



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: January 19, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Consideration of possible amendments to public financing program

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On September 30, 2011, Supervisor Jane Kim introduced legislation to amend the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct ("C&GC") Code section 1.110 et seq. ("CFRO") to address issues raised by the U.S. Supreme Court's decision in *Arizona Free Enterprise v. Bennett*. The legislation would have raised the qualifying threshold for candidates for the Board of Supervisors seeking public funds so that they must raise at least \$7,500 in qualifying contributions and be opposed by another candidate who has received contributions or made expenditures which in the aggregate equal or exceed \$7,500. The legislation would have also increased a Board candidate's individual expenditure ceiling from \$143,000 to \$245,000. It would have left unchanged the qualifying threshold and individual expenditure ceiling for candidates for Mayor seeking public funds. The Commission considered the legislation at its October 19, 2011 special meeting but did not take action to support or oppose it.

At its last meeting on December 12, 2011, the Ethics Commission considered several policy questions related to the City's public financing program for candidates for the Board of Supervisors and the Mayor. On January 10, 2012, Supervisor David Campos introduced a measure to be placed on the June 5, 2012 ballot to amend the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct Code ("C&GC Code" or "CFRO") and Municipal Elections Code to address issues raised by the *Bennett* decision. In the meantime, staff has been working with Supervisor Kim and others to amend the CFRO at the Board of Supervisors to address these same issues. Supervisor Kim has proposed that the Commission consider several amendments to her legislation at the January 23, 2012 meeting.

In general, the Kim proposal addresses not only the situation created by the *Bennett* decision but also concerns that were raised at the Interested Persons meetings that candidates must do more to show viability before receiving public funds and that public funds should be disbursed beginning on a date later than February of the election year. The proposed amendments generally do the following:

- Change the qualification thresholds for public funds for both Supervisorial and Mayoral candidates;
- Increase the amount of public funds available;
- Modify the formula for matching public funds;
- Delay the disbursement of public funds;
- Adopt different expenditure ceilings; and
- Retain adjustable expenditure ceilings.

In addition, the proposal amends section 1.170 to clarify the penalties for violations. Finally, the proposal makes adjustments to the Municipal Election Code to move the last day for filing nomination papers from early August to mid-June when there is a November election – but because the Commission does not have jurisdiction over the Municipal Election Code, this memo does not address these changes.

Under C&GC Code section 1.103, the Board of Supervisors may amend the CFRO if the amendment furthers the purposes of the CFRO, the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members, the proposed amendment is available for public review at least 30 days before it is considered by the Board or any of its committee; and the Board approves the proposed amendment by at least a two-thirds vote of all its members.

Staff’s hope is that the amendments will take effect by the time the Redistricting Task Force finishes its work in April 2012 so that the new rules will be in place before the Commission starts distributing public funds to any candidates.<sup>1</sup> If the Kim proposal is not adopted, and the Campos measure is placed on the ballot and approved by the voters in June, then candidates who seek public funds between now and July would be subject to the current qualifying and disbursement rules, while those who apply for funds in July would be subject to a different set of qualifying and disbursement rules. If the Kim proposal is not accepted, and the Campos measure fails at the polls, then current law stands and the Commission will be faced with the dilemma of possibly disbursing public funds in violation of the *Bennett* decision.

Because the Kim proposal is the result of discussions held with Commission staff and other supervisors, and we believe the legislation could receive support of eight Supervisors, staff urges the Commission to approve the proposal as one decision point. For this reason, staff is not setting out separate decision points on the different provisions of the legislative proposal.

## **Discussion**

### **A. Changing the qualification thresholds for public funds**

Under current law, to qualify for public funds, a candidate for the Board of Supervisors must raise at least \$5,000 in qualifying contributions from at least 75 contributors by the 70<sup>th</sup> day

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<sup>1</sup> On November 22, 2011, Supervisor Malia Cohen introduced legislation proposed by the Ethics Commission to delay certification of candidates seeking public funds in the November 2012 election until the Redistricting Task Force has completed its 2012 revision of supervisorial district boundaries, expected on or around April 15. The legislation is currently pending at the Rules Committee.

before the election; a candidate for Mayor must raise at least \$25,000 in qualifying contributions from at least 250 contributors by the 70<sup>th</sup> day before the election.

Under the Kim proposal, candidates for the Board of Supervisors would be required to raise at least \$10,000 in qualifying contributions from at least 100 contributors by the 70<sup>th</sup> day before the election. However, if the candidate is an incumbent member of the Board, he or she would be required to raise at least \$15,000 in qualifying contributions from at least 150 contributors by the 70<sup>th</sup> day before the election. Candidates for Mayor would be required to raise at least \$50,000 in qualifying contributions from at least 500 contributors by the 70<sup>th</sup> day before the election; an incumbent would be required to raise at least \$75,000 in qualifying contributions from at least 750 contributors by the 70<sup>th</sup> day.

At the Interested Persons meetings held during the past year, most participants stated that the current thresholds are too low and that meeting the current thresholds does not necessarily indicate that a candidate has broad-based support. Thus, many interested persons suggested raising the threshold for Board candidates to \$10,000 in qualifying contributions from at least 100 contributors, and for Mayoral candidates to \$50,000 in qualifying contributions from at least 500 contributors.<sup>2</sup> The Kim proposal would implement these suggestions.

