BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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M E M O R A N D U M

TO: Sophia Kittler, 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: June 25, 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. 190723

Hearing to consider the proposed Initiative Ordinance submitted by four or more Supervisors to the voters for the November 5, 2019, Election, entitled "Ordinance amending the Campaign and Governmental Conduct Code to prohibit campaign contributions from limited liability companies and limited liability partnerships; prohibit campaign contributions to members of and candidates for the Board of Supervisors, the Mayor and candidates for Mayor, the City Attorney and candidates for City Attorney, and the controlled committees of those officials and candidates, from any person with pending or recently resolved land use matters before the City; and expand disclaimer requirements for independent expenditure committee advertisements."

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: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Patrick Ford, Ethics Commission
S 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 Catara, Board of Appeals

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Submittal Form
For Proposed Initiative Measure(s)
Prior to Submittal to the Department of Elections

by 4 or more Supervisors or the Mayor

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors' Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections (per Proposition C, November 2007).

This matter is for the **November 5 2019** Election.

Sponsor(s): Supervisor Gordon Mar

Subject: Initiative Ordinance - Campaign and Governmental Conduct Code - Prohibiting Certain Campaign Contributions; Disclaimer and Disclosure Requirements

The text is listed below or attached:

(See attached.)

Supervisor Gordon Mar: _____

Supervisor Matt Haney: _____

Supervisor Sandra Lee Fewer: _____

Supervisor Hillary Ronen: _____

Supervisor Rafael Mandelman: _____

(Clerk of the Board's Time Stamp)

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PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 5, 2019 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than *45 days prior* to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Campaign and Governmental Conduct Code - Prohibiting Certain Campaign Contributions; Disclaimer and Disclosure Requirements]

Ordinance amending the Campaign and Governmental Conduct Code to prohibit campaign contributions from limited liability companies and limited liability partnerships; prohibit campaign contributions to members of and candidates for the Board of Supervisors, the Mayor and candidates for Mayor, the City Attorney and candidates for City Attorney, and the controlled committees of those officials and candidates, from any person with pending or recently resolved land use matters before the City; and expand disclaimer requirements for independent expenditure committee advertisements.

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

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

Section 1. Title.

This Initiative shall be known as the "Sunlight on Dark Money Initiative."

Section 2. Findings.

The People of the City and County of San Francisco declare their findings and purposes in enacting this ordinance to be as follows:

(a) The San Francisco Campaign Finance Reform Ordinance ("CFRO"), S.F. Campaign & Gov. Conduct Code, Article I, was enacted to enhance the integrity of the election process and help restore public trust in governmental and electoral institutions in the City and County of San Francisco. CFRO's specific purposes include assisting voters in making informed electoral decisions through increased disclosure, limiting contributions to candidates and committees to eliminate or reduce the appearance or reality that campaign contributions may lead to corruption or undue influence over elected officials, and enforcement to ensure compliance with the law.

(b) In recent years, exacerbated by the United States Supreme Court's decision in Citizens United v. Federal Elections Commission, corporations, lobbyists, and other wealthy interests have exploited legal loopholes to evade the reasonable contribution limits enacted by voters while hiding disclosure of their donations from voters.

(c) In 2015, the Board of Supervisors approved Ordinance No. 102-15, repealing certain disclosure requirements for independent expenditure committees, also known as "Super PACs." The repeal of those requirements has reduced the information available to San Francisco voters, making it more difficult for them to make informed choices.

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

(e) The corrosion of the integrity of San Francisco's elections caused by the 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.

Section 3. The Campaign and Governmental Conduct Code is hereby amended by revising Sections 1.114, 1.161, 1.162, and 1.170, and adding Section 1.127 to read as follows:

SEC. 1.114. CONTRIBUTIONS – LIMITS AND PROHIBITIONS.

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

(b) PROHIBITION ON CONTRIBUTIONS FROM CORPORATIONS. No corporation, *limited liability company, or limited liability partnership* organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection (b) shall prohibit such a corporation, *limited liability company, or limited liability partnership* from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, *limited liability company, or limited liability partnership*, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

* * * *

SEC. 1.127. CONTRIBUTIONS BY PERSONS WITH PENDING LAND USE MATTERS.

