

## LEGISLATIVE DIGEST

[Amendments to Campaign Finance Reform Ordinance.]

**Ordinance amending Article I, Chapter I of the Campaign & Governmental Conduct Code by amending sections 1.100, 1.104, 1.107, 1.108, 1.112, 1.113, 1.114, 1.118, 1.122, 1.128, 1.130, 1.134, 1.135, 1.136, 1.140, 1.142, 1.144, 1.146, 1.148, 1.150, 1.152, 1.156, 1.161, 1.161.5, 1.168, 1.170, deleting sections 1.134.5, 1.158, and 1.160, and adding sections 1.109, 1.143, 1.171, and 1.175 to refine and conform definitions; to eliminate and streamline reporting requirements; to authorize greater electronic filing; to adjust expenditure ceilings for inflation; to clarify the permissible uses of campaign funds; to provide that certain candidates are eligible to accept Voluntary Expenditure Ceilings; to set forth the instances in which the Ethics Commission will lift Voluntary Expenditure Ceilings; to modify how public funds are disbursed to eligible candidates; to clarify the requirements for third-party reporting; to amend the statute of limitations for administrative actions; and to impose record retention requirements on local committees.**

### Existing Law

The City's Campaign Finance Reform Ordinance ("CFRO") is codified at Article I, Chapter I of the Campaign & Governmental Conduct Code.

1. **Definitions:** Section 1.104 defines many of the terms used in CFRO.
2. **Trust Accounts and Contingency Accounts:** Section 1.108 requires that all contributions received by a candidate committee be deposited in and spent from a single bank account, referred to as a Campaign Contribution Trust Account. Campaign Contribution Trust Accounts established by publicly financed candidates may only hold funds up to a pre-determined amount, the Trust Account Limit. The Ethics Commission may increase a publicly financed candidate's Trust Account Limit based on other contributions and spending in the candidate's race. A publicly financed candidate may deposit additional contributions in a separate account, called the Campaign Contingency Account, in anticipation of an increase in the Trust Account Limit.
3. **Electronic Filing:** Section 1.112 requires certain committees to file campaign finance statements electronically.
4. **Reporting During Signature Gathering:** Section 1.113 requires committees that are raising or spending funds to support or oppose a local initiative, recall or referendum petitions to disclose their activity during the signature-gathering period. Depending on the date that the signature gathering begins, each committee has its own unique filing

schedule.

5. **Use of Campaign Funds:** Section 1.122(b) restricts how a candidate committee may use campaign funds. Local candidate committees may not use their funds to support other candidates or ballot measures. Withdrawn, defeated and departed candidates may only return funds to their contributors or donate the funds to the City or to charity.
6. **Voluntary Expenditure Ceilings:** Section 1.128 provides that all candidates for City elective office may accept voluntary expenditure ceilings ("VECs"). Once accepted, the VEC restricts how much a candidate may spend in support of his or her own candidacy, subject to further adjustments by the Ethics Commission based on other contributions and spending in the race. The Voter Information Pamphlet published by the Department of Elections lists the candidates who have accepted a VEC.
7. **Amount of Voluntary Expenditure Ceilings:** Section 1.130 establishes the VECs for eligible candidates. For candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, and Treasurer, the VEC is \$229,000. For candidates for School Board and City College Board, the VEC is \$98,000.
8. **Lifting of Voluntary Expenditure Ceilings:** Section 1.134 provides that the Ethics Commission will lift a VEC if either a candidate who has refused to accept the VEC has received contributions or made expenditures in excess of the VEC or third-parties have paid for communications that support or oppose a candidate and those communications total more than the VEC.
9. **Pre-election Statements:** Section 1.135 establishes a schedule for the filing of pre-election campaign statements.
10. **Amount of Individual Expenditure Ceilings:** Section 1.140 lists the eligibility requirements for candidates seeking public financing. This section currently provides that supervisorial candidates must agree to an Individual Expenditure Ceiling ("IEC") of \$140,000, and that mayoral candidates must agree to an IEC of \$1,375,000.
11. **Disbursement of Public Financing Funds:** Section 1.144 addresses the disbursement of funds for publicly financed candidates. More than 60 days before the election, the Controller must disburse public funds to eligible candidates within 48 hours of notification by the Ethics Commission. Within 60 days of the election, the Controller must disburse funds within a shorter time-frame, 24 hours. Section 1.144 does not restrict the number of claims for public funds that a candidate may simultaneously submit.
12. **Audits:** Section 1.150(a) provides that the Ethics Commission will audit all candidate committees for publicly financed candidates.