The proposal also requires incumbent candidates to raise more private funds in order to qualify for public funds. Since district elections were implemented for the second time in 2000, no incumbent has lost a bid for re-election. By virtue of their having served in office, incumbents enjoy great name recognition. Supervisors who have been involved in this legislation believe that incumbents who seek public funds should be able to show that they have more widespread support from their constituents than do non-incumbents running for office.

## **B. Increasing the amount of available public funds**

Currently, a certified candidate for the Board of Supervisors may receive up to \$89,000, and a certified candidate for Mayor may receive up to \$900,000 in public funds. Under the Kim proposal, a Board candidate may receive up to \$155,000 in public funds, and a Mayoral candidate may receive up to \$1,225,000.

As indicated in staff's December 7, 2011 memo, in the November 2010 election, three candidates (all from District 8) received more than \$100,000 in public funds (\$104,764,

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<sup>2</sup> At its last meeting, the Commission asked staff to explore the possibility of allowing a candidate to qualify for public funds by raising \$5,000 in qualifying contributions from at least 200 – 250 contributors. In looking at data from the 2010 election, staff notes that the average total number of contributions submitted by Board candidates seeking to qualify for public financing was 104; the median was 98. The average number of un-itemized contributions (donations of less than \$100) was 58; the median number of un-itemized contributions submitted for qualification was 59. It is difficult to gauge whether these numbers would change if the number of qualifying contributions was increased to 200 or 250. Nonetheless, based on information gathered at the Interested Persons meetings and possible administrative inequities with a different qualifying threshold, staff does not recommend creating an alternate qualification track for Board candidates.

The Commission also indicated support for a requirement that 50 contributors come from the district of a Board candidate seeking to qualify for public funds. Because staff believes that this is an issue that can be explored in greater detail at another time, staff does not recommend considering this provision at this time.

\$121,406, and \$140,572), and one candidate in District 6 received more than the initial \$89,000 amount (\$90,817). In the November 2008 election, two candidates received more than \$100,000 in public funds (\$123,445 in D3 and \$105,033 in D11), and one candidate in District 11 received more than the initial \$89,000 amount (\$92,058). Based on these figures, staff recommended that the amount of available public funds be set at \$150,000, an amount very close to the \$155,000 amount in the Kim legislation that is now before the Commission. Staff further believes that while \$155,000 in public funding would unlikely be reached by most candidates, the availability of that amount serves to encourage participation in the public financing program.

With respect to the amount of available public funds for Mayoral candidates, staff does not have concrete data to support an increase to \$1,225,000. During the 2011 election, when the amount of available public funds per candidate was \$900,000, no candidate reached that limit; the highest amount disbursed to a single candidate was \$721,000. However, given that the next contested Mayoral election is not expected to occur for four or even eight years later, staff believes that having this amount of public funds available in the CFRO is not excessive. Staff believes that while it is unlikely that any candidate will actually receive this level of public funding support, given the likelihood of high third party spending in a Mayoral election, having the ability to receive this amount of funds would help to encourage candidates to participate in the public financing program.

In line with the *Bennett* decision, the Kim proposal does not provide for any additional public funds beyond \$155,000 for Board candidates or \$1,225,000 for Mayoral candidates. For this reason, references to a “Per Candidate Available Disbursement Limit” are stricken from the proposal in sections 1.144(c), 1.144(d), and 1.144(e) of the draft amendments.

**C. Changing the formula for matching public funds**

The Kim proposal changes the formula for matching public funds to the formula discussed in staff’s December 7, 2011 memo. Thus, but for incumbent candidates, the disbursement formula would be a 1:2 initial qualifying match, a 1:2 match up to a certain threshold, and a final 1:1 match up to the initial individual expenditure ceiling. At its December meeting, Commission members expressed support for such a change. If approved, the public funding disbursement schemes would be as follows:

**Proposed Scheme for Board of Supervisors Candidates  
(Individual Expenditure Ceiling Set at \$250,000)**

	Private Funds Raised by Non-Incumbents	Public Funds Raised by Incumbents	Matching Public Funds
Initial	\$10,000	\$15,000	\$20,000
1:2	\$50,000	\$50,000	\$100,000
1:1	\$35,000	\$35,000	\$35,000
<b>Total</b>	<b>\$95,000</b>	<b>\$100,000</b>	<b>\$155,000</b>
<b>Total Public and Private Funds</b>	<b>\$250,000</b>	<b>\$255,000</b>	

**Proposed Scheme for Mayoral Candidates  
(Individual Expenditure Ceiling Set at \$1,975,000)**

	Private Funds Raised by Non-Incumbents	Public Funds Raised by Incumbents	Matching Public Funds
Initial	\$50,000	\$75,000	\$100,000
1:2	\$425,000	\$425,000	\$850,000
1:1	\$275,000	\$275,000	\$275,000
<b>Total</b>	<b>\$750,000</b>	<b>\$775,000</b>	<b>\$1,225,000</b>
<b>Total Public and Private Funds</b>	<b>\$1,975,000</b>	<b>\$2,000,000</b>	

**D. Delaying the disbursement of public funds**

Currently, certified candidates may receive public funds as early as nine months before the election, or sometime in February for an election occurring in November of the same year. Under the Kim proposal, no funds would be disbursed until 142 days before the date of the election, which would be approximately the beginning of the third week of June before a November election. This is very similar to the recommendation that the Commission supported at the December 2011 meeting.

