

ORDINANCE NO. O2017.51

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 13, ARTICLE II, THE TEMPE CITY
CODE, BY ADDING A NEW DIVISION 3,
RELATING TO DISCLOSURE OBLIGATIONS.**

WHEREAS, under the Arizona Constitution, a city with a population of more than three thousand five hundred (3,500) people is entitled to establish a charter for its government and that a charter city is granted autonomy over matters of local interests;

WHEREAS, the Arizona Supreme Court has declared that the “method and manner of conducting elections in the city ... is peculiarly the subject of local interest and is not a matter of statewide concern” (*State ex rel. Brnovich v. City of Tucson*, 399 P.3d 663 (Ariz. 2017), as amended (Aug. 17, 2017));

WHEREAS, the voters of the City of Tempe established the Tempe City Charter in 1964 that governs City of Tempe elections, in addition to other matters of local interests;

WHEREAS, the implementation of disclosure obligations for expenditures made to influence local elections in the City of Tempe, including for the offices of Mayor and Councilmember, will maintain the public trust, eliminate quid pro quo corruption, eliminate the potential for fraud for the conduct of City elections, and improve transparency and integrity of local government and local elections.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 13, Article II of the Tempe City Code is hereby amended by adding a new Division 3 to read as follows:

DIVISION 3. DISCLOSURE OBLIGATIONS

Section 13-125. Title.

This Ordinance shall be known as the “Keep Dark Money Out of Local Tempe Elections Ordinance.”

Section 13-126. Definitions.

The definitions in Chapter 13, Article II, Division 2, 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.

In addition, the following definitions shall apply to this Division 3, as follows, except where the context clearly indicates a different meaning, or as otherwise required by law.

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, or items exempted from, state law, as amended from time to time, that:

- (a) Advocates for the election or defeat of a candidate for city mayor or councilmember, or a city ballot issue; or
- (b) Identifies a candidate for city mayor or councilmember, or a city ballot issue.

Intermediary means:

- (a) 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; or
- (b) A person, association of persons or entity, who is not an original source and who receives or transfers funds which 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.

Major Contribution means any money, advance, deposit or other thing of value that is made for the purpose of influencing an election, including any contribution or items exempted as defined by state law, as amended from time to time, or a transfer of funds or goods or services with a monetary value of more than \$1,000 in the aggregate from a single source used to influence the result of a local City of Tempe election.

Original Source means a person, association of persons, or entity, other than a registered candidate committee, 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 except funds from contributions, donations or gifts.

State law references A.R.S. § 16-901; 16-921.

Section 13-127. Purpose and Intent.

(a) The Keep Dark Money Out of Local Tempe Elections Ordinance is intended to secure the right of the residents of the City of Tempe to know the source of all major contributions made to influence the result of a local Tempe election, to prevent actual corruption and its appearance, and to protect the integrity of Tempe elections.

(b) The Keep Dark Money Out of Local Tempe 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 Tempe 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 measures which include random audits and citizen complaints, as well as civil penalties for violations.

Section 13-128. Required Disclosure

(a) *Required disclosure for expenditures to influence a City of Tempe election.* Any person, association of persons or entity, other than a registered candidate committee, or political action committee, regardless of legal form, that makes expenditures to influence the result of a local City of Tempe election totaling more than \$1,000 within an election cycle shall disclose the original source or sources of all major contributions received during that period attributed to that expenditure, and any intermediaries through which such contributions passed.

(b) *Original source and intermediary contribution transfers: required disclosure.* The disclosure required by this Division shall identify the name, address and employer of each original source of a major contribution attributed to an expenditure as well as the amount(s) and date(s) of each major contribution. If the major contribution passed through an intermediary or intermediaries, the disclosure shall identify the name, address and employer of each intermediary, the name, address and employer of the person from whom the intermediary received the funds, the date(s) and amount(s) received from that person and the name, address and employer of the person to whom the funds were transferred, with the date(s) and amount(s) of the transfers.

- (1) 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.
- (2) Disclosure is not required of 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 issue election.
- (3) Disclosure is not required of the identity of persons contributing less than \$1,000 during an election cycle or of the 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 subject to this Division.

- (4) A person, association of persons or entity that makes expenditures to influence the result of a City of Tempe election totaling more than \$1,000 within an election cycle shall exercise its best efforts to identify the original source or sources of all major contributions received during that period attributed to that expenditure, and any intermediaries through which such contributions passed. The person, association of persons or entity will not be deemed to have exercised best efforts to identify the original source or sources of all major contributions unless it has made at least one (1) written request for the identity of the original source or sources of all major contributions to the contributor or intermediary after the receipt of the contribution.

