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EXECUTIVE DIRECTOR

Date: March 5, 2012

To: Members, Ethics Commission

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

Re: Amendments to legislation regarding public financing programs

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At its February 28, 2012 meeting, the Board of Supervisors (“Board”), by votes of 8-3 and 11-0, approved amendments to legislation introduced by Supervisors Kim, Campos, Mar and Avalos (“Kim legislation”) and that was unanimously approved by the Ethics Commission (“Commission”) at its January 23, 2012 meeting. Because the amendments made substantive changes to the legislation that was approved by the Commission, they have been returned to the Commission for its consideration. If passed by the Commission by at least a 4/5 vote, they will return to the Board’s Rules Committee for consideration. If the legislation, as amended, passes out of Rules, it will appear before the Board of Supervisors where it must pass by a 2/3 vote of all the members. *See* San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) § 1.103.

As you recall, in general, the Kim legislation would amend the Campaign Finance Reform Ordinance (“CFRO”), C&GC Code section 1.100 et seq., by

- increasing the qualification thresholds that a candidate must meet in order to be certified for public funds,
- delaying the disbursement date of public funds until approximately mid-June in advance of a November election,
- changing the matching public funds formula, and
- starting the individual expenditure ceilings at \$250,000 for Board of Supervisors candidates and \$1,750,000 for Mayoral candidates.

Except for changes to the Mayoral program, the amendments, introduced at the Board by Supervisors Kim and Scott Wiener, would retain these changes, in addition to making the following changes related to budgeting of the Election Campaign Fund (“Fund”):

- Change the way funds are appropriated to the Fund so that instead of appropriating \$2.75 per City resident each fiscal year to the Fund, the Board will appropriate funds such that the total amount in the Fund is at least \$4 million at the beginning of a fiscal year when there is an election for the Board of Supervisors, and at least \$5 million at the beginning of a fiscal year when

there is an election for Mayor. *See* draft changes to section 1.138(b) on the draft amendments at page 2, line 21 through page 3, line 9.

- Cap the amount of funds in the Fund at \$7 million instead of \$13.5 million. *See* draft changes on page 3, lines 10-13.
- Delete language that provides for additional funds to the Fund should the office of Mayor or Board become vacant and special elections are necessary to fill the vacancy. *See* draft changes on page 3, line 19 – page 4, line 4.
- Incorporate the provisions section 1.154 into section 1.138(b). Under these changes, by August 1, the Executive Director must notify the Commission and the Board if less than \$5 million exists in the Fund in an election year for Mayor, and the Commission may request a supplemental appropriation so that at least \$5 million exists in the Fund to fund the upcoming election. During an election year for the Board, by August 1, the Executive Director must notify the Commission and the Board if less than \$4 million exists in the Fund and the Commission may seek a supplemental appropriation so that at least \$4 million exists in the Fund to fund the upcoming election. *See* draft changes on page 4, lines 5-22 and pages 16, line 6 through page 17, line 5.

In addition to these amendments regarding appropriations to the Fund, the proposed amendments also lower the initial individual expenditure ceiling (“IEC”) for Mayoral candidates from \$1,750,000 to its current ceiling of \$1,475,000. *See* draft change to sections 1.140(c)(4) on page 7, line 15; and section 1.143(a) on page 8, line 17.

Corresponding changes are made to the matching formula for Mayoral candidates under section 1.144(c)(3) so that the final amount of funds that may be matched on a 1-1 basis is reduced from \$162,500 to \$25,000 for non-incumbent Mayoral candidates and from \$150,000 to \$12,500 for incumbent Mayoral candidates. *See* draft changes on page 12, lines 9-14. In addition, the amount of public funds available to Mayoral candidates is reduced from \$1,112,500 for non-incumbents to \$975,000; and for incumbent candidates from \$1,100,000 to \$962,500. *See* draft changes on page 12, lines 15-18.

## **Discussion**

### ***1. Funding the Election Campaign Fund:***

Staff does not oppose the proposed changes to the funding mechanism and capping amount of the Fund. Currently, there is approximately \$7.7 million in the Fund. Staff projects that approximately \$408,000 will be needed for the Board of Supervisors election in November 2012. The following chart shows past disbursements and appropriations to the Fund. Based on this history, staff believes that the new formulas would provide sufficient funds for the public financing program.

<b>Fiscal Year</b>	<b>07-08</b>	<b>08-09</b>	<b>09-10</b>	<b>10-11</b>	<b>11-12</b>	<b>11-12</b>
disburse - ments	\$351,995 (2008 Board election)	\$971,350 (2008 Board election)	\$460,140 (2010 Board election)	\$3,704,272 (\$1,017,573 for 2010 Board election and \$2,686,699 for 2011 Mayoral election)	\$2,009,692 (2011 Mayoral election)	\$408,000 (projected for 2012 Board election)
appro- priations	\$1,358,747	\$1,823,250	\$3,212,056	\$3,776,494 (includes \$500k restored & \$1.3m supplemental)	\$6,091,332	

<b>Election Campaign Fund Balance as of the End of Each Fiscal Year</b>					
date	June 30, 2008	June 30, 2009	June 30, 2010	June 30, 2011	Feb. 22, 2011
amount	\$2,159,781	\$757,224	\$3,514,331	\$3,616,217	\$7,698,765

However, staff does propose two minor clarifications with respect to the amendments. On page 3, lines 6 and 9, staff proposes that the words “at least” be added before “\$5 million” and “\$4 million.” Staff believes that the intent of the drafters is that *at least* \$5 million or \$4 million are available in the Fund on the first day of the fiscal year in which a Mayoral or Supervisorial election occurs, respectively. The amount of money in the Fund would still never exceed \$7 million.

**Decision Point 1:**

Shall the Commission insert the words “at least” before “\$5 million and “\$4 million” as they appear on page 3, lines 6 and 9, respectively, of the draft amendments?

**2. Proposed changes to the Mayoral public financing program:**

Staff does not oppose the amendments to the Mayoral public financing program. The history of the public financing program supports increasing in the availability of public funds for Board candidates from \$89,000 to \$155,000, and increasing the initial IEC for Board candidates from \$143,000 to \$250,000. But the City has only experienced one cycle of the Mayoral public financing program – and during 2011, no candidate reached the \$900,000 amount in available public funds. Thus, maintaining the current IEC at \$1,475,000 is likely to result in adequate funds for viable, publicly financed Mayoral candidates. Moreover, under the current version of this legislation, publicly financed Mayoral candidates would have access to a slightly higher initial amount of public funds – \$975,000 for non-incumbents and \$962,500 for incumbents, instead of \$900,000. In addition, an IEC of \$1,475,000 more closely tracks the average of \$1,337,797 that was spent by the five highest spending Mayoral candidates in 2011. Because IECs remain in the legislation – instead of switching to hard spending caps – Mayoral candidates would be able to fundraise for additional private funds if the IEC is adjusted upwards in response to opposition spending.

If enacted, the proposed schemes for Supervisorial and Mayoral candidates would look like this:

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

	Private Funds Raised by Non-Incumbents	Matching Public Funds	Private Funds Raised by Incumbents	Matching Public Funds
Initial	\$10,000	\$20,000	\$15,000	\$20,000
1:2	\$50,000	\$100,000	\$50,000	\$100,000
1:1	\$35,000	\$35,000	\$32,500	\$32,500
<b>Total</b>	<b>\$95,000</b>	<b>\$155,000</b>	<b>\$97,500</b>	<b>\$152,500</b>
<b>Total Public and Private Funds</b>	<b>\$250,000</b>		<b>\$250,000</b>	

**Proposed Scheme for Mayoral Candidates  
(Individual Expenditure Ceiling Set at \$1,475,000)**

	Private Funds Raised by Non-Incumbents	Matching Public Funds	Private Funds Raised by Incumbents	Matching Public Funds
Initial	\$50,000	\$100,000	\$75,000	\$100,000
1:2	\$425,000	\$850,000	\$425,000	\$850,000
1:1	\$25,000	\$25,000	\$12,500	\$12,500
<b>Total</b>	<b>\$500,000</b>	<b>\$975,000</b>	<b>\$512,500</b>	<b>\$962,500</b>
<b>Total Public and Private Funds</b>	<b>\$1,475,000</b>		<b>\$1,475,000</b>	

**3. Possible savings from the changes to the public financing programs**

A number of Supervisors asked staff to analyze whether monetary savings could be expected from the proposed changes to the public financing program. Staff’s analysis of the disbursements for publicly financed Mayoral candidates in the November 2011 election and for successful publicly financed Supervisorial candidates in 2008 and 2010 is reflected in the following charts. While the average amount of funds disbursed per candidate in the Mayoral program would decrease, two candidates would have received more funds under the new formula. In the Supervisorial program, all current publicly financed incumbents would receive more funds under the proposed scheme. However, because of the change in qualifying thresholds, many other candidates who qualified for public funds under the existing scheme may not have qualified under the new scheme. Because of time constraints, staff did not perform an analysis of all candidates who participated in the program to determine who would or would not have qualified and how much each certified candidate would have received under the new formula.

Candidate	Amount Deemed to be Qualifying or Matching	Number of Contributions Deemed to be Qualifying or Matching	Actual Disbursement	Disbursement Under Proposed Scheme
Dennis Herrera	\$395,690	1,929	\$720,690	\$791,380
David Chiu	\$247,050	1,396	\$572,050	\$494,100
Bevan Dufty	\$357,108	2,800	\$682,108	\$714,216
Michela Alioto-Pier	\$163,875	838	\$488,875	\$327,750
Leland Yee	\$214,015	1,257	\$539,014	\$428,030
Joanna Rees	\$167,480	850	\$492,480	\$334,960
John Avalos	\$136,479	1,700	\$461,479	\$272,958
Tony Hall	\$119,514	780	\$428,056	\$239,028
Phil Ting	\$90,641	630	\$312,564	\$181,282
<b>Total</b>			<b>\$4,697,316</b>	<b>\$3,783,704</b>
<b>Difference</b>				<b>-\$913,612</b>

Conclusion: Actual total disbursements were \$913,612 more than they would have been under the proposed scheme.

Caveats: 1) Under the proposed scheme, a candidate must demonstrate qualifying contributions from 500, not 250 residents of S.F., by the 70th day before the election. This analysis is based on the fact that all of the candidates listed above received at least 250 contributions that were either qualifying or matching. However, an analysis has not been performed of whether each candidate had at least 250 qualifying contributions before the 70th day before the election. 2) The figures used for the "number of contributions deemed to be qualifying or matching" are approximate, not exact figures (however, these figures are very close to actual figures.)

Candidate	Amount Deemed to be Qualifying or Matching	Number of Contributions Deemed to be Qualifying or Matching	Actual Disbursement	Disbursement Under Proposed Scheme
Eric Mar	\$59,349	479	\$94,349	\$118,698
David Chiu	\$88,445	542	\$123,445	\$148,445
Jane Kim	\$55,867	310	\$90,817	\$111,734
Scott Wiener	\$102,882	557	\$140,572	\$155,000
David Campos	\$43,331	294	\$73,331	\$86,662
Malia Cohen	\$44,616	300	\$79,666	\$89,232
John Avalos	\$52,720	522	\$87,720	\$105,440
<b>Total</b>			<b>\$689,900</b>	<b>\$815,211</b>
<b>Difference:</b>				<b>\$125,311</b>

Conclusion: Under the proposed scheme, the above-referenced candidates would have received a combined total of \$125,311 more than they received under the actual scheme that was in place in 2008 and 2010.

Caveats: 1) Under the proposed scheme, a candidate must demonstrate qualifying contributions from 100, not 75 residents of S.F., by the 70th day before the election. This analysis is based on the fact that all of the candidates listed above received at least 100 contributions that were either qualifying or matching. However, an analysis has not been performed of whether each candidate had at least 100 qualifying contributions before the 70th day before the election. 2) Some of the candidates listed above may have had more contributions that were eligible to be matching contributions except that such contributions could not be considered matching because the candidate reached his/her Trust Account Limit and thus was not eligible to receive more public funds. 3) The figures used for the "number of contributions deemed to be qualifying or matching" are approximate, not exact figures (however, these figures are very close to actual figures.)

\* \* \*

Staff's hope remains that any amendments to the public financing program will take effect as close as possible to when the Redistricting Task Force completes its work in mid-April 2012, so that the new rules will be in place before the Commission starts distributing funds to any candidates. In the discussions at the Board, it seems very likely that the Kim legislation, as amended on February 28, 2012 at the Board, will have the support of at least eight Supervisors. Staff urges the Commission to approve the amendments.

**Decision Point 2:**

Shall the Commission approve the amendments to the Kim legislation as set forth in the attached document, including Decision Point 1 if it is adopted?

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