**E. Changing the Expenditure Ceilings**

Under current law, a certified candidate for the Board of Supervisors is subject to an individual expenditure ceiling that starts at \$143,000, and a certified candidate for Mayor is subject to an individual expenditure ceiling that starts at \$1,475,000. *See* C&GC Code §§1.140(b)(4) and (c)(4). Under current law, these expenditure ceilings could be adjusted based on sum of total opposition spending against a candidate and the highest level of total supportive funds of any other candidate for the same office, if such amounts are at least \$10,000 greater than \$143,000 for Board candidates or at least \$100,000 greater than \$1,475,000 for Mayoral candidates.

The Kim proposal increases the individual expenditure ceiling for Board candidates to \$250,000 and for Mayoral candidates to \$1,975,000, in accordance with the disbursements and matching ratios discussed above. At its December 2011 meeting, Commission members indicated support for a \$250,000 ceiling for Board members but did not appear to support an increase to a \$1,975,000 for Mayoral candidates. As discussed below, staff recommends that the Commission approve the proposed ceiling limits for both Board and Mayoral candidates.

As mentioned in staff's December memo, in 2008, in Board races where there was no incumbent, the winner spent \$181,847 (D1), \$329,499 (D3), \$136,611 (D9), and \$173,625 (D11), or an average of \$205,396. (All of these winning candidates were publicly financed candidates.) In 2010, the average spent by winning candidates was \$213,447; in races where there was no incumbent, the winner spent \$260,467 (D2), \$249,969 (D6), \$246,666 (D8), and \$172,117 (D10), or an average of \$232,305. (Except for D2, all these winning candidates were publicly financed.) Thus, a \$250,000 spending limit appears appropriate for Board candidates.

With respect to Mayoral candidates, in December, staff recommended and the Commission appeared to support an expenditure ceiling of \$1,750,000. As noted in staff's earlier memo, based on reports filed at the Ethics Commission during the November 2011 election, the five highest spending candidates spent \$6,688,984, or an average of \$1,337,797; the winner spent \$1,722,714. Third party spending to support candidates totaled \$2,109,460; third party spending to oppose candidates totaled \$443,078. However, the next Mayoral election is not scheduled to occur until 2015 – a contested election may not occur until 2019 – by then, the amount of third party spending will likely increase; a spending limit of \$1,975,000 may not appear unreasonable in light of the time span before the program comes into play again.

#### **F. Retaining Adjustable Individual Expenditure Ceilings**

At its December 2011 meeting, the Commission discussed whether to adopt a hard spending cap or retain an adjustable individual expenditure ceiling (“IEC”) for certified candidates, but did not come to a conclusion. The Kim proposal retains adjustable individual expenditure ceilings. As with the system under current law, the IEC of a candidate will be adjusted upwards in response to opposition spending against that candidate and supportive spending of the candidate's opponents.

However, unlike the current system, no additional public funds will be provided beyond \$155,000 for Board candidates and \$1,225,000 for Mayoral candidates. Thus, if a Board candidate's IEC is adjusted to \$260,000, the candidate will not receive any additional public funds, but may be able to raise and spend private funds so long as the candidate's total amount of qualified campaign expenditures does not exceed \$260,000.

As mentioned in staff's December 7, 2011 memo, retaining adjustable expenditure ceilings allows publicly financed candidates to raise private funds to counter opposition spending. It also allows the public to gauge the amount of third party spending that occurs during the election, as non-candidate committees will continue to be required to file third party reports under the CFRO. The disadvantage of an adjustable expenditure ceiling is that publicly financed candidates may not really be subject to any spending limit if such limits are always increased; data shows that IECs almost always outdistance actual spending.

#### **G. Other Modifications**

The Kim proposal also makes clarifying changes to section 1.170(i)(1) and (3), adding the phrase “in a court of law” to modify where a candidate may be convicted. In section 1.170(i)(2), the proposal tightens up existing language to clarify that a publicly financed candidate who exceeds his or her individual expenditure ceiling may be deemed to have engaged in official misconduct, which warrants possible removal from office under the procedures set forth in the Charter.

#### **H. Approval of the draft amendments**

As mentioned above, the Kim proposal is the result of discussions held with Supervisor Kim and others. There is some urgency in passing this legislation because the public financing program

for Board candidates will begin on February 6, 2012; and, at this time, there is great uncertainty over the rules that govern the program, given the decision in *Bennett*. Staff has not yet begun to prepare manuals or training for candidates because of this uncertainty.

Staff believes that the proposal discussed above will enable it to implement the public financing programs in a consistent and fair manner. For this reason, staff urges the Commission's support for the proposal.

**Decision Point 1:**

Shall the Commission approve all the changes that are set forth in the draft proposal?

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1 [Campaign & Governmental Conduct Code – Amending Public Financing Program]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code and the**  
4 **Municipal Elections Code to modify expenditure ceilings for the City's public financing**  
5 **program, to delay the date on which public funds may be disbursed, to change the**  
6 **qualification requirements for participating candidates, and to advance the date by**  
7 **which all local candidates must file their nomination papers.**

8 NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby  
12 amended by amending Sections 1.140, 1.143, 1.144, and 1.170 to read as follows:

13 SEC. 1.140. ELIGIBILITY TO RECEIVE PUBLIC FINANCING.

14 (a) REQUIREMENTS FOR ALL CANDIDATES. To be eligible to receive public  
15 financing of campaign expenses under this Chapter, a candidate must:

16 (1) Have filed a statement indicating that he or she intends to participate in  
17 the public financing program under Section 1.142 of this Chapter.

