Legislation Details (With Text)

File #:	CB 119731 **Version:** 2	**Name:**	CB 119731
Type:	Ordinance (Ord)	**Status:**	Passed
		In control:	City Clerk
On agenda:	1/13/2020		
Final Action:	1/17/2020	**Ord. No.**	Ord 126035
Title:	AN ORDINANCE related to elections; prohibiting foreign-influenced corporations from making independent expenditures or contributing to campaigns and independent expenditure committees; amending Sections 2.04.010, 2.04.260, 2.04.270, 2.04.360, and 2.04.370 of the Seattle Municipal Code (SMC); and adding a new Section 2.04.400 to the SMC.		
Sponsors:	M. Lorena González		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Central Staff Memo, 3. Presentation, 4. Proposed Amendment 1, 5. Proposed Amendment 2, 6. Clerk File CF 321575 (added; 1/28/20), 7. Signed Ordinance 126035, 8. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
1/17/2020	2	City Clerk	attested by City Clerk	
1/17/2020	2	Mayor	returned	
1/17/2020	2	Mayor	Signed	
1/16/2020	2	City Clerk	submitted for Mayor's signature	
1/13/2020	1	City Council	passed as amended	Pass
1/7/2020	1	Select Committee on Campaign Finance Reform	pass	Pass
1/6/2020	1	City Council	referred	
12/31/2019	1	Council President's Office	sent for review	
12/31/2019	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE related to elections; prohibiting foreign-influenced corporations from making independent expenditures or contributing to campaigns and independent expenditure committees; amending Sections 2.04.010, 2.04.260, 2.04.270, 2.04.360, and 2.04.370 of the Seattle Municipal Code (SMC); and adding a new Section 2.04.400 to the SMC.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council makes the following findings of fact:

A. The City of Seattle welcomes immigrants, visitors, and investors from around the world. However,

its elections should be decided by the people of Seattle and not by foreign investors or the business entities over which they exert influence.

B. Foreign nationals have used and may continue to use U.S. business entities to funnel funds into U.S. elections, which is in violation of federal laws prohibiting foreign spending in U.S. elections. There are recent instances of intentional and targeted foreign interference in domestic local elections, including in San Diego, where in 2017, a businessman was convicted in federal court of unlawfully funneling foreign funding into local elections through third parties and shell corporations in order to support politicians who might support his real estate development plans; and in New York, where, in 2019, four individuals have been indicted on charges stemming from a scheme in which they laundered foreign money into U.S. elections via shell corporations and straw donors.

C. The U.S. Court of Appeals for the Ninth Circuit has acknowledged the validity of legislation "to protect the country's political processes after recognizing the susceptibility of the elections process to foreign interference," including in municipal elections. (*United States v. Singh*, 924 F. 3d 1030, 1043 (2019)).

D. The United States government has concluded that the 2016 presidential election was subject to extensive foreign involvement, as set forth in the U.S. Director of National Intelligence's January 2017 report on "Assessing Russian Activities and Intentions in Recent US Elections" and in Special Counsel Robert Mueller's "Report on the Investigation into Russian Interference in the 2016 Presidential Election," publicly released on April 18, 2019.

E. The United States government has concluded that Russia, China, Iran, and other foreign actors are engaged in ongoing campaigns to undermine democratic institutions, as set forth in the joint statement "Combating Foreign Influence in U.S. Elections," issued by the Office of the Director of National Intelligence (ODNI), Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Department of Homeland Security (DHS) on October 19, 2018.

F. The FBI has concluded that foreign influenced operations include "criminal efforts to suppress voting

and provide illegal campaign financing," as set forth in FBI Director Christopher Wray's press briefing on election security on August 2, 2018.

G. The United States Congress and the U.S. Supreme Court have recognized the need to protect U.S. elections (including local elections) from foreign influence through the ban on contributions and expenditures by foreign nationals imposed by 52 U.S.C. 30121 and upheld by the Supreme Court in *Bluman v. Federal Election Commission,* 800 F. Supp. 2d 281 (2011).

