

DRAFT 9.25.19

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ORDINANCE G-XXXX

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE VII
OF THE PHOENIX CITY CODE BY REVISING DIVISION 2
ON CAMPAIGN FINANCE AND ADDING A NEW DIVISION 3
RELATING TO ELECTION FUNDING DISCLOSURE
OBLIGATIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX, as
follows:

SECTION 1. That Chapter 12, Article VII, Division 2 of the Phoenix City
Code is amended to read as follows:

DIVISION 2. CAMPAIGN FINANCE

12-1500. State law to govern campaign finance.

UNLESS OTHERWISE PROVIDED IN THE CITY CHARTER OR IN THE
PHOENIX CITY CODE, [t]he applicable provisions of State law shall apply to
campaign finances in all City of Phoenix elections.

SECTION 2. That Chapter 12, Article VII of the Phoenix City Code is
hereby amended by adding a new Division 3 to read as follows:

DIVISION 3. ELECTION FUNDING DISCLOSURE OBLIGATIONS

12-1550. TITLE.

THIS ORDINANCE SHALL BE KNOWN AS THE "KEEP DARK MONEY OUT OF LOCAL PHOENIX ELECTIONS ORDINANCE."

12-1551. DEFINITIONS.

THE DEFINITIONS IN CHAPTER 12, ARTICLE VII, DIVISION 1, SHALL GOVERN WORDS, TERMS AND PHRASES WHEN USED IN THIS ARTICLE, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING, OR AS OTHERWISE REQUIRED BY LAW. THE FOLLOWING DEFINITIONS APPLY TO THIS DIVISION:

A. *EXPENDITURE* MEANS ANY PURCHASE, PAYMENT, DISTRIBUTION, LOAN, ADVANCE, DEPOSIT, OR GIFT OF MONEY OR ANYTHING OF VALUE MADE BY A PERSON, ASSOCIATION OF PERSONS, OR ENTITY, OTHER THAN A REGISTERED CANDIDATE COMMITTEE OR POLITICAL ACTION COMMITTEE, FOR THE PURPOSE OF INFLUENCING A LOCAL CITY ELECTION, INCLUDING A CONTRACT, PROMISE OR AGREEMENT TO MAKE AN EXPENDITURE RESULTING IN AN EXTENSION OF CREDIT AND THE VALUE OF ANY IN-KIND CONTRIBUTION RECEIVED, INCLUDING ANY EXPENDITURE DEFINED BY STATE LAW (AS AMENDED) THAT:

1) ADVOCATES FOR THE ELECTION OR DEFEAT OF A CANDIDATE FOR CITY MAYOR OR COUNCILMEMBER, OR A CITY BALLOT MEASURE; OR

2) IDENTIFIES A CANDIDATE FOR CITY MAYOR OR COUNCILMEMBER, OR A CITY BALLOT MEASURE.

THOSE ITEMS EXEMPTED FROM THE DEFINITION OF EXPENDITURE UNDER STATE LAW, AS AMENDED, ARE ALSO EXEMPT FROM THE DEFINITION OF EXPENDITURE UNDER THIS ORDINANCE.

B. *INTERMEDIARY* MEANS:

1) A PERSON, ASSOCIATION OF PERSONS OR ENTITY, WHO IS NOT AN ORIGINAL SOURCE AND WHO RECEIVES AND TRANSFERS FUNDS FROM ONE OR MORE ORIGINAL SOURCES OR FROM OTHER INTERMEDIARIES THAT ARE ATTRIBUTED TO AN EXPENDITURE SUBJECT TO THIS DIVISION; AND WHICH IN THE AGGREGATE CONSTITUTE A MAJOR CONTRIBUTION.

TRANSFERS INCLUDE BUNDLING NON-MAJOR CONTRIBUTIONS FOR DELIVERY TO THE PERSON, ASSOCIATION OF PERSONS, OR ENTITY MAKING THE

EXPENDITURE.