18 (2) Agree to the following conditions:

19 (A) The candidate bears the burden of providing that each contribution  
20 the candidate relies upon to establish eligibility is a qualifying contribution;

21 (B) The candidate bears the burden of proving that expenditures made  
22 with public funds provided under this Chapter comply with Section 1.148 of this Chapter;

23 (C) The candidate will not make any payments to a contractor or  
24 vendor in return for the contractor or vendor making a campaign contribution to the candidate  
25



1 or make more than a total of 50 payments, other than the return of a contribution, to  
2 contractors or vendor that have made contributions to the candidate;

3 (D) Notwithstanding Sections 1.114 and 1.116, the candidate shall not  
4 loan or donate, in total, more than \$5,000 of his or her own money to the campaign;

5 (E) The candidate shall not accept any loans to his or her campaign  
6 with the exception of a candidate's loan to his or her own campaign as permitted by this  
7 Section; and

8 (F) The candidate shall agree to participate in at least three debates  
9 with the candidate's opponents.

10 (3) Have paid any outstanding late fines or penalties, owed to the City by the  
11 candidate or any of the candidate's previous campaign committees, which were imposed for  
12 violations of this Code or the campaign finance provisions of the California Political Reform  
13 Act (Government Code Sections 84100-85704), provided that the Ethics Commission had  
14 notified the candidate of such fines or penalties by the time of certification.

15 (4) Have filed any outstanding forms, owed to the City by the candidate or  
16 any of the candidate's previous campaign committees, which were required to be filed  
17 pursuant to this Code or the campaign finance provisions of the Political Reform Act  
18 (Government Code Sections 84100-85704), provided that the Ethics Commission had notified  
19 the candidate of such outstanding forms by the time of certification.

20 (5) Have no finding by a court or by the Ethics Commission after a hearing  
21 on the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally  
22 violated any Section of this Code or the campaign finance provisions of this California Political  
23 Reform Act (Government Code Sections 84100-85704). For purposes of this Section, a plea  
24 of nolo contendere constitutes a finding by a court of a willful violation.

25

1 (b) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR THE BOARD OF  
2 SUPERVISORS. To be eligible to receive public financing of campaign expenses under this  
3 Chapter, a candidate for the Board of Supervisors must:

4 (1) Be seeking election to the Board of Supervisors and be eligible to hold  
5 the office sought;

6 (2) Have a candidate committee that has received at least ~~\$5,000~~10,000 in  
7 qualifying contributions from at least ~~75~~100 contributors before the 70th day before the  
8 election; *or, if the candidate is an incumbent member of the Board of Supervisors, have a candidate*  
9 *committee that has received at least \$15,000 in qualifying contributions from at least 150 contributors*  
10 *before the 70th day before the election;*

11 (3) Be opposed by another candidate who has either established eligibility to  
12 receive public financing, or whose candidate committee has received contributions or made  
13 expenditures which in the aggregate equal or exceed ~~\$5,000~~10,000; and

14 (4) Agree that his or her candidate committee will not make qualified  
15 campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of  
16 ~~\$143,000~~250,000, or as adjusted under Section 1.143 of this Chapter.

17 (c) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR MAYOR. To be  
18 eligible to receive public financing of campaign expenses under this Chapter, a candidate for  
19 Mayor must:

20 (1) Be seeking election to the office of Mayor and be eligible to hold the office  
21 sought;

22 (2) Have a candidate committee that has received at least ~~\$25,000~~50,000 in  
23 qualifying contributions from at least ~~250~~500 contributors by the 70th day before the election;  
24 *or, if the candidate is the incumbent Mayor, have a candidate committee that has received at least*  
25 *\$75,000 in qualifying contributions from at least 750 contributors by the 70th day before the election;*

1 (3) Be opposed by another candidate who has either established eligibility to  
2 receive public financing, or whose candidate committee has received contributions or made  
3 expenditures that in the aggregate equal or exceed \$50,000; and

4 (4) Agree that his or her candidate committee will not make qualified  
5 campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of  
6 ~~\$1,475,000~~\$1,975,000, or as adjusted under Section 1.143 of this Chapter.

7 (d) ADJUSTMENT OF EXPENDITURE LIMITS AND THRESHOLDS. The Ethics  
8 Commission is authorized to adjust:

9 (1) The figures in Subsections (b)(4) and (c)(4) to reflect changes in the  
10 California Consumer Price Index, provided that such adjustments shall be rounded off to the  
11 nearest \$1,000 for candidates for the Board of Supervisors and the nearest \$5,000 for  
12 candidates for Mayor;

13 (2) The figure in Subsection (a)(2)(D) of this Section to reflect changes in the  
14 California Consumer Price Index, provided that such adjustments shall be rounded off to the  
15 nearest \$1,000;

16 (3) The figures in Subsections (b)(2) and (b)(3) of this Section to reflect  
17 changes in the California Consumer Price Index, provided that such adjustments shall be  
18 rounded off to the nearest \$500;

19 (4) The figures in Subsections (c)(2) and (c)(3) of this Section to reflect  
20 changes in the California Consumer Price Index, provided that such adjustments shall be  
21 rounded off to the nearest \$5,000; and

22 (5) The maximum amount of a contribution that constitutes a qualifying  
23 contribution pursuant to Section 1.104 to reflect changes in the California Consumer Price  
24 Index, provided that such adjustments shall be rounded off to the nearest \$10.