H. It has been affirmed by the Supreme Court that "the United States has a compelling interest… in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process." (*Bluman v. Federal Election Commission*, 8000 F. Supp. 2d 281 (2011), *aff'd* 575 U.S. 1104 (2012))

I. Current law does not adequately protect against foreign interference through corporate political spending by U.S. corporations with significant foreign ownership, as explained by Federal Election Commissioner Ellen Weintraub in her July 19, 2017, statement "How Our Broken Campaign Finance System Could Allow Foreign Governments to Buy Influence in Our Elections and What We Can Do About It."

J. The U.S. Securities and Exchange Commission, major capital investors, corporate managers, and corporate governance experts broadly agree that ownership or control of one percent or more of shares can confer substantial influence on corporate decision-making.

K. Corporations with foreign ownership have been increasingly politically active in recent years, including in local elections in Seattle and around the country.

L. Business entities have a fiduciary duty to their shareholders, including shareholders around the world, and generally prioritize the interests of such shareholders, which may diverge substantially from the interests of the citizens of Seattle and of citizens of the United States.

M. Political spending by foreign-influenced business entities, even when they are simply acting in the perceived interests of their investors rather than being purposefully used to funnel foreign money into local

elections, can weaken, interfere with, or disrupt Seattle's democratic self-government and the faith that the electorate has in its elected officials.

N. To protect the integrity of Seattle's democratic self-government, it is necessary to prevent foreign-influenced business entities from influencing Seattle elections by spending money in local candidate elections or contributing to independent expenditure committees.

Section 2. Section 2.04.010 of the Seattle Municipal Code, last amended by Ordinance 124694, is amended as follows:

2.04.010 Definitions

* * *

"Candidate" means any individual who seeks election to the office of Mayor, member of the City Council, or City Attorney of the City, whether or not successfully. An individual is deemed to seek election when ((~~he or she~~)) the individual first:

1. Solicits or receives contributions; or

2. Makes expenditures or reserves space or facilities with intent to promote ((~~his or her~~)) the individual's candidacy for office; or

3. Announces publicly or files for office; or

4. Purchases commercial advertising space or broadcast time to promote ((~~his or her~~)) the individual's candidacy; or

5. Makes expenditures or solicits or receives contributions to explore the possibility of seeking election to City office; or

6. Gives ((~~his or her~~)) consent to another person to take on behalf of the individual any of the actions in subsections 1, 2, 4, or 5 of this ((~~section~~)) definition.

"Charter" means the Charter of The City of Seattle.

"Chief executive officer" means the highest-ranking officer or decision-making individual with

authority over a corporation's affairs.

"City" means The City of Seattle.

"Commercial advertiser" means any person who sells the service of communicating messages or producing political advertising.

"Commission" means the Seattle Ethics and Elections Commission established by Section 3.70.010.

"Continuing political committee" means a political committee which is an organization of continuing existence not established in anticipation of any particular election.

"Contribution" means a loan, loan guarantee, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or transfer of anything of value, including personal and professional services, for less than full consideration, but does not include:

(((~~(a) interest~~)) 1. Interest on moneys deposited in a political committee's account;

(((~~(b) ordinary~~)) 2. Ordinary home hospitality;

(((~~(c) the~~)) 3. The rendering of legal or accounting services on behalf of a candidate or an authorized political committee, but only to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws;

(((~~(d) the~~)) 4. The rendering of personal services of the sort commonly performed by volunteer campaign workers;

(((~~(e) incidental~~)) 5. Incidental expenses personally incurred by campaign workers not in excess of $25, in the aggregate, during the applicable period, personally paid for by a volunteer campaign worker; or

(((~~(f) an~~)) 6. An internal political communication primarily limited to the members of a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization. For purposes of this definition, "members" are those who (((~~(i)~~))) (a) regularly pay dues in exchange for benefits from the organization, or (((~~(ii)~~))) (b) are able to vote, directly or indirectly, for at least one (((~~(1)~~))) member of the

organization's governing board, or (((~~iii~~))) (c) adhere to a code of conduct, the violation of which may subject the members to sanctions that could adversely affect their livelihood, or (((~~iv~~))) (d) participate in the organization's policy-formulating committees.

