City of St. Petersburg

Committee of the Whole

Meeting of June 22, 2017 @ 8:00 a.m.

City Hall - Room 100

A. Call to Order – Council Chair Darden Rice

B. Discussion Items

1. **Campaign Finance Reform**

2. **Discussion on amending Section 4.05 of the City of St. Petersburg Municipal Charter to provide for additional Council member comments on the creation of new management or professional non-management positions and on the hiring and firing of City Council office staff**

C. Next Meeting – August 10, 2017 @ 9:00 a.m., City Hall - Room 100
Bio-Solids to Energy Update and
5 year Wastewater Improvement Plan

D. Adjournment

DRAFT

6/16/2017 2:47 PM

ORDINANCE NO. _____

AN ORDINANCE MAKING FINDINGS REGARDING THE NEED TO ENACT CAMPAIGN FINANCE REFORM FOR MUNICIPAL ELECTIONS IN THE CITY OF ST. PETERSBURG; AMENDING THE CITY CODE TO ADD CONTRIBUTION LIMITS FOR MUNICIPAL ELECTIONS; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF ST. PETERSBURG ORDAINS THE FOLLOWING:

SECTION 1—SHORT TITLE: This ordinance may be known and cited as the "Defend Our Democracy Ordinance."

SECTION 2—FINDINGS: The City Council of the City of St. Petersburg, Florida, makes the following findings:

[TBD findings based on input from City Council.]

SECTION 3—AMENDMENT OF CITY CODE: Chapter 10 of the St. Petersburg City Code is amended by inserting after article II, the following new article:

ARTICLE III. – CAMPAIGN FINANCING

Sec. 10-42. – Definitions.

The words, terms, and phrases used in this article shall have the meanings ascribed to them in the state statutes regulating elections, except that the following words, terms and phrases shall have the following meanings:

(a) "Chief executive officer" means the highest-ranking officer or decision-making individual with authority over the corporation's affairs.

(b) "Corporation" means any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity.

(c) "Foreign owner" means

(1) a foreign national, as defined in 52 U.S.C. § 30121(b); or

(2) a corporation wherein a foreign national, as defined in 52 U.S.C. § 30121(b), 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.

(d) "Foreign-influenced corporation" means any corporation wherein

(1) a foreign owner 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 5 percent of the total equity or outstanding voting shares; or

(2) foreign owners hold, own, control, or otherwise have directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than 20 percent of the total equity or outstanding voting shares; or

(3) one or more foreign owners participate in any way, directly or indirectly, in the corporation's decision-making process with respect to the corporation's political activities in the United States, including the corporation's political activities in a municipal election.

(e) "Municipal candidate" means a candidate for Mayor or City Council.

(f) "Municipal election" means a primary or general election for Mayor or City Council.

(g) "Municipal expenditure for electioneering communication" means an expenditure for an electioneering communication, as defined in F.S. § 106.011(8), made with respect to a municipal candidate.

(h) "Municipal independent expenditure" means an independent expenditure, as defined in F.S. § 106.011(12), made with respect to a municipal candidate, but shall not include any expenditure for any activity or communication that qualifies under F.S. § 106.011(8)(b).

(i) "Municipal special election" means any special election for Mayor or City Council, including a special primary election under F.S. § 100.101, special election to fill a vacancy under Sec. 3.04 of Article VII of the St. Petersburg City Charter, or special recall election under F.S. § 100.361.

(j) "Municipally active outside-spending group" means a political committee, as defined in F.S.§ 106.011(16)(a), or an electioneering communications organization, as defined in F.S. § 106.011(9), that either:

(1) makes a municipal independent expenditure or a municipal expenditure for electioneering communication; or

(2) mentions this city, either explicitly or by means susceptible of no reasonable interpretation other than this city, in a solicitation for a contribution or in a description of a planned independent expenditure or electioneering communication, that is distributed or otherwise made available to contributors or to the general public; or

(3) solicits contributions for, among other purposes, the purpose of municipal independent expenditures or municipal expenditures for electioneering communication; or

(4) otherwise conveys, in solicitations for contributions or in materials otherwise made available to prospective or actual contributors, either explicitly or by means susceptible to no other reasonable interpretation, that contributions may be used for municipal independent expenditures or municipal expenditures for electioneering communication; or

(5) accepts a contribution that has been specifically designated for partial or exclusive use in a municipal election or municipal special election.

Sec. 10-43. – Election spending by foreign-influenced corporations.

(a) This section applies to any corporation that:

(1) makes a municipal independent expenditure of $5,000 or more with respect to any municipal candidate in a municipal election or a municipal special election; or

(2) makes a municipal expenditure for electioneering communication of $5,000 or more with respect to any municipal candidate in a municipal election or municipal special election; or

(3) makes a contribution to a municipally active outside-spending group.

(b) The chief executive officer of any corporation subject to this section shall file with the City Clerk's Office, within 30 days after making the contribution or expenditure, a statement of certification avowing that, after due inquiry and under penalty of perjury, the corporation is not a foreign-influenced corporation. The statement of certification shall include the following:

(1) the name and mailing address of the corporation,

(2) for each contribution or expenditure, the amount, date, and recipient,

(3) the statement "I certify, after due inquiry and under penalty of perjury, that, on the date(s) on which the referenced contribution(s) or expenditure(s) was/were made, [name of corporation] was not a foreign-influenced corporation as defined by the St. Petersburg City Code," and

(4) the signature of the corporation's chief executive officer.

(c) It shall be unlawful for a corporation that is subject to this section to fail to timely file the statement of certification.

Sec. 10-44. – Contribution limits for municipally active outside-spending groups.

(a) The treasurer of a municipally active outside-spending group shall separately designate, record, and account for, by a secondary depository or a separate interest-bearing campaign account under F.S. § 106.021 or by any other means consistent with state law, funds that are eligible for use for municipal independent expenditures or municipal expenditures for electioneering communications.

(b) The following shall not be designated as eligible for use for municipal independent expenditures or municipal expenditures for electioneering communications:

(1) any portion of a contribution to a municipally active outside- spending group that exceeds the aggregate of $5,000 per person per calendar year; or

(2) any contribution from a corporation to a municipally active outside-spending group for which the corporation fails to provide, within 30 days of making the contribution, a copy of the statement of certification required under Section 10-43.

(c) The treasurer of a municipally active outside-spending group shall ensure that disbursements for municipal independent expenditures or municipal expenditures for electioneering communications are made from funds designated as eligible for such use.

(d) It shall be unlawful for the treasurer of a municipally active outside-spending group to make or authorize disbursements in violation of this section.

(e) The treasurer of a municipally active outside-spending group shall advise contributors and prospective contributors of the limits in this section.

Sec. 10-45. – Severability clause.

If any provision of this article, or the application thereof to any person, entity, or circumstance, is held invalid, such determination shall not affect other provisions or applications of this article, and to that end the provisions of this article are severable.

SECTION 4—EFFECTIVE DATE: In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it will become effective upon the expiration of the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto this ordinance, in which case this ordinance will become effective immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it will not become effective unless the City Council overrides the veto in accordance with the City Charter, in which case it will become effective immediately upon a successful vote to override the veto.

Approved as to form and content:

City Attorney (Designee)

Administration

DRAFT ORDINANCE FOR ST. PETERSBURG

ARTICLE III. CAMPAIGN FINANCING

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Foreign-influenced corporation means any corporation wherein

(a) a foreign owner 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 5 percent of the total equity or outstanding voting shares; or
(b) foreign owners hold, own, control, or otherwise have directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than 20 percent of the total equity or outstanding voting shares; or
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Municipally active outside-spending group means a political committee, as defined in F.S. § 106.011(16)(a), or an electioneering communications organization, as defined in F.S. § 106.011(9), that either:

(a) makes a municipal independent expenditure or a municipal expenditure for electioneering communication; or

(b) mentions this city, either explicitly or by means susceptible of no reasonable interpretation other than this city, in a solicitation for a contribution or in a description of a planned independent expenditure or electioneering communication, that is distributed or otherwise made available to contributors or to the general public; or

(c) solicits contributions for, among other purposes, the purpose of municipal independent expenditures or municipal expenditures for electioneering communication; or

(d) otherwise conveys, in solicitations for contributions or in materials otherwise made available to prospective or actual contributors, either explicitly or by means susceptible to no other reasonable interpretation, that contributions may be used for municipal independent expenditures or municipal expenditures for electioneering communication; or

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DRAFT ORDINANCE FOR ST. PETERSBURG

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  (3) makes a contribution to a municipally active outside-spending group.