C. *MAJOR CONTRIBUTION* MEANS ANY MONEY, ADVANCE, DEPOSIT OR OTHER THING OF VALUE THAT IS MADE FOR THE PURPOSE OF INFLUENCING AN ELECTION, **EXCLUDING** ANY CONTRIBUTION OR ITEMS EXEMPTED AS DEFINED BY STATE LAW AS AMENDED, OR A TRANSFER OF FUNDS OR GOODS OR SERVICES WITH A MONETARY VALUE OF \$1,000 OR MORE IN THE AGGREGATE FROM A SINGLE SOURCE USED TO INFLUENCE THE RESULT OF A LOCAL CITY OF PHOENIX ELECTION.

D. **ORIGINAL SOURCE** MEANS A PERSON, ASSOCIATION OF PERSONS, OR ENTITY, REGARDLESS OF LEGAL FORM, WHO MAKES A MAJOR CONTRIBUTION FROM HIS, HER OR ITS OWN RESOURCES, SUCH AS WAGES, INVESTMENT INCOME, INHERITANCE, OR REVENUE FROM THE SALE OF GOODS OR SERVICES.

12-1552. PURPOSE AND INTENT.

A. THE KEEP DARK MONEY OUT OF LOCAL PHOENIX ELECTIONS ORDINANCE IS INTENDED TO SECURE THE RIGHT OF THE RESIDENTS OF THE CITY OF PHOENIX TO KNOW THE SOURCE OF ALL MAJOR CONTRIBUTIONS MADE TO INFLUENCE THE RESULT OF A LOCAL PHOENIX ELECTION, TO PREVENT ACTUAL CORRUPTION AND ITS APPEARANCE, AND TO PROTECT THE INTEGRITY OF PHOENIX ELECTIONS.

B. THE KEEP DARK MONEY OUT OF LOCAL PHOENIX ELECTIONS ORDINANCE REQUIRES PUBLIC DISCLOSURE OF THE ORIGINAL SOURCE OF ALL MAJOR CONTRIBUTIONS USED TO FUND AN EXPENDITURE MADE TO INFLUENCE THE RESULT OF A PHOENIX ELECTION, REGARDLESS OF WHETHER THAT CONTRIBUTION PASSED THROUGH ANY INTERMEDIARIES.

C. TO ENSURE TRANSPARENCY IN THE POLITICAL PROCESS, THE DISCLOSURE REQUIREMENT WILL BE ENFORCED BY CITIZEN COMPLAINTS, AS WELL AS CIVIL PENALTIES FOR VIOLATIONS.

12-1553. REQUIRED DISCLOSURE

A. EXPENDITURES

ANY PERSON, ASSOCIATION OF PERSONS (HEREINAFTER "ASSOCIATION") OR ENTITY, OTHER THAN A REGISTERED CANDIDATE COMMITTEE OR POLITICAL ACTION COMMITTEE, REGARDLESS OF LEGAL FORM, THAT MAKES AN EXPENDITURE TO INFLUENCE THE RESULT OF A LOCAL CITY OF PHOENIX ELECTION TOTALING \$1,000 OR MORE WITHIN AN ELECTION CYCLE SHALL DISCLOSE THE FOLLOWING:

1) THE AMOUNT OF THE EXPENDITURE ATTRIBUTED TO A MAJOR CONTRIBUTION AND THE NAME AND ADDRESS OF THE VENDOR OR OTHER PAYEE RECEIVING THE EXPENDITURE;

2) THE NAME OF THE CANDIDATE AND RACE OR BALLOT MEASURE TO WHICH THE EXPENDITURE WAS MADE AND WHETHER THE EXPENDITURE WAS IN SUPPORT OF OR OPPOSITION TO THE CANDIDATE OR BALLOT MEASURE;

3) THE COMMUNICATION MEDIUM AND DESCRIPTION OF WHAT WAS PURCHASED WITH THE EXPENDITURE; AND

4) THE DATE OF THE EXPENDITURE.