For the purposes of this ((~~chapter~~)) Chapter 2.04, contributions other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution. Sums paid for tickets to fundraising events such as dinners and parties are contributions; however, the amount of any such contribution may be reduced for the purpose of complying with the reporting requirements of this ((~~chapter~~)) Chapter 2.04 by the actual cost of consumables furnished in connection with the purchase of such tickets, and only the excess over actual cost of such consumables shall be deemed a contribution. Without limiting the foregoing, the financing by a person of the dissemination, distribution, or publication, in whole or in part, of broadcast, written graphic, or other form of political advertising prepared or approved by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

"Corporation" means a corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

"Elected ((~~Official~~)) official" means any person elected at a general or special election to the office of Mayor, member of the City Council, or City Attorney of the City and any person appointed to fill a vacancy in any such office.

* * *

"Final report" means the report described as a final report in Section 2.04.375.

"Foreign-influenced corporation" means a corporation for which at least one of the following conditions is met:

1. A single foreign owner holds, owns, controls, or otherwise has direct or indirect beneficial ownership of one percent or more of the total equity, outstanding voting shares, membership units, or other applicable

ownership interests of the corporation;

2. Two or more foreign owners, in aggregate, hold, own, control, or otherwise have direct or indirect beneficial ownership of five percent or more of the total equity, outstanding voting shares, membership units, or other applicable ownership interests of the corporation; or

3. A foreign owner participates directly or indirectly in the corporation's decision-making process with respect to the corporation's political activities in the United States.

"Foreign investor" means a person or entity that:

1. Holds, owns, controls, or otherwise has direct or indirect beneficial ownership of equity, outstanding voting shares, membership units, or other applicable ownership interests of a corporation; and

2. Is a government of a foreign country; a foreign political party; a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence.

"Foreign owner" means (1) a foreign investor; or (2) a corporation wherein a foreign investor holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than 50 percent of the total equity or outstanding voting shares.

"In-kind labor" means services provided by a person who volunteers all, or a portion, of ((~~his/her~~)) the person's time to a candidate's election campaign, and who is not paid by any person for such services.

"Independent expenditure" means an expenditure on behalf of ((~~,~~)) or opposing any election campaign, when such expenditure:

1. ((~~is~~)) Is made independently of the candidate, ((~~his/her~~)) the candidate's political committee ((~~,~~)) or agent, or ((~~of~~)) any ballot proposition committee or its officers or agents; ((~~,~~))

2. ((~~and when such expenditure is~~)) Is made without the prior consent, or the collusion ((~~,~~)) or ((~~the~~)) cooperation, of the candidate, ((~~or his/her~~)) the candidate's agent or political committee, or the ballot

proposition committee or its officers or agents; ((,)) and

3. ((~~when such expenditure is~~)) Is not a contribution as defined in this Section 2.04.010.

An independent expenditure is made by a person on the earliest of the following events: (a) the person agrees with a vendor or provider of services to make an independent expenditure; or (b) the person incurs the obligation to make an independent expenditure; or (c) the person pays for an independent expenditure.

"Independent expenditure committee" means any political committee that makes an independent expenditure, or makes contributions to other independent expenditure committees, totaling $1,000 or more in an election cycle for a City election.

"Knowledge." A person knows or acts knowingly or with knowledge when:

1. ((~~the~~)) The person is aware of a fact, facts, or circumstances or result described by an offense in this ((~~title~~)) Title 2; or

2. ((~~he or she~~)) The person has information that would lead a reasonable person to believe that facts exist, which facts are described by an ordinance defining the offense, in violation of this ((~~title~~)) Title 2.