(b) The chief executive officer of any corporation subject to this section shall file with the City Clerk's Office, within 30 days after making the contribution or expenditure, a statement of certification avowing that, after due inquiry and under penalty of perjury, the corporation is not a foreign-influenced corporation. The statement of certification shall include the following:
  (1) the name and mailing address of the corporation,
  (2) for each contribution or expenditure, the amount, date, and recipient,
  (3) the statement "I certify, after due inquiry and under penalty of perjury, that, on the date(s) on which the referenced contribution(s) or expenditure(s) was/were made, [name of corporation] was not a foreign-influenced corporation as defined by the St. Petersburg City Code," and
  (4) the signature of the corporation's chief executive officer.

(c) It shall be unlawful for a corporation that is subject to this section to fail to timely file the statement of certification.

Sec. 10-44. – Contribution limits for municipally active outside-spending groups.

(a) The treasurer of a municipally active outside-spending group shall separately designate, record, and account for, by a secondary depository or a separate interest-bearing campaign account under F.S. § 106.021 or by any other means consistent with state law, funds that are eligible for use for municipal independent expenditures or municipal expenditures for electioneering communications.

(b) The following shall not be designated as eligible for use for municipal independent expenditures or municipal expenditures for electioneering communications:

(1) any portion of a contribution to a municipally active outside-spending group that exceeds the aggregate of $5,000 per person per calendar year; or

(2) any contribution from a corporation to a municipally active outside-spending group for which the corporation fails to provide, within 30 days of making the contribution, a copy of the statement of certification required under Section 10-43.

(c) The treasurer of a municipally active outside-spending group shall ensure that disbursements for municipal independent expenditures or municipal expenditures for electioneering communications are made from funds designated as eligible for such use.

(d) It shall be unlawful for the treasurer of a municipally active outside-spending group to make or authorize disbursements in violation of this section.

(e) The treasurer of a municipally active outside-spending group shall advise contributors and prospective contributors of the limits in this section.

Sec. 10-45. – Severability clause.

If any provision of this article, or the application thereof to any person, entity, or circumstance, is held invalid, such determination shall not affect other provisions or applications of this article, and to that end the provisions of this article are severable.

52 U.S.C. § 30121(b)
(b) "Foreign national" defined

As used in this section, the term "foreign national" means--

(1) a foreign principal, as such term is defined by section 611(b) of Title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of Title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of Title 8.

22 U.S.C. § 611(c)
(c) Expect [sic][1] as provided in subsection (d) of this section, the term "agent of a foreign principal" means--

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person--

(i) engages within the United States in political activities for or in the interests of such foreign principal;
(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
(iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and

(2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection.

F.S. § 100.101. Special elections and special primary elections

A special election or special primary election shall be held in the following cases:

(1) If no person has been elected at a general election to fill an office which was required to be filled by election at such general election.
(2) If a vacancy occurs in the office of state senator or member of the state house of representatives.
(3) If it is necessary to elect presidential electors, by reason of the offices of President and Vice President both having become vacant.
(4) If a vacancy occurs in the office of member from Florida of the House of Representatives of Congress.

F.S. § 100.361. Municipal recall

(1) Application; definition. – Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as "municipality," may be removed from office by the electors of the municipality. When the official represents a district and is elected only by electors residing in that district, only electors from that district are eligible to sign the petition to recall that official and are entitled to vote in the recall election. When the official represents a district and is elected at-large by the electors of the municipality, all electors of the municipality are eligible to sign the petition to recall that official and are entitled to vote in the recall election. Where used in this section, the term "district" shall be construed to mean the area or region of a municipality from which a member of the governing body is selected by the electors from such area or region. Members may be removed from office pursuant to the procedures provided in this section. This method of removing members of the governing body of a municipality is in addition to any other method provided by state law.

(4) Recall election. – If the person designated in the petition files with the clerk, within 5 days after the last-mentioned notice, his or her written resignation, the clerk shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general or special election held

within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

....

(6) Filling of vacancies; special elections. –

(a) If an election is held for the recall of members elected only at-large, candidates to succeed them for the unexpired terms shall be voted upon at the same election and shall be elected in the same manner as provided by the appropriate law for the election of candidates at general elections. Candidates shall not be elected to succeed any particular member. If only one member is removed, the candidate receiving the highest number of votes shall be declared elected to fill the vacancy. If more than one member is removed, candidates equal in number to the number of members removed shall be declared elected to fill the vacancies; and, among the successful candidates, those receiving the greatest number of votes shall be declared elected for the longest terms. Cases of ties, and all other matters not herein specially provided for, shall be determined by the rules governing elections generally.

(b) If an election is held for the recall of members elected only from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election called by the chief judge of the judicial circuit in which the districts are located not less than 30 days or more than 60 days after the expiration of the recall election. The qualifying period, for purposes of this section, shall be established by the chief judge of the judicial circuit after consultation with the clerk. Any candidate seeking election to fill the unexpired term of a recalled district municipal official shall reside in the district represented by the recalled official and qualify for office in the manner required by law. Each candidate receiving the highest number of votes for each office in the special district recall election shall be declared elected to fill the unexpired term of the recalled official. Candidates seeking election to fill a vacancy created by the removal of a municipal official shall be subject to the provisions of chapter 106.

(c) When an election is held for the recall of members of the governing body composed of both members elected at-large and from districts, candidates to succeed them for the unexpired terms shall be voted upon at a special election as provided in paragraph (b).

(d) However, in any recall election held pursuant to paragraph (b) or paragraph (c), if only one member is voted to be removed from office, the vacancy created by the recall shall be filled by the governing body according to the provisions of the appropriate law for filling vacancies.

(7) Effect of resignations. – If the member of the governing body being recalled resigns from office prior to the recall election, the remaining members shall fill the vacancy created according to the appropriate law for filling vacancies. If all of the members of the governing body are sought to be recalled and all of the members resign prior to the recall election, the recall election shall be canceled, and a special election shall be called to fill the unexpired terms of the resigning members. If all of the members of the governing body are sought to be recalled and any of the members resign prior to the recall election, the proceedings for the recall of members not resigning and the election of successors to fill the unexpired terms shall continue and have the same effect as though there had been no resignation....

F.S. § 106.011(8)

(8)(a) "Electioneering communication" means communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;
2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and
3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

(b) The term "electioneering communication" does not include:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence before the time during which a candidate named or depicted qualifies for that election, made in that organization's newsletter, which newsletter is distributed only to members of that organization.
2. A communication in a news story, commentary, or editorial distributed through the facilities of a radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by a political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by a political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the

communication is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area.
3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:
(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or
(II) A newspaper, radio station, television station, or other recognized news medium; and
b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication is not considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication does not constitute an independent expenditure and is not subject to the limitations applicable to independent expenditures.

F.S. § 106.011(9)
(9) "Electioneering communications organization" means any group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee under this chapter.

F.S. § 106.011(12)
(12)(a) "Independent expenditure" means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period is not an independent expenditure.

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any subordinate committee of the political party, an affiliated party committee, a political committee, or any other person is not considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's campaign, or an agent of the candidate acting on behalf of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue;
2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue;
3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of a broadcast or a written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member;
4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue;
5. After the last day of the qualifying period prescribed for the candidate, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or prepare an independent expenditure or advertising campaign, with:
    a. An officer, director, employee, or agent of a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate; or
    b. A person whose professional services have been retained by a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate;

6. After the last day of the qualifying period prescribed for the candidate, retains the professional services of a person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or
7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

F.S. § 106.011(16)(a)

(16)(a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $500 during a single calendar year:
   a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;
   b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;
   c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or
   d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party;
2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. National political parties, the state and county executive committees of political parties, and affiliated party committees regulated by chapter 103.
2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.
3. Electioneering communications organizations as defined in subsection (9).

F.S. § 106.021 – Campaign treasurers; deputies; primary and secondary depositories

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository before qualifying for office. Any person

who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions. At the same time a candidate designates a campaign depository and appoints a treasurer, the candidate shall also designate the office for which he or she is a candidate. If the candidate is running for an office that will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he or she is running. This subsection does not prohibit a candidate, at a later date, from changing the designation of the office for which he or she is a candidate. However, if a candidate changes the designated office for which he or she is a candidate, the candidate must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement does not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of the intent to seek a different office, the contributor notifies the candidate in writing that the contributor wishes his or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Up to a maximum of the contribution limits specified in s. 106.08, a candidate who runs for an office other than the office originally designated may use any contribution that a donor does not request be returned within the 30-day period for the newly designated office, provided the candidate disposes of any amount exceeding the contribution limit pursuant to the options in s. 106.11(5)(b) and (c) or s. 106.141(4)(a) 1., 2., or 4.; notwithstanding, the full amount of the contribution for the original office shall count toward the contribution limits specified in s. 106.08 for the newly designated office. A person may not accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03.