25 SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.

1 This Section shall apply only if the Ethics Commission has certified that at least one  
2 candidate for Mayor or the Board of Supervisors is eligible to receive public funds under this  
3 Chapter.

4 (a) The Executive Director shall adjust the Individual Expenditure Ceiling of a  
5 candidate for Mayor to an amount equal to the sum of the Total Opposition Spending against  
6 that candidate and the highest level of the Total Supportive Funds of any other candidate for  
7 Mayor if such amount is greater than ~~\$1,475,000~~\$1,975,000, provided that the Executive Director  
8 may adjust a candidate's Individual Expenditure Ceilings only in increments of \$100,000.

9 (b) The Executive Director shall adjust the Individual Expenditure Ceiling of a  
10 candidate for the Board of Supervisors to an amount equal to the sum of the Total Opposition  
11 Spending against that candidate and the highest level of the Total Supportive Funds of any  
12 other candidate for the same office on the Board of Supervisors if such amount is greater than  
13 ~~\$143,000~~\$250,000, provided the Executive Director may adjust a candidate's Individual  
14 Expenditure Ceiling only in increments of \$10,000.

15 (c) No later than the second business day after a statement is filed pursuant to  
16 Section 1.152 (a)(3) or (b)(3) of this Chapter, the Executive Director shall determine whether  
17 the communication supports or opposes one or more candidates.

18 Factors the Executive Director shall use to determine whether the communication  
19 supports or opposes one or more candidates include the following:

- 20 (1) whether the communication clearly identifies one or more candidates;
- 21 (2) the timing of the communication;
- 22 (3) the voters targeted by the communication;
- 23 (4) whether the communication identifies any candidate's position on a public  
24 policy issue and urges the reader or viewer to take action, including calling the candidate to  
25 support or oppose the candidate's position;

1 (5) whether the position of one or more candidates on a public policy issue  
2 has been raised as distinguishing these candidates from others in the campaign, either in the  
3 communication itself or in other public communications;

4 (6) whether the communication is part of an ongoing series of substantially  
5 similar advocacy communications by the organization on the same issue; and

6 (7) any other factors the Executive Director deems relevant.

7 (d) Within one business day of the date that the Executive Director makes a  
8 determination under Subsection (c), either the candidate(s) identified in the communication or  
9 any candidate seeking the same City elective office as the candidate identified in the  
10 communication may object to the Executive Director's determination. The Executive Director  
11 shall respond to any objection within one business day of receiving the objection.

12 (e) Within one business day of the Executive Director's response, either the  
13 candidate(s) identified in the communication or any candidate seeking the same City elective  
14 office as the candidate identified in the communication may submit to the Executive Director a  
15 request that the Ethics Commission review the Executive Director's determination. Within one  
16 business day of receiving the request, the Executive Director shall notify each Commissioner  
17 of the candidate's request.

18 If within one business day of the Executive Director's notice, two or more members of  
19 the Commission inform the Executive Director that they would like to review the determination,  
20 the Executive Director shall schedule a meeting of the Commission on a date that occurs  
21 within one week of the Commissioners' requests. If three members of the Commission vote to  
22 overrule the Executive Director's determination, the Commission shall make a final  
23 determination based on the factors set forth above.

24 (f) If no candidate objects to the Executive Director's determination, if no candidate  
25 requests review by the Commission of the Executive Director's determination, if a request is

1 made and two or more members of the Commission do not request to review the  
2 determination, or within one week of two members of the Commission requesting to review  
3 the Executive Director's determination, at least three members of the Commission do not vote  
4 to overrule the Executive Director's determination, the Executive Director's determination shall  
5 become final.

6 The Executive Director shall determine whether to adjust the Individual Expenditure  
7 Ceilings of each candidate for Mayor or the Board of Supervisors pursuant to either  
8 Subsection (a) or (b) of this Section within one business day of a final determination.

9 SEC. 1.144. DISBURSEMENT OF PUBLIC FUNDS.

10 (a) PAYMENT BY CONTROLLER. Upon certifying that a candidate is eligible to  
11 receive public financing under this Chapter, the Executive Director shall forward the  
12 certification to the Controller, and the Controller shall disburse payments to the candidate from  
13 the Election Campaign Fund in accordance with the certification and this Section.

14 (b) TIME OF PAYMENTS. The Controller shall not make any payments under this  
15 Chapter to any candidate more than ~~nine months~~ 142 days before date of the election.  
16 Payments from the Controller shall be disbursed to eligible candidates within two business  
17 days of the Controller receiving notification from the Ethics Commission regarding the amount  
18 of the disbursement, except that within fifteen calendar days before the election, such  
19 payments shall be made within one business day.

20 (c) PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR MAYOR.