* * *

Section 3. Section 2.04.260 of the Seattle Municipal Code, last amended by Ordinance 123070, is amended as follows:

2.04.260 Treasurer's reports-Contents ((.))

A. Each report required under Section 2.04.250 shall disclose:

1. The funds on hand at the beginning of the reporting period;

2. The name and address of each person who has made one or more contributions during the reporting period, together with:

a. The money value and date of each contribution; ((,))

b. The aggregate value of all contributions received from each such person during the applicable period; ((,))

c. The occupation and the employer's name, city, and state of each individual whose contributions in the aggregate during the applicable period exceed $100.

Contributions of $25 or less in the aggregate from any one person during the applicable period may be reported as one lump sum so long as the campaign treasurer maintains a separate list of the ((~~contributor's~~)) contributors' names, addresses, and the amounts of each of their contributions, but if the treasurer does not maintain such a list, then the name, address, and amount of each contribution shall be reported;

d. A copy of the certification provided pursuant to subsection 2.04.270.D, by the chief executive officer of any corporation making a contribution, that the corporation is not a foreign-influenced corporation.

3. Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly, or contingently and the date and amount of each such loan, promissory note, or security instrument;

4. The name and address of each political committee from which the reporting committee or candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts, dates, and purpose of all such transfers;

5. All other contributions not otherwise listed or exempted;

6. The name and address of each person to whom one or more expenditures were made in the aggregate amount of more than $50 during the reporting period, and the amount, date, and purpose of each such expenditure;

7. The total sum of expenditures;

8. The surplus or deficit of contributions over expenditures;

9. The disposition made of any surplus of contributions over expenditures;

10. Such other information as the Commission requires by rule adopted pursuant to the Administrative Code in conformance with the policies and purposes of this ((~~chapter~~)) Chapter 2.04;

11. Funds received from a political committee not domiciled in the state and not otherwise required to report under this ((~~chapter~~)) Chapter 2.04 (a "nonreporting committee"). Such funds shall be returned unless the nonreporting committee files with the City Clerk no later than the tenth day of the month following any month in which a contribution is made a statement disclosing:

a. The name and address of the nonreporting committee,

b. The purposes of the nonreporting committee,

c. The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and titles of its responsible leaders,

d. A statement whether the nonreporting committee is a continuing one,

e. The name and office sought of each candidate in the City in support of whom the nonreporting committee made an expenditure,

f. The City ballot proposition concerning which the nonreporting committee made an expenditure, and whether such committee is in favor of or opposed to such proposition,

g. The name and address of each person residing in the state or corporation which has a place of business in the state that has made one or more contributions in the aggregate of more than $25 to the nonreporting committee during the current calendar year, together with the money value and date of such contributions,

h. The name and address of each person in the state to whom an expenditure was made by the nonreporting committee on behalf of a candidate or political committee, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; and

12. Investments made of campaign funds under Section 2.04.215 and interest dividends and/or other income received.

B. The correctness of each report shall be certified as required by all applicable laws and ordinances.

Section 4. Section 2.04.270 of the Seattle Municipal Code, last amended by Ordinance 124694, is amended as follows:

2.04.270 Independent expenditures; contributions to out-of-state committees-reports ((.))

* * *

C. A person with the expectation of making an independent expenditure or expenditures by disseminating an advertising message or messages that the person reasonably expects to be received, read, viewed or heard by 1,000 or more individuals in a single calendar year shall, within two business days after the initial dissemination of the advertisement, deliver a copy of each such advertisement to the offices of the Commission, along with a statement disclosing the method of dissemination of the advertisement and an estimate of the expected quantity of the advertising. This requirement applies only to all independent expenditures that are required to be reported, i.e., an individual spending $100 or more of ((~~his or her~~)) the individual's own funds and anyone spending any amount of the funds of others. This disclosure does not substitute for the disclosure requirements of other sections of this ((~~chapter~~)) Chapter 2.04.