(b) Except as provided in paragraph (d), each candidate and each political committee shall also designate one primary campaign depository for the purpose of depositing all

contributions received, and disbursing all expenditures made, by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held in which the candidate or committee participates. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository. Any bank, savings and loan association, or credit union authorized to transact business in this state may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time that, and with the same officer with whom, the candidate or committee files the name of his, her, or its campaign treasurer pursuant to paragraph (a). In addition, the campaign treasurer or a deputy campaign treasurer may deposit any funds which are in the primary campaign depository and which are not then currently needed for the disbursement of expenditures into a separate interest-bearing account in any bank, savings and loan association, or credit union authorized to transact business in this state. The separate interest-bearing account shall be designated "(name of candidate or committee) separate interest-bearing campaign account." In lieu thereof, the campaign treasurer or deputy campaign treasurer may purchase a certificate of deposit with such unneeded funds in such bank, savings and loan association, or credit union. The separate interest-bearing account or certificate of deposit shall be separate from any personal or other account or certificate of deposit. Any withdrawal of the principal or earned interest or any part thereof shall only be made from the separate interest-bearing account or certificate of deposit for the purpose of transferring funds to the primary account and shall be reported as a contribution.

(c) Any campaign treasurer or deputy treasurer appointed pursuant to this section shall, before such appointment may become effective, have accepted appointment to such position in writing and filed such acceptance with the officer before whom the candidate is required to qualify or with the officer with whom the political committee is required to file reports. An individual may be appointed and serve as campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint herself or himself as campaign treasurer.

(d) Any political committee which deposits all contributions received in a national depository from which the political committee receives funds to contribute to state and local candidates shall not be required to designate a campaign depository in the state.

(2) A candidate or political committee may remove his, her, or its campaign treasurer or any deputy treasurer. In case of the death, resignation, or removal of a campaign

treasurer before compliance with all obligations of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor in the manner provided in the case of an original appointment. No resignation shall be effective until it has been submitted to the candidate or committee in writing and a copy thereof has been filed with the officer before whom the candidate is required to qualify or the officer with whom the political committee is required to file reports. No treasurer or deputy treasurer shall be deemed removed by a candidate or political committee until written notice of such removal has been given to such treasurer or deputy treasurer and has been filed with the officer before whom such candidate is required to qualify or with the officer with whom such committee is required to file reports.

(3) No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee, subject to the following exceptions:

(a) Independent expenditures;

(b) Reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign or activities of the political committee by a check drawn upon the campaign account and reported pursuant to s. 106.07(4). The full name of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment;

(c) Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance, or other expenditures that include multiple integral components as part of the expenditure and reported pursuant to s. 106.07(4)(a) 13.; or

(d) Expenditures made directly by any affiliated party committee or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure may not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

(4) A deputy campaign treasurer may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized to do so by the campaign treasurer and the candidate, in the case of a candidate, or the

campaign treasurer and chair of the political committee, in the case of a political committee.

(5) For purposes of appointing a campaign treasurer and designating a campaign depository, candidates for the offices of Governor and Lieutenant Governor on the same ticket shall be considered a single candidate.

Sec. 3.04 – Council Members and Mayor Vacancies; Removal from Office.

(a)

Vacancies.

(1) A.

Vacancies on the Council caused by death, resignation (except for resignations as provided for in subsection B), refusal of any Council Member to serve, removal of any member of the Council, the moving of a Council Member from the electoral district from which the Council Member is elected, or for any other reason shall be filled as provided for herein by a majority of the remaining members of the Council and such vacancies shall be filled by the Council within forty-five (45) days after such vacancy occurs. The election to replace an appointed Council Member with an elected Council Member shall take place at the next primary and general municipal election for which the qualifying period has not begun at the time of the vacancy. When such elections are not in a year which would constitute the commencement of a new term, the term for that person so elected shall end at the time the term of the person who originally vacated the position would have ended.

B.

Vacancies on the Council caused by certain types of resignation:

1. When the resignation is submitted prior to the beginning of the qualifying period for the municipal elections to take place in the year the resignation is submitted; and

2. The effective date of the resignation is later than the date the resignation was submitted and is later than the beginning of the qualifying period for the municipal elections to take place in the year the resignation is submitted;

then the election to fill this seat with an elected Council Member shall take place in the primary and general municipal elections to take place in the year the resignation was submitted. The person so elected shall take office on January 2 of the year following the election. However, where a resignation would result in a district being unrepresented for more than

50 days, the majority of the remaining members of the Council may within 45 days of the actual vacancy occurring appoint a replacement who shall serve until the person elected as provided herein takes office.

C.

Appointed Council Members shall be a resident of the district in which the vacancy occurs and shall have and possess all the qualifications required for elected Council Members. Appointed Council Members shall serve until replaced by an elected Council Member as provided herein. Appointments or elections to fill a vacancy shall not change the base year for, or the date of commencement of, the terms of each district established in Section 3.02.

(2) Vacancy of the Mayor caused by death, resignation, refusal of the Mayor to serve, removal, or for any other reason, shall be filled as provided for in Section 4.03 below. When the vacancy occurs within eight months of a regularly scheduled City election and prior to the beginning of the qualifying period for that election, an election for Mayor shall be held as part of that election. The Acting Mayor shall serve until the newly elected Mayor is sworn in. The newly elected Mayor shall serve the unexpired term of the previous Mayor if the election is one in which there would not normally be a Mayoral race.

If the vacancy occurs at any other time and would require an individual to serve as Acting Mayor for a period of greater than six months, then City Council shall schedule a special primary and general election for Mayor to be completed within five months of the occurrence of the vacancy. City Council shall by ordinance provide for the dates of the elections and the length of the qualifying period which qualifying period shall in no event be less than one week. The individual elected in this manner shall take office one month after being declared elected by City Council and shall serve the remainder of the unexpired term of the previous Mayor.

(b) *Extraordinary Vacancies.* In the event that all members of the City Council are removed by death, disability or forfeiture of office, the governor shall appoint an interim City Council that shall call a special election to fill all City Council positions. Should three or more vacancies occur simultaneously on Council, the remaining members shall within fifteen (15) days call a special election to fill the vacant City Council positions.

(c) *Removal of Council Members or Mayor.* The City Council shall have power and authority to remove from office any members of the City Council or the Mayor for corruption, criminal misconduct, gross malfeasance in office, or for violation of the City Code of Ethics, after due written notice is delivered to the accused and the accused has an opportunity to be heard and defend against the accusations. The aforementioned written notice, before being delivered to the accused, must be approved by at least two-thirds of the existing membership of City Council that is eligible to vote on the matter. A member of City Council or the Mayor may only be removed from office upon a vote wherein no less than two-thirds of the existing membership of City Council that is eligible to vote on the matter affirmatively vote for such action. Subsequent to the aforementioned written notice being delivered to the accused, the Council by a vote wherein no less than two-thirds of the existing membership of City Council that is eligible to vote on the matter affirmatively vote for such action shall have the authority to suspend a member or the Mayor pending the disposition of charges for removal. The accused member shall not be entitled to participate in the deliberations or decision in relation to the suspension or removal except the accused shall have the right to defend against the charges as provided in this Section 3.04(c). Eligible to vote as used in this Section 3.04(c) means any member of City Council, whether present at the meeting or not, who is not prohibited by state law from voting because of a conflict and is not prohibited from voting because of a provision of this Charter. Where a suspension of a Council Member or the Mayor occurs pursuant to this section of the Charter, the suspended official shall have the right to an immediate hearing upon demand to determine if there is sufficient evidence to establish the following two elements: (1) that probable cause exists to believe that the charges are true; and (2) that, if true, the charges would be grounds for removal. This hearing shall be held and the matter shall be decided by City Council. The rules of procedure shall be the same as those which apply to the hearing for removal. If City Council does not find by an affirmative vote of at least two-thirds of the existing membership of City Council that is eligible to vote on the matter that the evidence produced at the hearing is sufficient to establish the aforementioned two elements, the suspension shall terminate immediately and the official shall be reinstated pending a final hearing on removal.