21 ~~(1) — Until the Per Candidate Available Disbursement Limit has been determined,~~  
22 ~~e~~Candidates for Mayor ~~whom the Ethics Commission has~~ certified as eligible to receive public  
23 financing for their election campaigns will have access to up to \$~~900,000~~ 1,225,000 in funds  
24 from the Election Campaign Fund on a first\_come, first\_served basis according to the following  
25 formula ~~set forth in Subsection (c)(3) of this Section.;~~

1                   (2) — ~~Once the Per Candidate Available Disbursement Limit has been determined,~~  
2 ~~candidates for Mayor whom the Ethics Commission has certified as eligible to receive public financing~~  
3 ~~for their election campaigns shall have access to funds from the Election Campaign Fund as follows:~~

4                   (A) — ~~If the Executive Director determines that the Per Candidate Available~~  
5 ~~Disbursement Limit is greater than \$900,000, each participating candidate shall have access to the~~  
6 ~~amount of the Per Candidate Available Disbursement Limit, subject to the limitations set forth under~~  
7 ~~Subsection (c)(3)(D) and (c)(3)(E) of this Section.~~

8                   (B) — ~~If the Executive Director determines the Per Candidate Available~~  
9 ~~Disbursement Limit is less than or equal to \$900,000, participating candidates shall have access to~~  
10 ~~funds from the Election Campaign Fund on a first come, first served basis up to a maximum per~~  
11 ~~candidate of \$900,000.~~

12                  (3) — ~~A candidate for Mayor who is certified as eligible to receive public financing~~  
13 ~~under this Chapter shall receive payments for eligible matching contributions according to the~~  
14 ~~following formula:~~

15                  (A~~1~~) Upon qualification the candidate shall receive a one-time payment  
16 of ~~\$50,000~~100,000 from the Election Campaign Fund.

17                  (B~~2~~) After the initial payment under Subsection ~~(c)(3)(A)(1)~~, for the first  
18 ~~\$100,000~~425,000 in matching contributions raised by the candidate, the candidate shall receive  
19 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

20                  (C~~3~~) After the payments under Subsection ~~(c)(3)(B)(2)~~, for the next  
21 ~~\$450,000~~275,000 in matching contributions raised by the candidate, the candidate shall receive  
22 one dollar from the Election Campaign Fund for each dollar raised.

23                  (D~~4~~) The maximum amount of public funds a mayoral candidate may  
24 receive is ~~\$900,000~~1,225,000, ~~unless the candidate's Individual Expenditure Ceiling is adjusted~~  
25 ~~according to the rules set forth under Section 1.143.~~

1                   (E) — ~~If the Per Candidate Available Disbursement Limit has been determined~~  
2 ~~to be an amount greater than \$900,000, a candidate who has already received at least \$900,000 in~~  
3 ~~disbursements from the City shall continue to be eligible to receive public funds from the City at the~~  
4 ~~rate of one dollar for each dollar of a matching contribution raised up to the Per Candidate Available~~  
5 ~~Disbursement Limit, provided that no funds shall be disbursed if disbursement of the funds would result~~  
6 ~~in the candidate exceeding his or her Trust Account Limit.~~

7           (d)    PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR THE  
8 BOARD OF SUPERVISORS.

9                   (1) — ~~Until the Per Candidate Available Disbursement Limit has been determined,~~  
10 ~~e~~Candidates for the Board of Supervisors ~~whom the Ethics Commission has~~ certified as eligible to  
11 receive public financing for their election campaigns will have access to up to ~~\$89,000~~155,000  
12 in funds from the Election Campaign Fund on a first\_come, first\_served basis according to the  
13 following formula ~~set forth in Subsection (d)(3) of this Section.:~~

14                   (2) — ~~Once the Per Candidate Available Disbursement Limit has been determined,~~  
15 ~~e~~candidates for the Board of Supervisors ~~whom the Ethics Commission has~~ certified as eligible to  
16 receive public financing for their election campaigns shall have access to funds from the Election  
17 Campaign Fund as follows:

18                   (A) — ~~If the Executive Director determines that the Per Candidate Available~~  
19 ~~Disbursement Limit is greater than \$89,000, each participating candidate shall have access to the~~  
20 ~~amount of the Per Candidate Available Disbursement Limit, subject to the limitations set forth under~~  
21 ~~Subsection (d)(3)(D) and (d)(3)(E) of this Section.~~

22                   (B) — ~~If the Executive Director determines the Per Candidate Available~~  
23 ~~Disbursement Limit is less than or equal to \$89,000, participating candidates shall have access to~~  
24 ~~funds from the Election Campaign Fund on a first come, first served basis up to a maximum per~~  
25 ~~candidate of \$89,000.~~



1                   (3) — A candidate for the Board of Supervisors who is certified as eligible to receive  
2 public financing under this Chapter shall receive payments for eligible matching contributions  
3 according to the following formula:

4                   (A1) Upon qualification the candidate shall receive a one-time payment  
5 of ~~\$10,000~~20,000 from the Election Campaign Fund.

6                   (B2) After the initial payment under Subsection ~~(d)(3)(A)(1)~~, for the first  
7 ~~\$10,000~~50,000 in matching contributions raised by the candidate, the candidate shall receive  
8 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

9                   (C3) After the payments under Subsection ~~(d)(3)(B)(2)~~, for the next  
10 ~~\$39,000~~35,000 in matching contributions raised by the candidate, the candidate shall receive  
11 one dollar from the Election Campaign Fund for each dollar raised.

12                   (D4) The maximum amount of public funds a candidate for the Board of  
13 Supervisors may receive is ~~\$89,000~~155,000, unless the candidate's Individual Expenditure Ceiling  
14 is adjusted according to the rules set forth under Section 1.143.

