

4/25/2019

ITEM 5

Genevieve Yip

From: Hosam Haggag
Sent: Thursday, April 25, 2019 2:16 PM
To: Genevieve Yip; Simrat Dhadli
Subject: Printing memo for the Ethics and Governance meeting
Attachments: Dark Money Ordinance Hosam Haggag memo to Ethics Gov Committee.docx

Hey Genevieve and Simrat,

Could one of you be so kind as to help me print out the attached memo for discussion in today's Ethics and Governance Committee Meeting? Enough copies for committee members, myself, and a few for any members of the public.

Thanks!
hosam

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Hosam Haggag :: City Clerk



REPORT TO Ethics and Governance Committee

SUBJECT

Discussion of Dark Money Ordinance – City Clerk Hosam Haggag’s memo

BACKGROUND

In April 2018, the City Council unanimously adopted a Dark Money Ordinance based on the pioneering work of the Ethics Committee.

Here’s what the preamble to the ordinance says:

WHEREAS, the Ethics Committee of the City Council of the City of Santa Clara has considered the effects of financial contributions that have not been disclosed with respect to campaign activities;

WHEREAS, the Ethics Committee has determined that existing state and local regulations regarding campaign contribution disclosures can be enhanced by additional local regulations; and,

WHEREAS, the City Council desires to enact an ordinance to provide maximum transparency to the voters of the City regarding the origin of financial support for and against local election campaigns.

As your newly elected City Clerk, one of my top priorities is to enforce our Dark Money Ordinance and strengthen it when necessary. I believe that time is now.

In 2016, we saw an unprecedented attempt to influence Santa Clara City Council elections by BluPAC, a never-before heard of “dark money” organization that would not disclose its donors. They reported spending approximately \$49,000 to support and oppose multiple candidates for city council, clerk and police chief candidates. It was widely reported that the San Francisco 49ers were behind BluPAC or played a major role. In fact, the team had numerous connections to the organization and would not publicly confirm nor deny if they were major contributors.

In 2018, we saw a plaintiff in an active lawsuit against the City provide major funding and substantial support to a controlled campaign committee that did not accurately disclose the magnitude and source of funding during the campaign as required by law.

In 2018, we saw an unprecedented attempt to influence a Santa Clara mayoral election. Just a few weeks before election day, a lawsuit was brought against Mayor Lisa Gillmor that alleged that she improperly filed her Form 700, an economic interest disclosure form that all elected officials must file.

That allegation was false, as evidenced by the fact that Mayor Gillmor recently prevailed in Santa Clara County Superior Court. But perhaps more significantly, the plaintiff, Brian Exline, a Santa Clara University law school student, and the law firm representing him, McManis Faulkner, filed a complaint with the Santa Clara County District Attorney and learned prior to

filing their lawsuit that their charge was meritless. In fact, District Attorney Jeff Rosen was quoted in the media making this unambiguous statement:

“The Public Integrity Unit investigated whether income to Public Property Advisors was properly reported on Mayor Gillmor’s Forms 700. After reviewing documents, interviewing witnesses, conducting legal research, and consulting an FPPC representative, we concluded that Ms. Gillmor properly reported the income.”

Furthermore, the source of the funds for the lawsuit is not clear. It is still an open question as to whether a law school student independently funded a lawsuit prepared by a major law firm that could have taken hundreds of hours to prepare.

Given these facts, it is my concern that this lawsuit was filed to accomplish one or all the following:

1. to use a lawsuit based on a meritless allegation to influence a Santa Clara City election;
2. To use a lawsuit based on a meritless allegation to harass an election official by forcing her to spend her own money to defend against it;
3. To use a lawsuit based on a meritless allegation to intimidate an elected official or candidate.

Therefore, I believe we must act now to strengthen our Dark Money Ordinance to incorporate lawsuits as a potentially new and unprecedented way to influence, intimidate, or harass Santa Clara elected officials, candidates for elected office, other voting bodies or ballot measures or initiatives. What transpired in 2016 and 2018 could be repeated in 2020 and beyond.

RECOMMENDATION

I ask the Ethics Committee to support two of my efforts which are consistent with the Dark Money Ordinance preamble cited above and the previous work of your committee:

1. to support my efforts to bring a recommendation during the city's upcoming budget process to establish a contractual relationship with the California Fair Political Practices Commission to assist us with our dark money efforts and other investigations that may be required to keep Santa Clara elections transparent and honest. Our City Attorney's office and City Clerk's office have done an admirable job to date regarding our elections. However, I believe we would benefit from additional resources, expertise and enforcement authority that we don't readily have available in-house. The FPPC has a contractual relationship with other cities, including San Bernardino and Sacramento that have proven extremely effective, and I believe they can provide us with excellent expertise for reasonable compensation.
2. to support my efforts to bring a recommendation during the city's upcoming budget process to create a "Dark Money Defense Fund" that would help finance the defense of meritless lawsuits against elected officials. The funds would be used only in if it is reasonably clear that a lawsuit is meritless. An independent evaluator, such as the Fair Political Practices Commission, not the City Council, would make such a determination based on a set of criteria established in advance by a working group of legal and political experts.

3. to support my efforts to amend the current Dark Money Ordinance to incorporate funders of political lawsuits under the same funding disclosure requirements as is required of campaign contributions by Multipurpose Organizations, and that the penalties for failure to disclose be applied to these violatoins as well.

FISCAL IMPACT

For the recommendations made above:

1. Discussions are still under way with the Fair Political Practices Commission on the size of funding needed for an official engagement with them. More details will be provided at an upcoming meeting.
2. Establishing a new fund can be done by either
 - a. Setting aside a reserve fund that can be used in the event an independent evaluator recommends a meritless lawsuit is defensible, in which case a determined amount would need to be allocated for this fund, or
 - b. Establishing an ordinance that would include meritless lawsuits as recommended by an independent evaluator to be incorporated as part of the City's existing legal costs.