A final hearing for removal must take place and a decision rendered within ninety days after receipt by the accused of the above mentioned written notice unless both the City Council, by majority vote of those members eligible to vote on the matter, and the accused agree to extend the time. In order for City Council to remove the accused official from office, Council must find that the preponderance of the substantial competent evidence presented at the hearing supports the charges which

are the basis for the removal proceeding. If, after the final hearing, the City Council is unable to support such a finding by an affirmative vote of at least two-thirds of the existing membership of City Council that is eligible to vote on the matter, any suspension of the accused shall terminate and the accused shall be reinstated to office for any unfinished portion of the official's term. During a hearing regarding suspension or removal, the accused shall have the right to present evidence and testimony and to cross examine witnesses.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ELLEN L. WEINTRAUB
COMMISSIONER

October 25, 2016

Hon. Amy Foster, Chair
Hon. Darden Rice, Vice Chair
Hon. Charlie Gerdes
Hon. Jim Kennedy
Hon. Ed Montanari
Hon. Steve Kornell
Hon. Karl Nurse
Hon. Lisa Wheeler-Bowman

Members of the St. Petersburg City Council:

Thank you for this opportunity to comment on the "Defend Our Democracy Ordinance" you are considering. I congratulate and thank Vice Chair Rice for taking on this issue and bringing this ordinance before you. This ordinance will make St. Petersburg a leader in the United States' so-far halting efforts to respond to the corporate and foreign money flowing into our elections since the 2010 *Citizens United* decision.

In this tumultuous political year, foreign influence on American elections has emerged as an area of great concern to the American people. Our intelligence agencies indicate that a foreign government has stolen and disclosed emails from a national party committee and persons associated with a Presidential campaign in an attempt to disrupt our election. We have seen similar reports of foreign hacks of state voter-registration data. And we may have spotted the tip of the iceberg in foreign political spending, the true size of which is obscured by a sea of dark money.

The proliferation of dark-money groups in the wake of *Citizens United* has made it impossible to know the sources of all the funds flooding into our political system. It would be best to have more complete transparency for political spending. This proposal to require political spenders to verify and certify that they are not spending foreign money is a relatively modest but extremely welcome first step toward that goal.

Your proposed ordinance is well-drafted, on-target, legally sound, and very important. I am sorry to report that it is the sort of reform that may only succeed at the local and state levels at the moment, as ideological opposition to campaign-finance law enforcement has effectively paralyzed both the Federal Election Commission and Congress.

I well understand the concern about the increasingly influential role of super PACs in our elections. At the federal level, we are awash in super PAC funds. The Associated Press reported earlier this week that of the $1.7 billion raised for the Presidential race this year, fully one-third

of it came from unlimited donations to super PACs or dark-money groups that disclose even less than super PACs do.

The Wall Street Journal did a deep dive into the reports filed at the FEC last week. They found that 23 billionaires have spent $88 million on the presidential campaign. That's more than 700 times as much as they could have given if they could only contribute directly to candidate committees.

While most people think about outside-spending groups like super PACs in relation to congressional and presidential races, we are increasingly seeing these types of groups active at the state and local levels as well, where smaller sums can have much bigger impacts. A new study by the Brennan Center finds that in 2014 in the state races they examined, only 29 percent of outside spending was fully transparent, way down from 76 percent in 2006. This is a very troubling trend.

But I particularly want to address your proposed legislation's provisions concerning foreign-influenced corporations. I am gratified to note that it tracks the arguments I laid out in a *New York Times* op-ed in March (attached), where I highlighted the risk of foreign actors influencing our politics through corporate political contributions.

In a nutshell, my op-ed pointed out that the *Citizens United* majority protected the First Amendment rights of corporations as "associations of citizens." But the people behind corporate political spenders are not always U.S. citizens, and the resources they use may well be owned by foreigners. And under longstanding federal law, foreign nationals are absolutely barred from spending directly or indirectly in U.S. elections at any political level, including the municipal level. Since the Court held that a corporation's right to participate in elections flows from the collected rights of its individual shareholders to participate, it follows that limits on those individuals' rights must also flow to the corporation.

Foreign ownership of U.S. corporate assets is not an abstract concern. As Harvard Law professor John Coates, an expert on corporate law, said at the FEC in June, we have seen an "astonishing increase" in foreign ownership of U.S. corporate stock: "Back to 1982, about 5 percent of all U.S. corporate stock was held or controlled by foreigners," Prof. Coates said. "Now, it's now up to 25. Twenty-five."

And as I read Supreme Court precedent, ownership matters. When a U.S.-based company is owned by foreigners, the U.S. managers, even if they are U.S. citizens, would be breaching their fiduciary duties if they spent company resources other than in the best interest of their foreign owners. In the 2014 *Hobby Lobby* case, the Supreme Court wrote, "An established body of law specifies the rights and obligations of the *people* (including shareholders, officers, and employees) who are associated with a corporation in one way or another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people." It matters whose rights are being protected and whether the people who own or control corporations have the right to participate in our elections at all. Foreign nationals do not.

By focusing on disclosure, the City of St. Petersburg is on strong legal footing. The proposed disclosure does not bar any spending. It merely requires corporations that seek to spend in St. Petersburg elections to certify that they are following pre-existing federal law barring political spending by foreign nationals in municipal elections.

This is fully in keeping with *Citizens United's* prescription for greater transparency in political spending; as the Court wrote, "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

The measure before you requires a certification by corporations that seek to spend more than $5,000 in municipal elections that they are not "foreign-influenced corporations." The 5% and 20% thresholds strike me as defensible levels at which to draw a distinction among corporations. The notion that ownership can indicate control is not a novel idea in the law. Other areas of law specify various ownership levels that may be deemed a controlling interest. For example, federal securities law considers the purchase of a 5% share of a corporation to be significant and worthy of disclosure. Communications law limits foreign ownership of entities seeking broadcast licenses to a 20% share.

First Amendment concerns are not implicated by a bar on foreign political spending. In *Bluman v. FEC,* a 2011 decision affirmed by the Supreme Court, a special three-judge D.C. district court held that "the United States has a compelling interest for purposes of First Amendment analysis 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." The Court noted that the "government may bar foreign citizens (at least those who are not lawful permanent residents of the United States) from participating in the campaign process that seeks to influence how voters will cast their ballots in the elections."

I applaud St. Petersburg's taking a leadership role on this important question in American political life. By adopting these disclosure requirements, you will set an example that can be followed by others at the local, state, and federal levels. By passing this ordinance, you will be doing not just your City but also your country a great service.

Sincerely,

Ellen L. Weintraub

Ellen L. Weintraub
Commissioner
Federal Election Commission

cc: Mayor Rick Kriseman
Deputy Mayor Kanika Tomalin
City Attorney Jacqueline Kovilaritch

The New York Times | http://nyti.ms/1qhmpKB

The Opinion Pages | OP-ED CONTRIBUTOR

Taking On Citizens United

By ELLEN L. WEINTRAUB MARCH 30, 2016

SOMETHING is very wrong with the way we fund our elections. This has become especially clear since Citizens United, the 2010 Supreme Court decision that struck down campaign spending limits on corporations, ruling they were intrusions on free speech.

The majority opinion in Citizens United v. Federal Election Commission was clear: The First Amendment rights of corporations may not be abridged simply because they are corporations. But while corporations may be deemed to have some of the legal rights of people, the court has never held that corporations have any of the political rights of citizens.

This key distinction, read in harmony with existing law, provides ways to blunt the impact of the decision that gave corporations the right to spend unlimited sums of money on federal elections.

The effect of that decision has been pronounced: The Washington Post reported this month that through the end of January, 680 corporations had given nearly $68 million to "super PACs" in this election cycle — 12 percent of the $549 million raised by such groups. This figure does not include the untold amounts of "dark money" contributions to other groups that are not disclosed by the donor or the recipient.

Throughout Citizens United, the court described corporations as "associations of citizens": "If the First Amendment has any force," Justice Anthony M. Kennedy wrote, "it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." In other words, when it comes to political speech, which the court equated with political contributions and expenditures, the rights that citizens hold are not lost when they gather in corporate form.

Foreign nationals are another matter. They are forbidden by law from directly or indirectly making political contributions or financing certain election-related advertising known as independent expenditures and electioneering communications. Government contractors are also barred from making contributions.

Thus, when the court spoke of "associations of citizens" that have the right to participate in American elections, it can only have meant associations of American citizens who are allowed to contribute.

But many American corporations have shareholders who are foreigners or government contractors. These corporations are not associations of citizens who are allowed to contribute. They are an inseparable mix of citizens and noncitizens, or of citizens and federal contractors.

Since the court held that a corporation's right to participate in elections flows from the collected rights of its individual shareholders to participate, it follows that limits on those individuals' rights must also flow to the corporation.

You cannot have a right collectively that you do not have individually. Individual foreigners are barred from spending to sway elections; it defies logic to allow groups of foreigners, or foreigners in combination with American citizens, to fund political spending through corporations. If that were true, foreigners could easily evade the restriction by simply setting up shell corporations through which to funnel their contributions.