13. **Supplemental Reporting in Publicly Financed Races:** Section 1.152 establishes supplemental reporting requirements for candidates and third parties in races with a publicly financed candidate. Competing candidates and third parties must report their activity to the Ethics Commission so that the Ethics Commission can adjust publicly financed candidates' IECs and provide publicly financed candidates with sufficient funds to remain competitive.
14. **Mass Mailings:** Section 1.161 establishes disclosure and filing requirements for mass mailings that identify candidates for City elective office.
15. **Electioneering Communications:** Section 1.161.5 establishes disclosure and filing requirements for electioneering communications, i.e., "issue ads" that identify candidates.
16. **Statute of Limitations:** Section 1.168(c)(3) establishes a statute of limitations of five years for administrative actions brought by the Ethics Commission.
17. **Maintaining Records:** Under state law, committees must maintain records for audit purposes. This ordinance does not explicitly require committees to retain particular records documenting the contents of filings required by CFRO.
18. **Subpoena authority:** Under the Charter, the Ethics Commission has the authority to subpoena witnesses and documents. CFRO does not mention the Ethics Commission's, or the Executive Director's, subpoena powers.

#### Amendments to Current Law

The proposed legislation would make a number of changes to CFRO, including:

1. **Definitions:** Amends section 1.104 to propose or refine the definitions of candidate, candidate committee, City elective office, controlled committee, election, general purpose committee, independent expenditure, itemized disclosure statement, mass mailing, matching contribution, measure, member communication, person, qualifying contribution, surplus funds, total supportive funds, trust account limit, unexpended public funds, and withdrawal. In general, the amendments seek to conform CFRO's definitions to the state law definitions for identical or similar terms.
2. **Trust Accounts and Contingency Accounts:** Amends section 1.108 to eliminate the requirement that the candidate committee provide the Ethics Commission with its bank account number. State law already requires candidate committees to provide that information on a statement of organization (FPPC Form 410). The amendments also clarify that elected officeholders may not open a separate bank account for the purpose of making officeholder expenses, and that a candidate committee may only deposit funds in a Campaign Contingency Account if the amount of funds in the Campaign

Contribution Trust Account has reached the Trust Account Limit.

3. **Electronic Filing:** Amends section 1.112 to differentiate between campaign finance statements required by state versus local law. Statements required by state law must be filed electronically and in paper; certain statements required by local law must only be filed electronically. The amendments also incorporate recent state law definitions of what constitutes a "local" committee. The amendments further authorize the Ethics Commission to require additional committees, beyond those currently set forth in the ordinance, to file electronically.
4. **Reporting During Signature Gathering:** Amends section 1.113 provide that each committee supporting or opposing local initiative, recall or referendum petitions must disclose its activity at uniform times each month during the signature-gathering period.
5. **Use of Campaign Funds:** Amends section 1.122(b) to clarify that local candidate committees are prohibited from making contributions to support or oppose state propositions. The amendments also provide that withdrawn, defeated, or departed candidates may use campaign funds to pay debts and other costs associated with closing a committee.
6. **Voluntary Expenditure Ceilings:** Amends section 1.128 to provide that only candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, School Board, and City College Board may accept a VEC. The Voter Information Pamphlet will no longer list candidates who have accepted a VEC; the Ethics Commission instead will maintain a website that lists those candidates. Candidates for the Board of Supervisors and Mayor may no longer accept VECs. If they participate in the public financing program, those candidates must accept IECs.
7. **Amount of Voluntary Expenditure Ceilings:** Amends section 1.130 to adjust the VECs for inflation. The VEC for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, and Treasurer will increase to \$243,000. The VEC for School Board and City College Board will increase to \$104,000.
8. **Lifting of Voluntary Expenditure Ceilings:** Amends section 1.134 to provide that if a candidate who has accepted the VEC actually spends more than the VEC – thus violating section 1.128 – the Ethics Commission will lift the VEC for competing candidates.
9. **Pre-election Statements:** Amends section 1.135 to provide that in even-numbered years, the schedule for the filing of pre-election statements shall be the same as the schedule established for such filings by the Fair Political Practices Commission. For odd-numbered years, committees shall continue to be subject to the current schedule set forth in CFRO.