D. Any corporation making an independent expenditure or contributing to an independent expenditure committee shall, within seven business days after making such expenditure or contribution, file with the City Clerk a statement of certification signed by its chief executive officer under penalty of perjury, avowing that after due inquiry, the corporation was not a foreign-influenced corporation on the date such expenditure or contribution was made. The corporation shall also provide a copy of the statement of certification to any independent expenditure committee to which it makes a contribution.

Section 5. Section 2.04.360 of the Seattle Municipal Code, last amended by Ordinance 116368, is amended as follows:

2.04.360 Application ((.))

Sections 2.04.350 through 2.04.370 ((~~and 2.04.400 through 2.04.480~~)) apply only to candidates in any primary,

general, or special election for the offices of Mayor, City Council, and City Attorney of The City of Seattle.

Section 6. Section 2.04.370 of the Seattle Municipal Code, last amended Ordinance 125611, is amended as follows:

2.04.370 Mandatory limitations on contributions to candidates

* * *

D. No candidate for Mayor, member of the City Council, or City Attorney of the City shall solicit or receive campaign contributions of more than $500 from any person in any election cycle.

E. Contributions from foreign-influenced corporations prohibited

1. No candidate for Mayor, member of the City Council, or City Attorney of the City shall solicit or receive campaign contributions from a foreign-influenced corporation.

2. Any corporation making a contribution to a candidate for Mayor, member of the City Council, or City Attorney of The City of Seattle shall, within seven business days after making such contribution, file with the City Clerk a statement of certification signed by its chief executive officer under penalty of perjury, avowing that after due inquiry, the corporation was not a foreign-influenced corporation on the date such contribution was made. The corporation shall also provide a copy of the statement of certification to any campaign to which it contributes.

((~~E~~)) F. The limitations imposed by this ((~~section~~)) Section 2.04.370 shall not apply to:

1. A candidate's contributions of ((~~his or her~~)) the candidate's own resources to ((~~his or her~~)) the candidate's own campaign, or contributions to the candidate's campaign by the candidate or the candidate's spouse or state registered domestic partner of their jointly owned assets;

2. Independent expenditures as defined by this Chapter 2.04 except as provided by Section 2.04.400;

3. The value of in-kind labor; and

4. Contributions consisting of the rendering of clerical or computer services on behalf of a

candidate or an authorized political committee, to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws.

((~~F~~)) G. The limitations imposed by this ((~~section~~)) Section 2.04.370 shall apply to contributions of the candidate's spouse's or state registered domestic partner's separate property.

((~~G.~~)) H. The limitations in this Section 2.04.370 shall be adjusted commencing before the 2019 election cycle, and prior to each election cycle thereafter, by the Commission to account for inflation or deflation using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the period since the effective date of this measure or the prior adjustment, as calculated by the United States Department of Labor. The declaration of the Washington State Department of Labor and Industries ((~~each~~)) every September 30, regarding the rate by which Washington State's minimum wage rate is to be increased effective the following January 1, shall be the authoritative determination of the rate or percentage of increase or decrease to be adjusted, except that the Commission may round off the new figures to amounts judged most convenient for public understanding.

Section 7. A new Section 2.04.400 of the Seattle Municipal Code is added to Subchapter IV of Chapter 2.04 as follows:

2.04.400 Independent expenditures

A. No foreign-influenced corporation shall make an independent expenditure in elections for or against candidates for the offices of Mayor, City Council, or City Attorney of The City of Seattle, nor a contribution to an independent expenditure committee that has conveyed, implicitly or explicitly, that contributions to the committee may be used in elections for or against candidates for the offices of Mayor, City Council, or City Attorney of The City of Seattle.

B. An independent expenditure committee may dedicate any contributions that do not comply with the restrictions of Section 2.04.400 for use in elections outside Seattle or for other lawful purposes.

Section 8. 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 City Council hereby declares that it 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 portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 9. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

_____

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Monica Martinez Simmons, City Clerk

(Seal)