Arguably, then, for a corporation to make political contributions or expenditures legally, it may not have any shareholders who are foreigners or federal contractors. Corporations with easily identifiable shareholders could meet this

standard, but most publicly traded corporations probably could not.

This may sound like an extreme result, but it underscores how urgently policy makers need to examine these issues with an eye toward drawing acceptable lines. Perhaps we could require corporations that spend in federal elections to verify that the share of their foreign ownership is less than 20 percent, or some other threshold. The Federal Communications Commission, for example, bars companies that are more than 20 percent owned by foreign nationals from owning a broadcast license. At the moment, without a clarifying rule, the only standard that follows the law is a zero-tolerance standard.

If one thing is clear this election season, it is that many voters feel that their voices are not being heard. We should make sure that the voices of citizens are not being drowned out by corporate money. American billionaires already have an outsize influence on our elections. Let's not cede yet more power to foreign elites.

To that end, at the next public meeting of the Federal Election Commission, I will move to direct the commission's lawyers to provide us with options on how best to instruct corporate political spenders of their obligations under both Citizens United and statutory law. The American people deserve assurances from American corporations that they are not using the money of foreign shareholders to influence our elections.

Regardless of whether the perpetually deadlocked F.E.C. takes action, lawyers may wish to think twice before signing off on corporate political giving or spending that they cannot guarantee comes entirely from legal sources.

States can also take action, since Citizens United and federal law barring foreign money apply with equal force at the state level. States can require entities accepting political contributions from corporations in state and local races to make sure that those corporations are indeed associations of American citizens — and enforce the ban on foreign political spending against those that are not.

Polls show that overwhelming majorities of Americans reject the conclusions of Citizens United and want to see it overturned. But in the meantime, federal and state policy makers and authorities can at least ensure that corporations are not being

used as a front to allow foreign money to seep into our elections.

Ellen L. Weintraub is a member of the Federal Election Commission.

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October 25, 2016

To the Honorable City Council Chair Amy Foster and the Honorable City Council,

I am writing briefly with regard to a particular issue that I understand has emerged regarding the proposed ordinance in St. Petersburg applicable to contributions to super PACs and foreign corporate political spending.

As I understand it, the question has emerged of whether members of the City Council, or their staff, could be found individually and personally liable as a result of any litigation brought to challenge the ordinance. Under U.S. Supreme Court precedent, local legislators, like their state and federal counterparts, "are entitled to absolute immunity from civil liability for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998). As the unanimous opinion (written by Justice Thomas) in that case noted, absolute legislative immunity (including for local legislators) has been a consistent principle of constitutional and common law since the earliest days of the Republic. In particular, as the Court made clear, "acts of *voting for an ordinance* [are], in form, quintessentially legislative," and therefore protected by absolute immunity. *Id.* at 55. Even officials *outside* the legislative branch itself—let alone legislative staff—"are entitled to legislative immunity when they perform legislative functions." *Id.*

I have reviewed, and agree with the conclusions of, the attached letter addressing this question in more detail, which discusses additional federal and Florida appellate court decisions that reach this same conclusion. Given such consistent and clear precedent, members of the St. Petersburg City Council and their staff are certainly entitled to absolute and unqualified immunity for their legislative activities, including for the specific act of voting on ordinances. If I can be of assistance to the Council throughout the process in any way, please do not hesitate to contact me.

Sincerely,

Laurence H. Tribe

Laurence H. Tribe
Carl M. Loeb University Professor and Professor of Constitutional Law
Harvard Law School*

**Title and university affiliation included for identification purposes only.*

FREE SPEECH FOR PEOPLE .ORG

October 13, 2016

Assistant City Attorney Joseph Patner
Office of the City Attorney for the City of St. Petersburg
One Fourth Street North
St. Petersburg, Florida 33701

Dear Mr. Patner,

We enjoyed speaking with you and your colleagues last week regarding the Defend Our Democracy ordinance ("Ordinance") sponsored by Councilmember Rice. As follow-up to that conversation, we are providing some additional information regarding three questions that were discussed: (1) state preemption, (2) the federal regulation interpreting the federal "foreign nationals" spending ban, and (3) absolute legislative immunity. Please do not hesitate to contact us if you have further questions.

I. State Preemption and the Defend Our Democracy Ordinance

Under the Florida Constitution, Fla. Const. art. VIII, sec. 2, and the Municipal Home Rule Power Act, Fla. Stat. Ann. § 166.021, Florida municipalities, including St. Petersburg, have broad home rule powers, and may exercise any power for municipal purposes "except as otherwise provided by law." Fla. Const. art. VIII, sec. 2. *See also Masone v. City of Aventura*, 147 So.3d 492 (Fla. 2014) (Municipal ordinances must yield to state statutes); *City of Kissimmee v. Florida Retail Federation, Inc.*, 915 So.2d 205 (Fla. Dist. Ct. App. 2005) (a municipality may, under its broad home rule powers, enact local ordinances that are not inconsistent with general law).

In 2010, the Florida Supreme Court made clear that state law did not preempt the field of election law, and that local governments could adopt ordinances in the field so long as they did not conflict with state law. *Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886-87 (Fla. 2010). This decision expressly overruled the only decision holding otherwise. *See Browning v. Sarasota All. for Fair Elections, Inc.*, 968 So.2d 637 (Fla. Dist. Ct. App. 2007).

The Court wrote:

> While we agree that Florida's Election Code is a detailed and extensive statutory scheme, we conclude that the Legislature's grant of power to local authorities in regard to many aspects of the election process does not evince an intent to preempt the field of election laws…In the instant

> case, the Legislature clearly did not deprive local governments of all local power in regard to elections. To the contrary, the Election Code specifically delegates certain responsibilities and powers to local authorities[.]

Browning, 28 So.3d at 886-88.

In *Browning*, the Court held that a conflict exists between a local ordinance and a state law when "one must violate one provision in order to comply with the other. Putting it another way, a conflict exists when two legislative enactments 'cannot co-exist.'" *Id.* at 888 (quoting *Laborers' Int'l Union of N. Am., Local 478 v. Burroughs,* 522 So.2d 852, 856 (Fla. Dist. Ct. App. 1987)).

That is to say, conflict is present "only if there is an *impossibility of the coexistence* of the two laws asserted to be in conflict." *Id.* at 892 (emphasis added). *See also State ex rel. Dade County v. Brautigam*, 224 So.2d 688, 692 (Fla. 1969) ("The word 'inconsistent' as used in this provision of the constitution means contradictory in the sense of legislative provisions which cannot coexist."). Thus, a reviewing court is most concerned with "whether compliance with a [municipal] ordinance *[r]equires* a violation of a state statute or renders compliance with a state statute impossible." *Jordan Chapel Freewill Baptist Church v. Dade Cnty.*, 334 So.2d 661, 664 (Fla. Dist. Ct. App. 1976) (emphasis added). *See also Masone*, 147 So. 3d at 495; *Jass Properties, LLC v. City of N. Lauderdale*, 101 So.3d 400, 402 (Fla. Dist. Ct. App. 2012).

Florida's relevant campaign finance laws, *see generally*, Fla. Stat. Ann. chapter 106, which regulate campaign financing for candidates, political committees, electioneering communication organizations, and political parties, do not conflict with the contribution limits that the Defend Our Democracy ordinance ("Ordinance") would establish for municipally active outside spending groups, as Florida's campaign finance laws do not establish—or even reference the possibility of—contribution limits to political committees or electioneering communication organizations. *Cf.* Fla. Stat. § 106.08.

And even if they *could* be said to do so somehow, the experiences of Ft. Lauderdale, Sarasota, Sarasota County, Leon County, and Tallahassee—all of which have adopted city- or county-level contribution limits, and all of which remain valid—demonstrate that contribution limits, such as those to be established by the Ordinance, are not only increasingly common on the municipal and county levels, but that they do not *require* a violation of any state statute nor render compliance with any state statute impossible. *See* LeRoy Collins Institute & Integrity Florida, *Money in Politics Reforms in Florida*, 4 (2015),

http://collinsinstitute.fsu.edu/sites/collinsinstitute.fsu.edu/files/Campaign%20finance%20report%20AUG%202015.pdf (discussing local contribution limits passed by these five Florida jurisdictions).

Thus, while in *Browning* a handful of election law-related provisions (e.g., vote certification deadlines, voting system auditing requirements, vote counting procedures) did trigger, and fail, the Florida Supreme Court's conflict test due to *explicit* disagreements between state and local law,[1] the Ordinance cannot be said to present *any* discernible conflicts with Florida's Election Code whatsoever.