15                   (E) — If the Per Candidate Available Disbursement Limit has been determined  
16 to be an amount greater than \$89,000, a candidate who has already received at least \$89,000 in  
17 disbursements from the City shall continue to be eligible to receive public funds from the City at the  
18 rate of one dollar for each dollar of a matching contribution raised up to the Per Candidate  
19 Disbursement Limit, provided that no funds shall be disbursed if disbursement of the funds would result  
20 in the candidate exceeding his or her Trust Account Limit.

21                   (e) — ~~PER CANDIDATE AVAILABLE DISBURSEMENT LIMIT. On the 59th day before the~~  
22 ~~election, the Executive Director shall divide the total amount of non-administrative funds in the~~  
23 ~~Election Campaign Fund by the number of qualified candidates. This number shall be deemed the Per~~  
24 ~~Candidate Available Disbursement Limit. For the purposes of this section, the total amount of non-~~  
25 ~~administrative funds in the Election Campaign Fund shall be the total amount of funds that existed in~~

1 ~~the Fund nine months before the date of election plus any funds deposited into the Fund between that~~  
2 ~~date and the 59th day before the election minus any funds necessary to cover the administrative costs~~  
3 ~~associated with implementing the public financing program for the next election.~~

4 ~~If there are candidates who have submitted a Declaration of Qualification but whose eligibility~~  
5 ~~has not been determined as of the 59th day before the election, the Executive Director shall assume that~~  
6 ~~they are qualified for the purposes of determining the Per Candidate Available Disbursement Limit.~~  
7 ~~The Per Candidate Available Disbursement Limit shall be revised upward according to the formula~~  
8 ~~above if and when it is determined that the candidate or candidates in question did not qualify to~~  
9 ~~receive public financing.~~

10 ~~Immediately upon calculating the Per Candidate Available Disbursement Limit, the Executive~~  
11 ~~Director shall inform the Controller of the initial determination of the Per Candidate Available~~  
12 ~~Disbursement Limit. Thereafter, the Executive Director shall immediately inform the Controller of any~~  
13 ~~subsequent changes in the Per Candidate Available Disbursement Limit due to a determination that a~~  
14 ~~candidate has not qualified to receive public financing.~~

15 (f) SUBMISSION OF CLAIMS FOR PUBLIC FUNDS. The Ethics Commission shall  
16 determine the information needed to submit a claim for payment of public funds. The  
17 Executive Director shall certify each request for payment of public funds within four business  
18 days of the request, except that within 14 calendar days before the election, when the  
19 certification of a request for public funds shall be made within two business days of the  
20 request. No candidate may submit a claim for public funds if the candidate has any such  
21 claims pending with the Ethics Commission. For candidates for Mayor, any submission of a  
22 claim for public funds must include a minimum of \$5,000 of matching contributions; provided  
23 that in the 14 calendar days preceding an election, a claim must include a minimum of \$1,000  
24 of matching contributions. For candidates for the Board of Supervisors, any submission of a  
25 claim for public funds must include a minimum of \$1,000 of matching contributions; provided

1 that in the 14 calendar days preceding an election, a claim must include a minimum of \$200 of  
2 matching contributions. All claims for public funds must be submitted no later than 5:00 p.m.  
3 on the 30th day following the date of the election.

4 (~~g~~) DEPOSIT IN CAMPAIGN CONTRIBUTION TRUST ACCOUNT. A candidate  
5 must deposit all payments received from the Election Campaign Fund in his or her candidate  
6 committee's Campaign Contribution Trust Account.

7 SEC. 1.170. PENALTIES.

8 (a) CRIMINAL. Any person who knowingly or willfully violates any provision of this  
9 Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a  
10 fine of not more than \$5,000 for each violation or by imprisonment in the County jail for a  
11 period of not more than six months or by both such fine and imprisonment; provided, however,  
12 that any willful or knowing failure to report contributions or expenditures done with intent to  
13 mislead or deceive or any willful or knowing violation of the provisions of Section 1.114 of this  
14 Chapter shall be punishable by a fine of not less than \$5,000 for each violation or three times  
15 the amount not reported or the amount received in excess of the amount allowable pursuant  
16 to Section 1.114 of this Chapter, or three times the amount expended in excess of the amount  
17 allowable pursuant to Section 1.130 or 1.140.5, whichever is greater.

18 (b) CIVIL. Any person who intentionally or negligently violates any of the provisions  
19 of this Chapter shall be liable in a civil action brought by the civil prosecutor for an amount up  
20 to \$5,000 for each violation or three times the amount not reported or the amount received in  
21 excess of the amount allowable pursuant to Section 1.114 or three times the amount  
22 expended in excess of the amount allowable pursuant to Section 1.130 or 1.140.5, whichever  
23 is greater.

1 (c) ADMINISTRATIVE. Any person who intentionally or negligently violates any of  
2 the provisions of this Chapter shall be liable in an administrative proceeding before the Ethics  
3 Commission held pursuant to the Charter for any penalties authorized therein.

4 (d) LATE FILING FEES

5 (1) Fees for Late Paper Filings. In addition to any other penalty, any person  
6 who files a paper copy of any statement or report after the deadline imposed by this Chapter  
7 shall be liable in the amount of ten dollars (\$10) per day after the deadline until the statement  
8 is filed.

9 (2) In addition to any other penalty, any person who files an electronic copy  
10 of a statement or report after the deadline imposed by this Chapter shall be liable in the  
11 amount of twenty-five dollars (\$25) per day after the deadline until the electronic copy or  
12 report is filed.