B. ORIGINAL SOURCE CONTRIBUTIONS & INTERMEDIARY TRANSFERS

1) IN ADDITION TO THE DISCLOSURES REQUIRED IN SECTION 12-1553(A), THE ORIGINAL SOURCE OR SOURCES OF ALL MAJOR CONTRIBUTIONS RECEIVED DURING AN ELECTION CYCLE THAT ARE ATTRIBUTED TO AN EXPENDITURE, AND ANY INTERMEDIARIES THROUGH WHICH SUCH CONTRIBUTIONS PASSED SHALL ALSO BE DISCLOSED AS FOLLOWS:

a) THE NAME, ADDRESS AND EMPLOYER OF EACH ORIGINAL SOURCE OF A MAJOR CONTRIBUTION ATTRIBUTED TO THE EXPENDITURE AS WELL AS THE AMOUNT(S) AND DATE(S) OF EACH MAJOR CONTRIBUTION; AND

b) IF THE CONTRIBUTION PASSED THROUGH AN INTERMEDIARY OR INTERMEDIARIES, THE NAME, ADDRESS AND EMPLOYER OF EACH INTERMEDIARY TO WHOM THE FUNDS WERE TRANSFERRED, WITH THE DATE(S) AND AMOUNT(S) OF THE TRANSFERS.

2) CONTRIBUTIONS ARE ATTRIBUTED TO AN EXPENDITURE SUBJECT TO THIS DIVISION AT THE TIME THAT THEY ARE EARMARKED AND USED FOR THAT EXPENDITURE, OR WHEN THEY CAN BE CREDIBLY TRACED TO AN EXPENDITURE USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

3) BEST EFFORTS SHALL BE EXERCISED TO IDENTIFY THE ORIGINAL SOURCE OR SOURCES OF ALL MAJOR CONTRIBUTIONS RECEIVED DURING AN ELECTION CYCLE THAT ARE ATTRIBUTED TO AN EXPENDITURE, AND ANY INTERMEDIARIES THROUGH WHICH SUCH CONTRIBUTIONS PASSED. BEST EFFORTS WILL NOT HAVE BEEN DEEMED EXERCISED UNLESS AT LEAST ONE (1) WRITTEN REQUEST HAS BEEN SENT TO THE CONTRIBUTOR OR INTERMEDIARY REQUESTING THE IDENTITY OF THE ORIGINAL SOURCE OR

SOURCES OF ALL MAJOR CONTRIBUTIONS AFTER THE RECEIPT OF THE CONTRIBUTION.

12-1554 WHEN DISCLOSURE IS NOT REQUIRED

DISCLOSURE IS NOT REQUIRED TO IDENTIFY:

A. ANY PERSON WHO CONTRIBUTES LESS THAN \$1,000 DURING AN ELECTION CYCLE.

B. THE NAMES OF DONORS WHO HAVE SPECIFICALLY RESTRICTED THEIR DONATION TO NON ELECTION-RELATED USES, PROVIDED THE FUNDS WERE NOT IN FACT USED TO INFLUENCE THE RESULT OF A CITY CANDIDATE OR CITY BALLOT MEASURE ELECTION.

C. CONTRIBUTORS OF MEMBERSHIP DUES OR FEES MADE CONSISTENT WITH A MEMBERSHIP DUES AND FEES SCHEDULE PUBLISHED BY AN ORGANIZATION AT LEAST TWO (2) YEARS PRIOR TO THE MAJOR CONTRIBUTION PROVIDED THE PUBLISHED SCHEDULE INCLUDES EACH OF THE FOLLOWING: (1) THE NUMBER OF MEMBERS; (2) THE AMOUNT OF THE MEMBERSHIP DUES OR FEES; AND (3) THE AMOUNT OF THE MEMBERSHIP DUES OR FEES, IF ANY, ALLOCATED FOR POLITICAL PURPOSES. HOWEVER, THE IDENTITY OF CONTRIBUTORS WHO EXCEED THE PUBLISHED SCHEDULED AMOUNT FOR MEMBERSHIP DUES OR FEES MUST BE DISCLOSED IF THE EXCESS AMOUNT OF A CONTRIBUTOR TOTALS \$1,000 OR MORE.

12-1555 REPORTING, CIVIL PENALTIES, AND APPEALS

A. THE DISCLOSURES REQUIRED BY THIS DIVISION SHALL BE MADE IN ELECTRONIC FORMAT AND FILED WITH THE CITY CLERK, IN THE MANNER PRESCRIBED BY THE CITY CLERK.