II. Federal Regulation Prohibiting Independent Expenditures by Foreign Nationals

You had inquired whether the federal foreign nationals prohibition at 52 U.S.C. § 30121 includes a prohibition on independent expenditures made by foreign nationals. As we mentioned on the call, the Federal Election Commission's regulation clarifies that independent expenditures are in fact covered. Here is the regulation:

11 CFR § 110.20 – Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (52 U.S.C. 30121, 36 U.S.C. 510).

(e) *Disbursements by foreign nationals for electioneering communications.* A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) *Expenditures, independent expenditures, or disbursements by foreign nationals in connection with elections.* A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election.

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[1] For example, the Court found that the charter amendment conflicted with the Florida Election Code by providing, without specifying a date certain, that no election results could be certified until an independent auditing firm had completed mandatory audits and any cause for concern about accuracy of results had been resolved, whereas the Election Code required results to be certified by the county canvassing board by 5 p.m. on the seventh day after a primary election, and by 5 p.m. on the eleventh day following a general election. *See Browning*, 28 So.3d at 889-90.

III. Legislative Immunity

Under unanimous U.S. Supreme Court precedent, "[i]t is well established that federal, state, and regional legislators are entitled to absolute immunity from civil liability for their legislative activities." *Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998) (holding that local legislators are absolutely immune from suit under § 1983 for their legislative activities).

The principle that legislators are absolutely immune from liability for their legislative activities "has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries" and was "taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation." *Tenney v. Brandhove,* 341 U. S. 367, 372 (1951) (holding that members of California legislative subcommittee were protected by absolute immunity from damages liability as a matter of section 1983 interpretation). As such, U.S. Supreme Court jurisprudence shields legislators from liability for their legislative activities. *See Brandhove*, 341 U.S. at 372-75.

In particular, the U.S. Supreme Court has repeatedly made clear that legislative immunity includes both regional and local legislative conduct. *Bogan*, 523 U.S. at 46; *Owen v. City of Independence,* 445 U.S. 622 (1980); *U.S. v. Gillock,* 445 U.S. 360 (1980); *Lake County Estates v. Tahoe Regional Planning Authority*, 440 U.S. 966 (1979); *Doe v. McMillan,* 412 U.S. 306 (1973).

The U.S. Court of Appeals for the Eleventh Circuit has held that absolute legislative immunity extends to a broad spectrum of "legislative activities":

> Acts such as voting…speech making on the floor of the legislative assembly…preparing committee reports…and participating in committee investigations and proceedings…are generally deemed legislative and, therefore, protected by the doctrine of legislative immunity.

Yeldell v. Cooper Green Hosp., Inc., 956 F.2d 1056, 1062 (11th Cir. 1992). Acts that are generally *not* protected by the doctrine of legislative immunity, on the other hand, include the public distribution of press releases and newsletters, the acceptance of bribes in return for votes on pending legislative business, the administration of penal facilities, and the denial of licenses. *Id. See also Espanola Way Corp. v. Meyerson,* 690 F.2d 827, 829 (11th Cir. 1982) (holding that exercises of absolutely immune legislative decision-making involved actions such as the vetoing of an ordinance passed by a city's legislative body, the examining of a plaintiff before a legislative committee, and the vote of a city councilman).

The Florida Supreme Court has likewise extended absolutely immunity to legislative activities. In a wrongful death case involving a municipal police department, the Court reinforced the unassailability of this protection, writing: "We think it advisable to protect our conclusion against any interpretation that would impose liability on the municipality in the exercise of legislative or judicial, or quasi-legislative or quasi-judicial functions." *Hargrove v. Town of Cocoa Beach*, 96 So.2d 130, 133 (Fla. 1957).

This conclusion has been echoed time and time again across Florida's courts of appeal. The First District Court of Appeals has stated that "[a]bsolute immunity...applies to government officials performing legislative functions." *Junior v. Reed*, 693 So.2d 586, 589 (Fla. Dist. Ct. App. 1997). *See also Florida House of Representatives v. Expedia, Inc.*, 85 So.3d 517, 523-24 (Fla. Dist. Ct. App. 2012) (holding that because legislative immunity existed under the common law of England, it continues to exist in Florida: "Because we know of no law abrogating the common law on this point, we conclude that Florida legislators continue to enjoy legislative immunity under state law."). The Fourth District Court of Appeals has similarly held that "State and local officials are immune from civil suits for their acts done within the sphere of legislative activity." *City of Pompano Beach v. Swerdlow Lightspeed Mgmt. Co., LLC*, 942 So.2d 455, 456 (Fla. Dist. Ct. App. 2006).

In particular, the Second District Court of Appeals has made clear that "[i]f an exercise of legislative or judicial power is involved, the immunity is absolute." *Penthouse, Inc. v. Saba*, 399 So.2d 456, 458 (Fla. Dist. Ct. App. 1981). This immunity has been applied precisely to city councilmembers: "City council members...are immune from personal liability for acts or omissions within the scope of their legislative function, unless they acted 'in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.'" *P.C.B. P'ship v. City of Largo*, 549 So.2d 738, 740 (Fla. Dist. Ct. App. 1989) (quoting Fla. Stat. Ann. § 768.28(9)(a)). *See also Allen v. Secor*, 195 So.2d 586 (Fla. Dist. Ct. App. 1967) ("When the officials of a municipality engage in functions legislative or quasi-legislative in character they too are immune from suit...The mayor, acting in like capacity, is also immune.").

Florida's First District Court of Appeal, echoing the U.S. Court of Appeals for the Eleventh Circuit, has made clear that the act of *voting* is a legislative activity subject to absolute immunity:

> The protection afforded by absolute immunity is available to local governmental officials as well as to those officials performing legislative functions at the federal and state levels....[A]n officer of the legislative branch of the government has absolute immunity only for legislative

> functions. *A county commissioner could assert a valid claim of absolute immunity for the act of voting on a proposed county budget, for example, because that is a legislative function.* In contrast, a county commissioner has no claim of absolute immunity for comments made to the press following a commission meeting because that is an administrative function.

Reed, 693 So.2d at 589.

Thank you for your careful attention to these issues, and please do not hesitate to contact me if you have further questions.

Sincerely,

Scott Greytak, Counsel
Free Speech For People
614-668-0258
scottgreytak@freespeechforpeople.org

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March 15, 2017

Hon. Amy Foster, Chair
Hon. Darden Rice, Vice Chair
Hon. Charlie Gerdes
Hon. Jim Kennedy
Hon. Ed Montanari
Hon. Steve Kornell
Hon. Karl Nurse
Hon. Lisa Wheeler-Bowman

Dear Members of the St. Petersburg City Council:

My letter to you of October 23 explained why I believe the Supreme Court is likely to uphold a statute or ordinance limiting contributions to super PACs even if it is unwilling to reconsider its decision in *Citizens United v. FEC*, 558 U.S. 310 (2010). My letter criticized the ruling of the United States Court of Appeals for the District of Columbia Circuit in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), which held that contributions to super PACs cannot be limited. As my letter noted, five other federal courts of appeals have endorsed the D.C. Circuit's ruling, and none have disagreed. At the Committee of the Whole meeting of the Council on October 27, a member asked about the other courts' decisions. In fact, all of these decisions echoed *SpeechNow* without adding to its analysis.

The five decisions are *Republican Party of N.M. v. King*, 741 F.3d 1089, 1095–96, 1103 (10th Cir. 2013) (invalidating a New Mexico statute limiting contributions to super PACs); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487, 489 (2d Cir. 2013) (invalidating a New York statute limiting contributions to super PACs); *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 537–538, 538 n.3 (5th Cir. 2013) (invalidating a Texas statute limiting contributions to super PACs); *Wis. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 155 (7th Cir. 2011) (invalidating a Wisconsin statute limiting contributions to super PACs); and *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 696–99 (9th Cir. 2010) (invalidating a Long Beach ordinance limiting contributions to super PACs).

In all of these cases, government lawyers argued that contribution limits differed from expenditure limits, and, in all of them, the courts of appeals responded by endorsing the supposed syllogism the D.C. Circuit offered in *SpeechNow*: If, as *Citizens United* declared, super PAC expenditures do not corrupt, the contributions that make these expenditures possible cannot corrupt either. The Seventh Circuit described this proposition as "inexorable." 664 F.3d at 154.

You may recall the three criticisms of the supposed syllogism I noted in my letter: (1) The conclusion does not follow from the premise. Contributions can corrupt even when expenditures do not corrupt. (2) The sentence of the *Citizens United* opinion taken as the premise of the supposed syllogism was dictum. And (3) the Supreme Court's other statements and rulings strongly suggest that this sentence was not meant literally. None of the courts of appeals decisions noted or responded to any of these criticisms, apparently because none of the lawyers defending contribution limits presented any significant criticism of the D.C. Circuit's reasoning.