(a) Definitions. For purposes of this Section 1.127, the following terms have the following meanings:

"Affiliated Entities" means business entities directed and controlled by the same person or majority-owned by the same person.

"Financial Interest" means (a) an ownership interest of at least $5,000,000 in the project or property that is the subject of the Land Use Matter; (b) holding the position of director or principal officer, including but not limited to President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of the Board of Directors, in an entity with an ownership interest of at least $5,000,000 in the project or property that is the subject of the Land Use Matter; or (c) being the developer of a project with an estimated construction cost of at least $5,000,000 that is the subject of the Land Use Matter.

"Land Use Matter" means (a) any request to a City elective officer for a Planning Code or Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary determination at a public hearing before a City board or commission. "Land Use Matter" shall not include discretionary review hearings.

"Prohibited Contribution" means a contribution of any amount to (a) a member of the Board of Supervisors, (b) a candidate for member of the Board of Supervisors, (c) the Mayor, (d) a candidate for Mayor, (e) the City Attorney, or (f) a candidate for City Attorney.

(b) ***Prohibited Contributions****. No person, or the person's Affiliated Entities, with a Financial Interest in a Land Use Matter pending before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, shall make any Prohibited Contribution at any time from*

the date of commencement of a Land Use Matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling or any appeals to another City agency from that decision or ruling have been finally resolved.

(c) ***Prohibition on Soliciting or Accepting Prohibited Contributions.***

(1) ***Prohibition.*** *No member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates may accept or solicit any contribution prohibited by subsection (b).*

(2) ***Safe Harbor.*** *Notwithstanding subsection (c)(1), if a member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, accepts a contribution prohibited by subsection (b) after exercising due diligence, such due diligence shall constitute a full and complete defense in any enforcement action for a violation of this Section 1.127, except that the recipient of the prohibited contribution shall forfeit that contribution. A candidate or committee would satisfy this due diligence requirement if the person making the contribution to such candidate or committee attests under penalty of perjury that the contribution is not prohibited by subsection (b).*

(d) ***Exception for Primary Residence.*** *The prohibitions set forth in subsections (b) and (c) of this Section 1.127 shall not apply if the Land Use Matter concerns only the person's primary residence.*

(e) ***Forfeiture of Prohibited Contributions.*** *In addition to any other penalty provided by law, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) of this Section 1.127 shall pay promptly the amount received by or deposited to the City and County of*

San Francisco by delivering the payment to the Ethics Commission for deposit in the City's General Fund.

(f) ***Notification.*** *The Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, and the Treasure Island Development Authority Board of Directors shall post a description of the prohibition in subsection (b) of this Section 1.127 on their respective websites and include that description on each meeting agenda.*

SEC. 1.161. CAMPAIGN ADVERTISEMENTS.

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

(1) TOP THREE CONTRIBUTORS. The disclaimer requirements for primarily formed independent expenditure committees and primarily formed ballot measure committees set forth in the Political Reform Act with respect to a committee's top three major contributors shall apply to contributors of ~~*$10,000*~~ *$5,000* or more. *Such disclaimers shall include both the name of and the dollar amount contributed by each of the top three major contributors of $5,000 or more to such committees. If any of the top three major contributors is a committee, the disclaimer must also disclose both the name of and the dollar amount contributed by each of the top two major contributors of $5,000 or more to that committee.* The Ethics Commission may adjust this monetary threshold to reflect any increases or decreases in the Consumer Price Index. Such adjustments shall be rounded off to the nearest five thousand dollars.

(2) WEBSITE REFERRAL. Each disclaimer required by the Political Reform Act or its enabling regulations and by this ~~s~~Section *1.161* shall be followed in the same required format, size, and speed by the following phrase: "Financial disclosures are available at sfethics.org." A substantially similar statement that specifies the web site may be used as an alternative in audio communications.

(3) MASS MAILINGS AND SMALLER WRITTEN ADVERTISEMENTS. Any disclaimer required by the Political Reform Act and by this section on a mass mailing, door hanger, flyer, poster, oversized campaign button or bumper sticker, or print advertisement shall be printed in at least ~~*12 point*~~ *14-point, bold* font.