(c) *Reporting, civil penalties and appeals.*

- (1) The disclosures required by this Division shall be made in electronic format and filed with the City Clerk, as the City Clerk so prescribes.
- (2) The disclosure shall be made within forty-eight (48) hours of the expenditure. A person, association of persons, or entity who makes one disclosure shall make supplemental disclosures within forty-eight (48) hours of making subsequent expenditures totaling \$1,000 or more.
- (3) 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 has knowledge of and authority over the operations of the person, association of persons, or entity making the expenditure subject to this Division.
- (4) The City Clerk shall post the disclosures publicly on line in electronic and downloadable format within two (2) working days of receipt.
- (5) Civil penalties and appeals shall be governed by the following:
 - a. If a person has reasonable cause to believe that a violation of any of the limits or requirements imposed by this Division has occurred, a written, notarized complaint shall be filed with the City Clerk within ninety (90) days of the election for which the expenditure was made. All statements made in a complaint are subject to the statutes governing perjury and shall differentiate between statements based upon personal knowledge and statements based upon information and belief. Within two (2) working days, the City Clerk shall notify the City Manager or designee of receipt of such complaint.
 - b. Upon receipt of such complaint, the City Clerk shall provide the City Manager or designee with information ascertained by the City Clerk in the normal course of carrying out the City Clerk's responsibilities, or information received on the basis of a referral from a state, county or municipal election

official, that may have bearing on a reasonable cause determination to believe a person, association of persons, or entity has or has not violated any of the limits or requirements imposed by this Division.

- c. If the City Manager or designee determines that, if true, the facts listed in the complaint would constitute a violation of this article, he or she shall provide the person, association of persons, or entity notification requiring a response to the complaint. Such notification shall include a copy of the written, notarized complaint and shall specify the time period for compliance which shall in no event exceed ten (10) calendar days. Notice shall be accomplished by sending the notification by electronic mail, or U.S. mail to the last known address of the person, association of persons, or entity. If compliance is not possible due to the nature of the violation or if no response is timely filed as required by section 13-128(C)(5)(c), a person, association of persons, or entity who violates section 13-128(A) or (B) shall be subject to a civil penalty assessed by the City Manager or designee of up to three (3) times the amount of money that has been spent in violation or up to three (3) times the value in money for an equivalent of money or other contributions of value spent in violation of section 13-128, per violation.
- d. The person, association of persons, or entity shall have ten (10) calendar days from the date of issuance of the notification or assessment as set forth in subsection 13-128(C)(5)(c), in order to file a written, notarized response to the complaint. The response shall be filed with the City Clerk before 5:00 p.m. on the tenth (10th) calendar day.
- e. The City Clerk shall provide the response to the City Manager or designee to render a final decision which may include a civil penalty as described in section 13-128(C)(5)(c) and/or a requirement for corrective action. The decision shall specify the time period for compliance or corrective action, if any, which shall in no event be less than twenty (20) calendar days.
- f. An appeal from a final decision of the City Manager or designee shall be filed within ten (10) calendar days from the date of issuance of the final decision. Such appeal shall be in writing, signed and dated by the person or complainant, and filed with the City Clerk.
- g. If the person, association of persons, or entity fails to take corrective action within the specified time period or no appeal is timely filed with the City Clerk, the person, association of persons, or entity shall remit payment to the City Clerk.
- h. In the event that a timely appeal is filed with the City Clerk, the City's Hearing Officer shall review the facts and make a written determination within twenty (20) calendar days of the filing of such appeal. The City Manager or designee may provide written documentation of the basis for its decision to be considered by the City's Hearing Officer.
- i. Appeals from the determination of the City's Hearing Officer shall be made to the Superior Court by way of special action within twenty (20) calendar

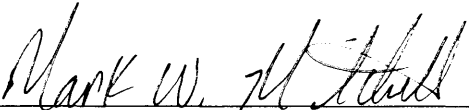
days from the date of issuance of the determination set forth in subsection 13-128(c)(5)(h).

- (6) All civil penalties collected pursuant to this Division shall be paid into the Tempe general fund.
 - (7) The City shall conduct a random audit of the reports submitted within one hundred twenty (120) days following a primary or general election.
- (d) *Severability and deference to state law.*
- (1) 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.
 - (2) Nothing in this Division shall preempt other laws, ordinances or rules regulating the requirements of disclosure.
- (e) 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 2. Pursuant to the Tempe City Charter, Section 2.12, the requirements of this ordinance shall be effective beginning with the 2020 election cycle.

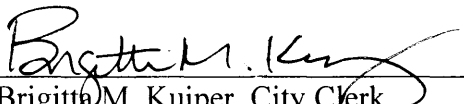
Section 3. Conditional Enactment. Pursuant to the Tempe City Charter, Section 2.12, this Ordinance shall only be effective upon the effective date of the Charter Amendment regarding disclosure obligations if passed by the City of Tempe voters at the March 13, 2018 Special Election, pursuant to Resolution No. R2017.140, and approved by the Governor of the State of Arizona.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, this 30th day of November, 2017.



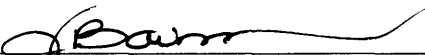
Mark W. Mitchell, Mayor

ATTEST:



Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:



Judith R. Baumann, City Attorney