In addition, none of these lawyers appear to have reviewed the distinctions between expenditures and contributions drawn by *Buckley v. Valeo*, 421 U.S. 1 (1976), and to have argued that limits on contributions to super PACs cannot reasonably be distinguished from the limits on contributions to candidates that *Buckley* upheld. Because these lawyers did not argue to the contrary, the courts of appeals read *Buckley* and other Supreme Court decisions as saying something they did not say—that political contributions cannot corrupt candidates unless the candidates themselves determine how the contributions are spent.

The four state statutes and one municipal ordinance invalidated by the courts of appeals were all enacted prior to *Citizens United* and *SpeechNow*. None of them were enacted by a body taking a deliberate and principled stand against *SpeechNow* and seeking an authoritative constitutional ruling in a jurisdiction that has not yet decided the question. Moreover, two of the rulings simply approved temporary relief prior to trial on the ground that super PAC contribution limits *probably* would be held unconstitutional; they did not resolve the issue definitively. See *N.Y. Progress & Prot. PAC*, 733 F.3d at 487 ("Although we express no opinion on the ultimate outcome, the plaintiff here has a substantial likelihood of success on the merits."); *Republican Party of N.M. v. King*, 741 F.3d at 1103 ("Because NMER and NMTA are likely to prevail on the merits in their challenge against New Mexico's law, we AFFIRM the district court's grant of a preliminary injunction enjoining the law's enforcement.").

If I can be of further assistance, please let me know.

Sincerely yours,

Albert W. Alschuler

cc: Mayor Rick Kriseman
City Attorney Jacqueline Kovilaritch

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March 15, 2017

Hon. Amy Foster, Chair
Hon. Darden Rice, Vice Chair
Hon. Charlie Gerdes
Hon. Jim Kennedy
Hon. Ed Montanari
Hon. Steve Kornell
Hon. Karl Nurse
Hon. Lisa Wheeler-Bowman

Dear Members of the St. Petersburg City Council:

I had the privilege several months ago of speaking to you in support of a proposed ordinance limiting contributions to super PACs. At that time, several members of the Council indicated that, although they favored the ordinance in principle, they were concerned that it could lead to litigation in which St. Petersburg could be required to pay a successful challenger's attorneys fees. My impression was that the prospect of paying these fees constituted the principal objection to approval of the ordinance.

As I mentioned when I spoke to you, five U.S. Courts of Appeals, following the D.C. Circuit's decision in *SpeechNow*, have held measures resembling the proposed ordinance unconstitutional. One of these courts, the Ninth Circuit, decided two cases on the issue. St. Petersburg has good reason to hope for a better result, but the Council's concern is certainly appropriate.

It occurred to me after my appearance before the Council that it might be useful to know what attorneys fees had been awarded in the six post-*SpeechNow* cases just mentioned. Free Speech for People staff members and I succeeded in reaching attorneys in all of these cases.

Here are the attorneys fee awards reported by these attorneys:

1. Long Beach Area Chamber of Commerce v. City of Long Beach, 603 F.3d 684 (9th Cir. 2010): **$89,000**.

2. Thalheimer v. City of San Diego, 645 F.3d 1109 (9th Cir. 2011): **$273,000**

3. Wisconsin Right to Life State Pol. Action Comm. v. Barland, 664 F.3d 139 (7th Cir. 2011): **$406,000**

4. Texans for Free Enterprise v. Texas Ethics Commission, 732 F.3d 535 (5th Cir. 2013): **$123,000**

5. New York Progress & Protection PAC v. Walsh, 733 F.3d 483 (2d Cir. 2013): **$360,000**

6. Republican Party of New Mexico v. King, 741 F.3d 1089 (10th Cir. 2013): **$93,000** (Note: This figure is the amount the successful plaintiff is currently requesting in settlement. The final award will not be higher and may be lower.)

The average attorney fee award for all six cases was **$224,000**.

I hope you find this information useful. Please let me know if you have any questions or if I can be of further assistance.

Sincerely yours,

Albert W. Alschuler

cc: Mayor Rick Kriseman
City Attorney Jacqueline Kovilaritch

FREE SPEECH FOR PEOPLE .ORG

Hon. Darden Rice, Chair
Hon. Lisa Wheeler-Bowman, Vice Chair
Hon. Amy Foster
Hon. Charlie Gerdes
Hon. Jim Kennedy
Hon. Ed Montanari
Hon. Steve Kornell
Hon. Karl Nurse

March 15, 2017

RE: Legal defense for Defend Our Democracy ordinance

Dear Members of the City Council,

We are writing on behalf of Free Speech For People, a national non-profit 501(c)(3) organization, which, as you know, has been pleased to assist in your consideration of the proposed Defend Our Democracy ordinance. We are writing to set forth Free Speech For People's commitment to assist in the legal defense of the ordinance *pro bono* (without charging for legal services) if the ordinance is challenged in court.

By this letter, Free Speech For People offers to assist the City of St. Petersburg and its staff, in cooperation and coordination with the City Attorney as special counsel or co-counsel, in defending the ordinance against a constitutional challenge in state or federal court, up to and including the U.S. Supreme Court. While we do not have any attorneys on our staff who are licensed to practice law in Florida, we expect that our attorneys would be admitted *pro hac vice* (for a particular case) with the assistance of the City Attorney's Office.

Furthermore, outside of Free Speech For People's own legal staff, we are also advised and assisted in this matter by a Legal Advisory Committee and other prominent scholars and practitioners, some of whom have already testified before the St. Petersburg City Council regarding this ordinance.

Free Speech For People was founded in January 2010, on the very afternoon that the Supreme Court issued its *Citizens United v. FEC* decision. Reforming the two campaign financing vehicles embraced by the ordinance—super PACs, and foreign-influenced corporate political spending—is a key strategic objective of Free Speech For People. We are committed to helping St. Petersburg enact and defend this important legislation.

1340 Centre Street, Suite 209, Newton, MA 02459 O 617.244.0234 F 206.260.3031 www.freespeechforpeople.org

This letter does not itself create an attorney-client relationship. At the appropriate time, we would be pleased to discuss with the City Attorney a special counsel or co-counsel agreement to create and formalize an appropriate counsel relationship.

Thank you and please do not hesitate to ask if you have any questions.

Sincerely,

John Bonifaz
President

Ron Fein
Legal Director

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If I can be of further assistance, please let me know.

Sincerely yours,

cc: Mayor Rick Kriseman
City Attorney Jacqueline Kovilaritch

6/22/17 COW Item #2

AN ORDINANCE PROVIDING FOR A REFERENDUM AS PART OF THE GENERAL CITY ELECTION TO BE HELD ON NOVEMBER 7, 2017; AMENDING SECTION 4.05 OF THE CITY CHARTER OF THE CITY OF ST. PETERSBURG; PROVIDING THAT THE AMENDMENT CONTAINED IN THIS ORDINANCE SHALL BECOME EFFECTIVE ONLY IF THE BALLOT QUESTION CONTAINED IN THIS ORDINANCE IS APPROVED BY A MAJORITY VOTE OF THE ELECTORS OF THE CITY VOTING ON SAID QUESTION IN THE NOVEMBER 7, 2017 ELECTION AND THE REVISED CHARTER IS FILED, INCLUDING THE AMENDMENT, WITH THE DEPARTMENT OF STATE; PROVIDING FOR THE CALLING OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 7, 2017, TO PRESENT THIS CHARTER AMENDMENT TO THE VOTERS; PROVIDING FOR THE FORM OF THE BALLOT TITLE AND SUMMARY TO APPEAR ON THE BALLOT; PROVIDING FOR THE AMENDMENT OF SECTION 4.05 OF THE CITY CHARTER TO PROVIDE FOR ADDITIONAL COUNCIL MEMBER COMMENTS ON THE CREATION OF NEW MANAGEMENT OR PROFESSIONAL NON-MANAGEMENT POSITIONS AND ON THE HIRING AND FIRING OF CITY COUNCIL OFFICE STAFF; PROVIDING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

SECTION 1. That the City Council of the City of St. Petersburg hereby makes the following findings:

1. That when the City Charter adopting the strong mayor form of government was approved by a majority of the voters after a citizens' initiative petition process, there was a prohibition against Council Members taking any action which either directly or indirectly requested the hiring or firing of any City employee.

2. That several years ago there was a desire for Council Members to be able to express their opinions concerning the hiring of new senior management employees by the Mayor which was the subject of a recently approved referendum and which is now incorporated in the Charter. Senior management employees are defined as chiefs and administrator or higher management level employees.