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

(5) AUDIO AND VIDEO ADVERTISEMENTS. For audio advertisements, the disclaimers required by this Section 1.161 shall be spoken at the ~~*end*~~ *beginning* of such advertisements, *except that such disclaimers do not need to disclose the dollar amounts of contributions as required by subsection (a)(1)*. For video advertisements, the disclaimers required by this Section 1.161 shall be spoken at the ~~*end*~~ *beginning* of such advertisements, *except that such disclaimers do not need to disclose the dollar amounts of contributions as required by subsection (a)(1)*.

(b) FILING REQUIREMENTS.

(1) INDEPENDENT EXPENDITURE~~S~~ *ADVERTISEMENTS*. Committees required by state law to file late independent expenditure reports disclosing expenditures that support

or oppose a candidate for City elective office shall also file with the Ethics Commission on the same date a copy of the associated advertisement(s), *an itemized disclosure statement with the Ethics Commission for that advertisement(s),* and

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

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

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

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

(2) INDEPENDENT EXPENDITURE MASS MAILINGS.

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

(B) Each committee making independent expenditures that pays for a mass mailing shall file a copy of the mailing and the itemized disclosure statement required by subsection (b)(2) within 48 hours of the date of the mailing if the date of the mailing occurs within the final 16 days before the election.

(C) ***Exception.*** *Committees making independent expenditures to support or oppose a candidate for City elective office are not subject to the filing requirements imposed by this subsection (b)(2) during the time period that they are required by state law to file late independent expenditure reports and if they also file the itemized disclosure statement required by subsection (b)(1).*

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

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

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

(3) The Ethics Commission shall specify the method for filing copies of advertisements and mass mailings.

* * * *

SEC. 1.162. ELECTIONEERING COMMUNICATIONS.

(a) DISCLAIMERS.

(1) Every electioneering communication for which a statement is filed pursuant to subsection (b) shall include the following disclaimer: "Paid for by _____ (insert the name of the person who paid for the communication)." and "Financial disclosures are available at sfethics.org."

(2) Any disclaimer required by this Section *1.162* shall be included in or on an electioneering communication in a size, speed, or format that complies with the disclaimer requirements for independent expenditures supporting or opposing candidates set forth in the Political Reform Act and its enabling regulations.

(3) Notwithstanding subsection (a)(2), any disclaimer required by this Section *1.162*:

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

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

(C) to be included in a video advertisement, shall be spoken at the ~~*end*~~ *beginning* of such advertisements.

* * * *

SEC. 1.170. PENALTIES.

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

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter 1 shall be liable in a civil action brought by the City Attorney for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Sections 1.114, ~~*or*~~ 1.126, *or 1.127* or three times

the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140, whichever is greater. In determining the amount of liability, the court may take into account the seriousness of the violation, the degree of culpability of the defendant, and the ability of the defendant to pay.

(c) ADMINISTRATIVE. Any person who violates any of the provisions of this Chapter 1 shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 4. Scope of Ordinance. In enacting this ordinance, the People of the City and County of San Francisco intend to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly show in this ordinance as additions or deletions, in accordance with the "Note" that appears under the official title of the ordinance.

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

Section 6. Amendment or Repeal.

(a) Only the voters may amend or repeal any of the provisions of Section 1.114(b) and Section 1.127, including the preexisting provisions of Section 1.114(b) prohibiting contributions from corporations. Sections 1.114(b) and 1.127 are not subject to Section 1.103.

(b) The Board of Supervisors may amend or repeal the remaining provisions of the ordinance subject to the conditions set forth in Section 1.103:

(1) the amendment furthers the purposes of this Chapter;

(2) the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;

(3) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and

(4) the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

Section 7. Effective Date. The effective date of this ordinance shall be ten days after the official vote count is declared by the Board of Supervisors.

* * *

SUBMITTED.

Date: 6/18/19

Supervisor Gordon Mar
Member, Board of Supervisors

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DEPARTMENT OF ELECTIONS

Supervisor Matt Haney
Member, Board of Supervisors

Date: 6/18/19

Supervisor Sandra Lee Fewer
Member, Board of Supervisors

Date: 6/18/19

Supervisor Hillary Ronen
Member, Board of Supervisors

Date: 6/18/19

Supervisor Rafael Mandelman
Member, Board of Supervisors

Date: 6/18/19

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