B. 48-HOUR DISCLOSURE REQUIREMENT.

1) AN INITIAL DISCLOSURE IS REQUIRED TO BE FILED WITHIN 48 HOURS OF AN EXPENDITURE TOTALING \$10,000 OR MORE (EXCLUDING SATURDAYS, SUNDAYS AND OTHER LEGAL HOLIDAYS) WHEN THE EXPENDITURE IS MADE WITHIN 16 DAYS PRIOR TO AN ELECTION. THE INITIAL 48-HOUR DISCLOSURE REQUIRED BY THIS SUBSECTION SHALL INCLUDE ALL THE INFORMATION REQUIRED IN SECTION 12-1553(A).

2) THE 48-HOUR DISCLOSURE SHALL ALSO INCLUDE THE INFORMATION REQUIRED UNDER SECTION 12-1553(B) FOR CONTRIBUTIONS ATTRIBUTED TO AN EXPENDITURE TOTALING \$10,000 OR MORE FROM A SINGLE SOURCE OR INTERMEDIARY.

C. ALL OTHER REQUIRED DISCLOSURES SHALL INCLUDE THE INFORMATION REQUIRED IN SECTIONS 12-1553 AND SHALL BE FILED ON A FORM PRESCRIBED BY THE CITY CLERK ON THE SAME DATE THAT THE NEXT CAMPAIGN FINANCE REPORT IS DUE UNDER STATE LAW.

D. DISCLOSURES SHALL BE MADE UNDER OATH AND SUBJECT TO THE PENALTY OF PERJURY BY A PERSON, ASSOCIATION OF PERSONS, OR ENTITY, OR A REPRESENTATIVE OF SUCH, WHO EITHER MAKES THE EXPENDITURE DIRECTLY OR WHO HAS KNOWLEDGE OF AND AUTHORITY OVER THE OPERATIONS OF THE PERSON, ASSOCIATION OF PERSONS, OR ENTITY MAKING THE EXPENDITURE SUBJECT TO THIS DIVISION

E. THE CITY CLERK SHALL POST THE DISCLOSURES PUBLICLY ONLINE IN ELECTRONIC FORMAT WITHIN TWO (2) WORKING DAYS OF RECEIPT.

F. THE CIVIL PENALTIES AND APPEALS PROCESS APPLICABLE TO VIOLATIONS OF CAMPAIGN FINANCE AS SET FORTH IN A.R.S. § 16-938 AS AMENDED APPLY TO ANY PERSON, ASSOCIATION OR ENTITY SUBJECT TO THIS DIVISION AND ARE INCORPORATED HEREIN BY THIS REFERENCE.

G. ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS DIVISION SHALL BE PAID INTO THE CITY OF PHOENIX GENERAL FUND.

SECTION 12-1556 SEVERABILITY AND DEFERENCE TO STATE LAW

A. THE PROVISIONS OF THIS DIVISION ARE SEVERABLE. IF ANY PROVISION IS HELD INVALID FOR ANY REASON, THE REMAINING PROVISIONS WILL BE SEVERED FROM THE VOID PORTION AND GIVEN THE FULLEST POSSIBLE FORCE AND APPLICATION.

B. NOTHING IN THIS DIVISION SHALL PREEMPT OTHER LAWS, ORDINANCES OR RULES REGULATING THE REQUIREMENTS OF DISCLOSURE.

SECTION 12-1557 PUBLIC RECORDS PRESUMPTION

ALL DOCUMENTS PROVIDED TO THE CITY PURSUANT TO THIS DIVISION ARE PRESUMED TO BE PUBLIC RECORD PURSUANT TO THE LAWS OF THE STATE OF ARIZONA AND MAY BE SUBJECT TO DISCLOSURE UPON REQUEST IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA.

SECTION 3. City of Phoenix voters approved Proposition 419 on election funding disclosure obligations at a special election on November 6, 2018. Pursuant to Section 2 of Article XIII of the Constitution of the State of Arizona, the Governor of the

State of Arizona approved Proposition 419 on July 3, 2019. Pursuant to Chapter IV, Section 14 of the Charter of the City of Phoenix, the requirements of this ordinance shall take effect and become operative thirty (30) days after its passage by the Council of the City of Phoenix and apply to elections beginning in 2020.

PASSED by the Council of the City of Phoenix this ____ day of October, 2019.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

Acting City Attorney

REVIEWED BY:

City Manager

DRL:rb:(10/5/19):2143452v1