13 (3) Limitation on Liability. Liability imposed by Subsection (d)(1) shall not  
14 exceed the cumulative amount stated in the late statement or report, or one hundred dollars  
15 (\$100), whichever is greater. Liability imposed by Subsection (d)(2) shall not exceed the  
16 cumulative amount stated in the late statement or report, or two hundred fifty dollars (\$250),  
17 whichever is greater.

18 (4) Reduction or Waiver. The Ethics Commission may reduce or waive a fee  
19 imposed by this subsection if the Commission determines that the late filing was not willful  
20 and that enforcement will not further the purposes of this Chapter.

21 (e) MISUSE OF PUBLIC FUNDS. Any person who willfully or knowingly uses  
22 public funds, paid pursuant to this Chapter, for any purpose other than the purposes  
23 authorized by this Chapter shall be subject to the penalties provided in this Section.

24 (f) PROVISION OF FALSE OR MISLEADING INFORMATION TO THE ETHICS  
25 COMMISSION; WITHHOLDING OF INFORMATION. Any person who knowingly or willfully

1 furnishes false or fraudulent evidence, documents, or information to the Ethics Commission  
2 under this Chapter, or misrepresents any material fact, or conceals any evidence, documents,  
3 or information, or fails to furnish to the Ethics Commission any records, documents, or other  
4 information required to be provided under this Chapter shall be subject to the penalties  
5 provided in this Section.

6 (g) PERSONAL LIABILITY. Candidates and treasurers are responsible for  
7 complying with this Chapter and may be held personally liable for violations by their  
8 committees. Nothing in this Chapter shall operate to limit the candidate's liability for, nor the  
9 candidate's ability to pay, any fines or other payments imposed pursuant to administrative or  
10 judicial proceedings.

11 (h) JOINT AND SEVERAL LIABILITY. If two or more persons are responsible for  
12 any violation of this Chapter, they shall be jointly and severally liable.

13 (i) EFFECT OF VIOLATION ON ~~OUTCOME OF ELECTION~~CANDIDACY.

14 (1) If a candidate is convicted, in a court of law, of a violation of this Chapter  
15 at any time prior to his or her election, his or her candidacy shall be terminated immediately  
16 and he or she shall be no longer eligible for election, unless the court at the time of sentencing  
17 specifically determines that this provision shall not be applicable. No person convicted of a  
18 misdemeanor under this Chapter after his or her election shall be a candidate for any other  
19 City elective office for a period of five years following the date of the conviction unless the  
20 court shall at the time of sentencing specifically determine that this provision shall not be  
21 applicable.

22 (2) If a candidate for ~~Mayor or~~ the Board of Supervisors certified as eligible for  
23 public financing is found by a court to have exceeded the Individual Expenditure Ceiling in this  
24 Chapter by ten percent or more at any time prior to his or her election, such violation shall  
25 constitute official misconduct. ~~he or she is ineligible for election, unless the court specifically~~

1 ~~determines that this provision shall not be applicable. If feasible, the candidate's name shall be~~  
2 ~~removed from the ballot. No candidate for Mayor or the Board of Supervisors who is found by a court~~  
3 ~~to have exceeded the Individual Expenditure Ceiling in this Chapter by ten percent or more after his or~~  
4 ~~her election shall be a candidate for any City elective office for a period of five years following the~~  
5 ~~court's determination unless the court specifically determines that this provision shall not be~~  
6 ~~applicable.~~—The Mayor may suspend any member of the Board of Supervisors for such a violation, and  
7 seek the removal of Ethics Commission may make a recommendation to the Board of Supervisors that  
8 a candidate found by a court to have exceeded the Individual Expenditure Ceiling in this Chapter by  
9 ten percent or more should be removed from office following the procedures set forth in Charter  
10 section 15.105(a).

11 (3) A plea of nolo contendere, in a court of law, shall be deemed a conviction  
12 for purposes of this Section.

13 Section 2. The San Francisco Municipal Elections Code is hereby amended by  
14 amending Section 200 and adding Section 205, to read as follows:

15 SEC. 200. NOMINATION AND RECALL OF ELECTIVE OFFICERS;  
16 INCORPORATION OF STATE LAW.

17 Except as otherwise provided by the Charter or this Municipal Elections Code,  
18 nomination of elective officers shall be made pursuant to California Elections Code Section  
19 ~~8000~~10220 et seq., and the recall of elective officers shall be made pursuant to California  
20 Elections Code Section 11000 et seq. If the official proposed to be removed at a recall  
21 election is recalled, the vacancy shall be filled pursuant to Charter Sections ~~3.100~~(1415) and  
22 13.101.5.

23 The Board of Supervisors may amend or repeal Section 200 of this Article only if it approves the  
24 proposed amendment by at least a two-thirds vote of all its members.

25 SEC. 205. NOMINATION DEADLINES.

1            Candidates must file nomination papers no later than the 146th day before a municipal election  
2 during normal office hours, as posted.

3            The Board of Supervisors may amend or repeal Section 205 of this Article only if it approves the  
4 proposed amendment by at least a two-thirds vote of all its members.

5  
6 APPROVED AS TO FORM:  
7 DENNIS J. HERRERA, City Attorney

8 By: \_\_\_\_\_  
9        ANDREW SHEN  
       Deputy City Attorney