3. That Council Members currently desire to expand their ability to express individual opinions on hiring employees to include expressing their opinions concerning any new management or professional non-management positions created by the Mayor.

4. That providing City Council Members with the opportunity to express individual opinions on this topic would not interfere with the hiring and firing of employees by the Mayor or the Mayor's administration of the City or the Mayor's staff.

5. That the expression of individual opinions by Council members would provide meaningful beneficial information and perspectives in the creation of any new management or professional non-management positions.

6. That the public reasonably expects City Council Members to be able to publicly share their opinions and perspectives in the creation of new management or professional non-management positions.

7. That, in the absence of formal action taken collectively by City Council, the public expression of a City Council Member's individual opinion would not constitute undue influence on the creation of a new management or professional non-management position.

8. That City Council Members also desire to have input into the hiring and firing of City employees who work for Council Members in the City Council Office.

9. That language in the Charter relating to Council Members sharing their opinion concerning the hiring and firing of City employees should be made clearer and easier to understand.

SECTION 2. That a special election will be held as part of the general City election to be held on November 7, 2017, and the question and title delineated in Sections 4 and 5 of this Ordinance shall be placed on the ballot at said election.

SECTION 3. That if the ballot question contained in Section 4 of this Ordinance is approved by a majority of the qualified electors voting on said question at said election, the City shall file a Revised Charter with the Department of State that contains the following amendments to Section 4.05 of the St. Petersburg City Charter, with such amendments effective upon the filing of the Revised Charter with the Department of State:

Sec. 4.05. Administrative affairs; Council participation.

(a) Except as otherwise authorized by this section, n~~N~~either the Council nor any of its committees or any of its members, may do any of the following, whether publicly or privately, directly or indirectly, individually or collectively:

(1) ~~,shall~~ direct or request the appointment ~~of anyone to,~~ or removal ~~from,~~ of any employee of the City to or from any position with the City~~, office~~ by the Mayor or by any of the Mayor's subordinates;~~, or~~

(2) ~~in any manner, directly or indirectly,~~ take part in the appointment or removal of any ~~officer or~~ employee of the City to or from any position with the City;~~, or~~

(3) direct or request the removal of any member~~s~~ of boards or commissions of the City that are confirmed by City Council except through a quasi-judicial hearing for the removal of a member for cause as authorized by applicable law; or ~~in the administrative service of the City~~

(4) direct or request the removal of any members of boards or commissions created by the Mayor; or

(5) give any order to any employee of the City or any member of any board or commission appointed or confirmed by City Council or appointed by the Mayor.

(b) Except as authorized by this section, any~~All~~ inquiry dealing with any portion of the administrative service of the City ~~with the exception of (b) herein~~ shall be with the Mayor, the City Administrator, or the Mayor's designee when that designation is made in writing.

~~and neither the Council nor any member thereof shall give any orders to any subordinate or officer of the City, either publicly or privately, directly or indirectly.~~

(c) Any violation of the provisions of this section by a member of the Council shall be grounds for removal from office under Section 3.04(c).

(d) This ~~sub~~section ~~shall not operate to~~ does not prohibit any individual Council Member from expressing ~~their~~ his or her personal opinion concerning the hiring by the Mayor of any chief or administrator or higher management level employee or the creation of any new management position or professional non-management position; or

(e) This section does not prohibit any individual Council Member from expressing his or her personal opinion concerning the appointment or removal by the Mayor of any employee who works for City Council in the City Council Office. If, at a Council meeting or a Committee of the Whole meeting, the City Council takes formal action to make a collective recommendation concerning the appointment or removal by the Mayor of any employee who works for City Council in the City Council Office and the Mayor does not follow that recommendation, then the Mayor shall provide written justification to the City Council identifying the reasons for not following the recommendation within ten days of that decision.

~~(b)~~(f) *Permitted contact with City staff.*

(1) The finances of the City shall, under the direction of the Council, be examined and audited by a certified public accountant at least once a year. The financial audit shall be a certified audit with no exceptions, and all reports and recommendations of the auditor shall be directed to the Council. City Council, at any time, shall be permitted to conduct a management evaluation, by a professional consultant, of the administrative activities of the City, or any portion thereof, under the direction of City Council. At least ~~lease~~ once every two years, the City Council shall discuss and make a decision as to whether or not any such an audit is needed. The management evaluation and all reports and recommendations shall be directed to the Council.

(2) The Council or any member thereof may request information of the Mayor or the Mayor's subordinates in a form that presently exists and could be obtained by a public record request under Florida law, subject to such reasonable regulations of use as City Council may prescribe by ordinance or resolution from time to time.

SECTION 4. That the ballot question provided for in Section 2 of this Ordinance shall appear on the ballot in the following form:

Shall the City Charter, which currently prohibits Council Members from directing or requesting the hiring or firing of City employees except hiring or firing senior management employees, be amended to allow Council Members to express personal opinions concerning the creation of new management positions or professional non-management positions and the hiring or firing of City Council office staff, while continuing to prohibit any opinions concerning hiring and firing of other employees by City Council?

YES NO

SECTION 5. That the title of the ballot question provided for in Section 2 of this Ordinance shall appear on the ballot in the following form:

Charter Amendment modifying prohibition on Councilmembers expressing opinions concerning employment decisions and Council office employees.

SECTION 6. In the event this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective upon the expiration of the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City

Clerk that the Mayor will not veto the ordinance, in which case this ordinance shall become effective immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter,

SECTION 7. That the provisions of this Ordinance shall be deemed severable, and the invalidity of any portion thereto shall not affect the validity of the remaining portions.

Approved as to form and content:

_____

City Attorney (designee)

6/22/11 COW Item #COW

Sec. 4.05. Administrative affairs; Council participation.

(a) Except as otherwise authorized by this section, n~~N~~either the Council nor any of its committees or any of its members, may do any of the following, whether publicly or privately, directly or indirectly, individually or collectively:

(1) ~~,shall~~ direct or request the appointment ~~of anyone to,~~ or removal ~~from,~~ of any employee of the City to or from any position with the City, ~~office~~ by the Mayor or by any of the Mayor's subordinates;~~, or~~

(2) ~~in any manner, directly or indirectly,~~ take part in the appointment or removal of any ~~officer or~~ employee of the City to or from any position with the City;~~, or~~

(3) direct or request the removal of any members of boards or commissions of the City that are confirmed by City Council except through a quasi-judicial hearing for the removal of a member for cause as authorized by applicable law; or ~~in the administrative service of the City~~

(4) direct or request the removal of any members of boards or commissions created by the Mayor; or

(5) give any order to any employee of the City or any member of any board or commission appointed or confirmed by City Council or appointed by the Mayor.

(b) Except as authorized by this section, any~~All~~ inquiry dealing with any portion of the administrative service of the City ~~with the exception of (b) herein~~ shall be made in writing with the Mayor, the City Administrator, or the Mayor's designee when that designation is made in writing.

~~(c) and neither the Council nor any member thereof shall give any orders to any subordinate or officer of the City, either publicly or privately, directly or indirectly.~~

(c) Any violation of the provisions of this section by a member of the Council shall be grounds for removal from office under Section 3.04(c).

(d) This ~~sub~~section ~~shall not operate to~~ does not prohibit any individual Council Member from expressing ~~their~~ his or her personal opinion concerning the hiring by the Mayor of any chief or administrator or higher management level employee or the creation of any new management position or professional non-management position; or

(e) This section does not prohibit any individual Council Member from expressing his or her personal opinion concerning the appointment or removal by the Mayor of any employee who works for City Council in the City Council Office. If, at a Council meeting or a Committee of the Whole meeting, the City Council takes formal action to make a collective recommendation concerning the appointment or removal by the Mayor of any employee who works for City Council in the City Council Office and the Mayor does not follow that recommendation, then the Mayor shall provide written justification to the City Council identifying the reasons for not following the recommendation within ten days of that decision.

~~(b)~~(f) *Permitted contact with City staff.*

(1) The finances of the City shall, under the direction of the Council, be examined and audited by a certified public accountant at least once a year. The financial audit shall be a certified audit with no exceptions, and all reports and recommendations of the auditor shall be directed to the Council. City Council, at any time, shall be permitted to conduct a management evaluation, by a professional consultant, of the administrative activities of the City, or any portion thereof, under the direction of City Council. At least ~~lease~~ once every two years, the City Council shall discuss and make a decision as to whether or not any such an audit is needed. The management evaluation and all reports and recommendations shall be directed to the Council.

(2) The Council or any member thereof may request information of the Mayor or the Mayor's subordinates in a form that presently exists and could be obtained by a public record request under Florida law, subject to such reasonable regulations of use as City Council may prescribe by ordinance or resolution from time to time.