10. **Amount of Individual Expenditure Ceilings:** Amends section 1.140 to adjust the IECs for inflation. The IEC for supervisorial candidates will increase to \$143,000, and the IEC for mayoral candidates will increase to \$1,475,000.
11. **Disbursement of Public Financing Funds:** Amends section 1.144 to provide that the Controller must disburse public funds within one business day only within the last fifteen days of an election, rather than the last sixty. The amendments also clarify that a candidate may not simultaneously submit multiple claims for public funds.
12. **Audits:** Amends section 1.150(a) to confirm that the Executive Director may initiate additional audits irrespective of whether the committees received public funds.
13. **Supplemental Reporting in Publicly Financed Races:** Amends section 1.152 to clarify the thresholds for third-party reporting operate on a per-candidate basis. The amendments also broaden the scope of supplemental reporting to include all communications that clearly identify a candidate, rather than relying on the third party's determination of whether the communications support or oppose a candidate.
14. **Mass Mailings:** Amends section 1.161 to provide that a committee is not subject to the mass mailing filing requirements if it is already filing disclosures regarding the same communication under another CFRO provision.
15. **Electioneering Communications:** Amends section 1.161.5 to provide that a committee is not subject to the electioneering communication filing requirements if it is already filing disclosures regarding the same communication under another CFRO provision. The amendments also eliminate an exception to the definition of "electioneering communication" to provide that committees' "expenditures" may be electioneering communications.
16. **Statute of Limitations:** Amends section 1.168(c)(3) to provide that the statute of limitations for administrative action by the Ethics Commission is four years. The amendment will conform the limitations period for CFRO violations to the limitations periods governing other ordinances within the Ethics Commission's jurisdiction.
17. **Maintaining Records:** Adds section 1.109, which provides that local committees must maintain records – for audit purposes – according to the standards set forth in state law. Section 1.109 also provides that committees must provide those records upon request by the Ethics Commission.
18. **Subpoena authority:** Adds section 1.171, which provides that the Ethics Commission – including its Executive Director – may issue subpoenas in furtherance of its duties under the Charter, including, but not limited to, audits.

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19. **Renumbering and Reorganizing CFRO Provisions:** Re-numbers section 1.134.5, addressing when and how the Ethics Commission adjusts IECs, as section 1.143. The new section 1.143 also incorporates inflation-adjusted IECs for mayoral and supervisorial candidates. The legislation also re-numbers section 1.158, authorizing the Ethics Commission to adopt implementing regulations, as section 1.175. The legislation also deletes section 1.160, which explicitly states that nothing in CFRO is intended to limit a candidate's fines or penalties imposed in other administrative or judicial proceedings. The amendments replicate the same language in section 1.170(g).

#### Background Information

The proposal amends Article 1, Section 1 of the Campaign & Governmental Conduct Code ("C&GCC"). The Campaign Finance Reform Ordinance, originally approved by the voters, expressly authorizes amendment by the Board of Supervisors only if:

- 1) the amendment furthers the purposes of the CFRO;
- 2) the amendment is submitted to the Ethics Commission and recommended by its members by a four-fifths vote;
- 3) the legislation is made available for public review for 30 days; and
- 4) the Board of Supervisors adopts the legislation by a two-thirds vote.

See C&GCC § 1.103.