

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 1 OF CHAPTER 12.06 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO ADD SECTION 12.06.112 DEFINING A FOREIGN ENTITY, SECTION 12.06.114 DEFINING A FOREIGN-INFLUENCED BUSINESS ENTITY, AND SECTION 12.06.116 DEFINING A FOREIGN OWNER; AND AMENDING PART 2 OF CHAPTER 12.06 OF TITLE 12 TO ADD SECTION 12.06.270 PROHIBITING FOREIGN-INFLUENCED BUSINESS ENTITIES FROM MAKING INDEPENDENT EXPENDITURES, CAMPAIGN CONTRIBUTIONS OR CONTRIBUTING TO INDEPENDENT EXPENDITURE COMMITTEES AND REQUIRING ANY BUSINESS ENTITY MAKING AN INDEPENDENT EXPENDITURE OR CONTRIBUTION TO CERTIFY THEY ARE NOT A FOREIGN INFLUENCED BUSINESS ENTITY

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new section is added to Chapter 12.06 of Title 12 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

12.06.112 Foreign Entity

“Foreign Entity” means a person or entity for which at least one of the following conditions is met:

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

SECTION 2. A new section is added to Chapter 12.06 of Title 12 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

12.06.114 Foreign-Influenced Business Entity

“Foreign-Influenced Business Entity” means any Business Entity for which at least one of the following conditions is met:

- A. One percent (1%) or more of the total ownership interests of the Business Entity are held, owned, controlled, or otherwise directly or indirectly beneficially owned by a single Foreign Entity Owner;

- B. Five percent (5%) or more of the total ownership interests of the Business Entity are held, owned, controlled, or otherwise directly or indirectly beneficially owned by two (2) or more Foreign ~~Entities~~ Owners in aggregate; ~~or~~
- C. A Foreign Owner directly or indirectly participates in the Business Entity's decisions to engage in political activities in the United States; or
- D. The Business Entity is directly or indirectly controlled by a Business Entity meeting at least one of the conditions in subparagraphs A, B, or C.

SECTION 3. A new section is added to Chapter 12.06 of Title 12 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

12.06.116 Foreign Owner

“Foreign Owner” means (1) a Foreign Entity; or (2) a Business Entity in which a Foreign Entity holds, owns, controls, or otherwise directly or indirectly acquired beneficial ownership of equity or voting shares in an amount that is equal to or greater than fifty percent (50%) of the total equity or outstanding voting shares.

SECTION 4. A new section is added to Chapter 12.06 of Title 12 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

12.06.270 Prohibited Contributions – Foreign-Influenced Business Entities

- A. No Foreign-Influenced Business Entity shall make any Contribution to a Candidate or Candidate Controlled Committee under this Chapter.

B. No Foreign-Influenced Business Entity shall make an Independent Expenditure in Elections for or against Candidates for City office, nor a Contribution to an Independent Expenditure Committee that has conveyed, implicitly or explicitly, that Contributions to the Committee may be used in Elections for or against Candidates for City office. An Independent Committee may dedicate any Contributions that do not comply with the restrictions under this Section for use in elections outside the City or for other lawful purposes.

C. No Foreign-Influenced Business Entity shall make any Contribution to a Committee or Person that has conveyed, implicitly or explicitly, that Contributions to the Committee or Person may be directly or indirectly used in Elections for or against Candidates for City office.

D. The Business Entity shall also provide a copy of the statement of certification to any Committee or Person to which it contributes.

~~E.G.~~ Any Business Entity making a Contribution to a Candidate for City office or making an Independent Expenditure or contributing to an Independent Expenditure Committee for or against Candidates for City office shall, within seven (7) business days after making such expenditure or Contribution, file with the City Clerk a statement of certification signed by its chief executive officer or president under penalty of perjury, avowing that after due inquiry, the Business Entity was not a Foreign-Influenced Business Entity as defined under the San José Municipal Code on the date such expenditure or Contribution was made. The Business Entity shall also provide a copy of the statement of certification to any Candidate-Controlled Committee or Independent Expenditure Committee to which it contributes. The statement of certification shall include the following:

1. The name and mailing address of the Business Entity;

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 business entity] was not a Foreign-Influenced Business Entity as defined by the San José Municipal Code"; and
4. The signature of the Business Entity's chief executive officer or president.

FD. It shall be unlawful for a Business Entity that is subject to this Section to fail to timely file the statement of certification. The penalty for any violation of this Section is the lesser of the following: (i) the amount of the contribution or expenditure for which certification was required, or (ii) \$500.00.

PASSED FOR PUBLICATION of title this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk