

GUIDE FOR CANDIDATES FOR SAN FRANCISCO CITY ELECTIVE OFFICE

This guide is intended to be used as a supplement to the Fair Political Practices Commission's Manual 2



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I. INTRODUCTION

This guide summarizes local laws applicable to candidates for San Francisco City elective office. It is intended to be used as a supplement to the Fair Political Practices Commission's (FPPC) Manual 2 Information for Local Candidates, which sets forth the basic rules applicable for all local candidates and candidate committees. Manual 2 is available from the Ethics Commission or the FPPC website. This guide is intended to answer the most frequently asked questions about applicable laws, and is, therefore, necessarily general. Any specific questions regarding these laws should be directed to the San Francisco Ethics Commission at (415) 252-3100 or ethics.commission@sfgov.org.

In addition to the Ethics Commission, agencies that administer and enforce laws regulating recipient committees and elections include the California Secretary of State (SOS), the Fair Political Practices Commission (FPPC), and the San Francisco Department of Elections. They may be contacted as follows:

SOS	(916) 653-6814	www.ss.ca.gov
FPPC	(916) 275-3772	www.fppc.ca.gov
S.F. Dept. of Elections	(415) 554-4375	www.sfelections.org

Please be aware that additional requirements and restrictions may apply. To the extent this guide conflicts with state or local law, the law controls.

II. WHO SHOULD USE THIS GUIDE?

This guide is intended to provide information on local rules that apply to candidates for San Francisco City elective offices. Because FPPC Manual 2 provides information on state requirements applicable to all local candidates, such state requirements are not discussed in this guide.

San Francisco City elective offices include: Mayor, Members of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Members of the Board of Education of the San Francisco Unified School District and Members of the Governing Board of the San Francisco Community College District. Any person running for one of these offices is a candidate for City elective office.

See S.F. Campaign & Governmental Conduct ("C&GC") Code Sec. 1.104.

III. TRAINING AND RECORDKEEPING REQUIREMENTS

This section provides information on training for candidates and treasurers and recordkeeping requirements.

A. Training for Candidates and Committee Treasurers

Every committee must have a treasurer. The committee may not accept contributions or make expenditures before a treasurer is appointed or while the treasurer's post is vacant, even if there is an assistant treasurer. A candidate may serve as the treasurer of his or her candidate committee. FPPC Manual 2 discusses in detail the responsibilities of a candidate and treasurer.

Every candidate and his or her treasurer must attend a training program conducted or sponsored by the Ethics Commission prior to the election at which the candidate's name will appear on the ballot. An assistant treasurer who signs campaign statements is also required to complete a training. The Commission welcomes and encourages fundraisers, campaign consultants and other representatives to attend a training session as well. After completing the training requirement, candidates, treasurers and assistant treasurers must submit a *Certification of Training Form* (Form SFEC-107) to the Ethics Commission.

A candidate/treasurer may satisfy the training requirement by attending a live training held by the Ethics Commission or by viewing the Ethics Commission's training online. The dates of training sessions are posted on the Commission's website.

See S.F. Campaign & Governmental Conduct ("S.F. C&GC") Code § 1.107 and S.F. Ethics Commission ("SFEC") Regulations §§ 1.107-1, 1.107-2 and 1.107-3.

B. Record Keeping

An accurate and organized record must be kept of all campaign receipts and expenditures. All individuals who handle receipts and make expenditures must be aware of and practice the record keeping procedures required by the Political Reform Act and FPPC regulations outlined in FPPC Campaign Disclosure Manuals. While others may be involved, the candidate and treasurer remain legally responsible for the accuracy of the records.

Committees must keep all records, including original source documentation, for a period of four years from the date the campaign statement relating to the records was filed. Documents that identify the names of the contributors that are affiliated entities must be kept for five years. Committees may be audited by the Ethics Commission, the FPPC or the Franchise Tax Board. For a detailed discussion of the types of records required to be maintained, see FPPC Campaign Disclosure Manual 2 and the Ethics Commission's *Records Required for Audit and Guidelines for Organizing Records* guide. Committees are required to provide records to the Ethics Commission within **ten business days** of a request by the Ethics Commission.

See Gov't Code § 84104; 2 Cal. Code of Regs. § 18401; and S.F. C&GC Code § 1.109.

IV. FILING OF CAMPAIGN STATEMENTS

FPPC Manual 2 discusses the filing of various FPPC forms, as required under state law. The section below discusses additional requirements at the local level as they relate to the filing of forms by San Francisco candidates and candidate committees.

A. Declaring Intent To Be a Candidate and To Solicit and Accept Contributions

Before a candidate solicits or accepts campaign contributions (including loans) or uses any personal funds for campaign purposes (excluding filing fees), the candidate must file a *Candidate Intention Statement (Form 501)* with the San Francisco Ethics Commission and a *Declaration of Intent to Solicit and Accept Contributions* with the San Francisco Department of Elections. A candidate may run for only one City elective office at a time.

See Cal. Gov't Code § 85200; S.F. C&GC Code § 1.122.

B. Establishing a Campaign Bank Account

The treasurer of each candidate committee must establish a campaign contribution trust account at an office of a bank located in the City and County of San Francisco. All expenditures for the City elective office, including those made with personal funds, must be made from this account. See FPPC Campaign Disclosure Manual 2 for detailed information on reimbursement of campaign expenditures made by individuals other than the candidate. A candidate may not use funds from the campaign bank account for personal use and may not be reimbursed from the campaign bank account for campaign-related expenditures.

See Cal. Gov't Code § 85201; S.F. C&GC Code § 1.108.

C. Disclosing Financial Interests

Each candidate must file a *Statement of Economic Interests (Form 700)* with the Department of Elections disclosing investments, interests in real property, and income received during the immediately preceding 12 months. This statement must be filed by the deadline for filing nomination papers. The filing of a *Statement of Economic Interests* may not be required if the candidate has filed a statement within the past 60 days for the same jurisdiction.

See Cal. Gov't Code § 87201.

D. Deciding Whether to Comply With Voluntary Spending Limits

A candidate for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the San Francisco Unified School District or the

Governing Board of the San Francisco Community College District may accept the applicable voluntary expenditure ceiling. Candidates for the Board of Supervisors or Mayor may not accept a voluntary expenditure ceiling – instead, such candidates may be subject to an individual expenditure ceiling if the Ethics Commission certifies them to receive public funds.

A candidate for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the San Francisco Unified School District or the Governing Board of the San Francisco Community College District who wishes to accept the applicable voluntary expenditure ceiling must file an *Acceptance of Voluntary Expenditure Ceiling Statement (Form SFEC-128)* with the Ethics Commission indicating that he or she accepts the applicable expenditure ceiling by the deadline for filing nomination papers. Once filed, this statement may not be withdrawn. The Ethics Commission will post on its website a list of candidates who have accepted the voluntary expenditure ceiling.

Any candidate who files a statement accepting the spending limit and makes campaign expenditures that exceed the limit at a time when the limit has not been lifted will be subject to penalties.

Any candidate committee that receives contributions, makes expenditures, incurs expenses or has funds in its campaign trust account that exceed 100 percent of the applicable expenditure ceiling must, within 24 hours of exceeding 100 percent of the applicable expenditure ceiling, file *Form SFEC-134(b)* with the Ethics Commission.¹

Within 24 hours after receiving such notice, the Ethics Commission will lift the voluntary expenditure ceiling if:

(1) a candidate seeking election to the same City elective office, who has declined to accept the voluntary expenditure ceilings, receives contributions or makes qualified campaign expenditures in excess of 100 percent of the applicable voluntary expenditure ceiling; or

(2) a person or persons make expenditures or payments, or incur expenses for the purpose of making independent expenditures, electioneering communications or member communications that total more than 100 percent of the applicable voluntary expenditure ceiling, and those expenditures or communications clearly identify a candidate seeking election to the same City elective office; or

¹ This requirement applies only if at least one candidate for the City elective office has filed a statement with the Ethics Commission to accept the applicable voluntary expenditure limit.

(3) a candidate seeking election to the same City elective office, who has accepted the voluntary expenditure ceiling, makes qualified campaign expenditures in excess of 100 percent of the voluntary expenditure ceiling.

If the Commission lifts the limit, the Commission will inform every candidate for that office that the voluntary expenditure ceiling has been lifted.

The provisions related to the raising of the individual expenditure ceilings are considerably different for candidates for Mayor and the Board of Supervisors who seek public financing. These candidates should refer to the ***Supplement for Candidates for Mayor Seeking Public Funding*** or the ***Supplement for Candidates for the Board of Supervisors Seeking Public Funding***.

See S.F. C&GC Code §§ 1.128 & 1.134(b).

The voluntary expenditure limits are as follows:

Office	General
City Attorney, Treasurer, District Attorney, Sheriff, Assessor and Public Defender	\$243,000
Board of Education and Community College District	\$104,000

See S.F. C&GC Code §§ 1.128 & 1.130.

E. Electronic Filing of Campaign Statements

All San Francisco committees, including candidate committees, must file their FPPC campaign statements electronically with the Ethics Commission. A committee is required to continue filing electronic campaign disclosure statements, regardless of the committee's level of financial activity, until the committee files a statement of termination.

Committees must use the approved .CAL format to file electronic statements. To comply with the electronic filing requirement, committees may use the Commission's free San Francisco Electronic Disclosure System (SFEDS) or a private software vendor. A registration form and a user guide regarding SFEDS are available on the Commission's web site at www.sfethics.org. For questions regarding the Commission's system, please contact the Ethics Commission. For a list of qualified third-party software vendors, please see the Secretary of State's website or visit the electronic filing section of the Ethics Commission's website.

The Ethics Commission has prescribed an electronic filing format for the following FPPC forms: 460 and 497.²

See S.F. C&GC Code § 1.112.

F. Itemized Disclosure Statements for Mass Mailings

A candidate committee that pays for a mass mailing must file a statement and a copy of the mailing within five business days of the date the mailing or within 48 hours if the date of the mailing occurs during the 16 days immediately preceding the election.

As is the case with other communications, a “paid for by ___” disclaimer is required on a mass mailing. **For detailed information about disclaimer requirements and the relevant formatting rules, see the *San Francisco Ethics Commission’s Political Advertising Disclaimers Chart for Communications by City Candidate Committees for their own Election.***

G. Additional Notification Requirements Pertaining to Candidates for Board of Supervisors

All candidates for the Board of Supervisors must file a *Statement of Participation or Non-Participation in Public Financing Program* form [Form SFEC 142(a)] by the deadline to file nomination papers in the year of the applicable election to indicate whether they intend to participate in the public financing program. The form may not be amended or withdrawn after that deadline. Indicating an intent to participate on *Statement of Participation or Non-Participation in Public Financing Program* form does not qualify a candidate for public funds. In order to qualify for public funding, a candidate must submit an application and meet eligibility requirements, as explained in the ***Supplement for Candidates for the Board of Supervisors Seeking Public Funding.***

Candidates for the Board of Supervisors must notify the Ethics Commission within 24 hours of receiving or spending a certain amount of money, regardless of whether the candidate receives public funding.

² Some local forms are also required to be filed electronically. The Ethics Commission has also prescribed an electronic filing format for FPPC Forms 461, 496 and 465; however, these forms are not used by candidate committees.

Initial Threshold Report (\$10,000 threshold)

Each candidates for the Board of Supervisors (including publicly funded candidates) must file the *Threshold Form*

- within 24 hours of receiving contributions to be deposited into the Campaign Contribution Trust Account or making expenditures that in the aggregate equal or exceed \$10,000.

Subsequent Threshold Filing(s) (\$100,000 threshold and each subsequent \$10,000 threshold)

In a district where at least one candidate is certified as eligible to receive public funds, each candidate (including publicly funded candidates) must file the *Threshold Form* as follows:

(1) within 24 hours of:

- receiving \$100,000 or more (monetary contributions, loans, in-kind contributions and public funds); or
- spending \$100,000 or more (paid and unpaid expenditures).

And thereafter,

(2) within 24 hours of each time

- receipts (monetary contributions, loans, in-kind contributions and public funds); or
- expenditures (paid and unpaid expenditures)

reach an additional \$10,000 amount (i.e., when receipts or expenditures, whichever comes first, reach \$110,000, \$120,000, \$130,000, etc.)

Any person who wishes to receive written notification from the Ethics Commission that the Commission has certified a candidate for the Board of Supervisors as eligible to receive public funds should complete and submit to the Ethics Commission *Form SFEC-152(c)* or send an email to ethics.commission@sfgov.org.

See S.F. C&GC Code § 1.152(a).

H. Additional Notification Requirements Pertaining to Candidates for Mayor

All candidates for Mayor must file a *Statement of Participation or Non-Participation in Public Financing Program* form [Form SFEC 142(a)] by the deadline to file nomination papers in the year of the applicable election to indicate whether they intend to participate in the public financing program. The form may not be amended or withdrawn after that deadline. Indicating an intent to participate on a *Statement of Participation or Non-Participation in Public Financing Program* form [Form SFEC 142(a)] does not qualify a candidate for public funds. In order to qualify for public funding, a candidate must submit an application and meet eligibility requirements, as explained in the **Supplement for Candidates for Mayor Seeking Public Funding**.

Candidates for Mayor must notify the Ethics Commission within 24 hours of receiving or spending a certain amount of money, regardless of whether the candidate receives public funding.

Initial Threshold Report (\$50,000 threshold)

Each candidates for Mayor (including publicly funded candidates) must file the *Threshold Form*

- within 24 hours of receiving contributions to be deposited into the Campaign Contribution Trust Account or making expenditures that in the aggregate equal or exceed \$50,000.

Subsequent Threshold(s) (\$1,000,000 threshold and each subsequent \$50,000 threshold)

If at least one candidate is certified as eligible to receive public funds, each candidate (including publicly funded candidates) must file the *Threshold Form* as follows:

(1) within 24 hours of:

- receiving \$1,000,000 or more (monetary contributions, loans, in-kind contributions and public funds); or
- spending \$1,000,000 or more (paid and unpaid expenditures).

And thereafter,

(2) within 24 hours of each time

- receipts (monetary contributions, loans, in-kind contributions and public funds); or
- expenditures (paid and unpaid expenditures)

reach an additional \$50,000 amount (i.e., when receipts or expenditures, whichever comes first, reach \$1,050,000, \$1,100,000, \$1,150,000, etc.)

Any person who wishes to receive written notification from the Ethics Commission that the Commission has certified a candidate for Mayor as eligible to receive public funds should complete and submit to the Ethics Commission *Form SFEC-152(c)*.

See S.F. C&GC Code § 1.152(b).

V. LIMITS ON ACCEPTING CONTRIBUTIONS AND LOANS

A. Limits on Contributions and Loans

Candidates may not solicit or accept more than \$500 from any contributor.³ Loans are contributions and are subject to the same limits and disclosure requirements as other types of contributions. In other words, a person may not contribute more than \$500 cumulatively (i.e., in the form of monetary contributions, in-kind contributions or loans)

³ These contribution limits also apply to any special election held to fill City elective offices.

to any candidate for City elective office. The \$500 contribution limit is an election cycle limit, not a calendar year limit.

A candidate who has received a contribution in excess of the limit may **not** return the illegal contribution to the contributor; any amount received in excess of the \$500 limit must be paid promptly to the General Fund of the City and County. A contribution is not considered to have been received if it is not negotiated, deposited, or utilized and is returned to the donor before the closing date of the campaign report on which the contribution would otherwise be reported. If the excessive contribution arrives within the final 16 days before the election, it is considered not received if it is not negotiated, deposited, or utilized and returned within 48 hours.

There are limits on the amount of personal funds a candidate for the City elective office may loan to his or her campaign committee. At any given time, a candidate may not have more than the following amounts in loans from his or her personal funds (the rules are different for a candidate who receives public funding):

City Elective Office	Candidate’s Personal Loan Limit (Non-Publicly Financed Candidates)
Board of Supervisors; Board of Education of SF Unified School District; Governing Board of SF Community College District	\$15,000
Mayor	\$120,000
City Attorney; Treasurer; Assessor; Public Defender; District Attorney; Sheriff	\$35,000

A candidate for Mayor or the Board of Supervisors who receives public funding may not loan or donate, in total, more than \$5,000 of his or her own money to the campaign.

See Cal. Gov't Code § 82036; S.F. C&GC Code §§ 1.114, 1.116, and 1.140.

When a candidate contributes \$1,000 or more or loan \$1,000 or more to their candidate committee during the last 90 days before an election or on the date of the election, the candidate committee must file a Late Contribution Report *Form 497* within 24 hours of receiving the contribution or loan.

See Cal. Gov't Code § 84203.

B. Aggregation of Contributions

Contributions from affiliated entities must be aggregated for the purposes of the contribution limits. Contributions of an entity whose contributions are directed and

controlled by any individual must be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities must be aggregated. Contributions made by entities that are majority-owned by any person must be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

Example: Larry Trinity is the sole proprietor and 100% owner of Trinity, Inc. Larry contributed \$500 from his personal account to Simon Seal, a candidate for Sheriff. Larry received an invitation to Seal's next fundraiser, which includes a five-course dinner cruise around the bay. Tickets to the fundraiser cost \$500. Can Larry use funds from Trinity, Inc.'s business account to pay for the ticket to the fundraiser?

Answer: No. Because Larry already donated the maximum amount to Seal from his personal account, neither Larry nor any entity of which he is the majority-owner may contribute any additional money to Seal. Accordingly, because Larry is the sole proprietor and 100% owner of Trinity, Inc., and Trinity does not act independently in making contributions, neither he nor Trinity, Inc. may purchase the ticket to Seal's fundraiser.

Contributions made by children under age 18 are presumed to be a contribution from the child's parent or guardian and are counted towards the \$500 limit applied to the parent.

See S.F. C&GC Code § 1.114(c); Cal. Gov't Code §§ 85308 and 85311; CCR § 18428(e).

C. Limits on Contributions from Corporations

Corporations, whether for profit or not, may not make contributions to candidates for City elective office. Corporations may establish, administer and solicit contributions to a separate segregated fund to be used for political purposes by the corporation; such a fund must comply with the requirements of federal law.

See S.F. C&GC Code § 1.114(b).

D. Ban on Accepting or Soliciting Contributions from Contractors Doing Business with the City

City elective officers and committees controlled by City elective officers may not solicit or accept contributions from persons who are seeking or recently entered certain government contracts. The ban applies when:

(1) the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District is a party to the contract,

(2) the contract or series of contracts in the same fiscal year has a total anticipated or actual value of \$50,000 or more in a fiscal year, and

(3) the City elective officer, a board on which that officer serves, or the board of a state agency on which the officer's appointee serves must approve that contract or series of contracts.

The ban goes into effect when the contract is submitted to the City elective officer or a board on which the officer serves. The ban ends when either the parties terminate contract negotiations or six months have elapsed from the date the contract is approved.

During this period, the City elective officer, or any committee controlled by the City elective officer, may not solicit or accept a contribution from the following persons:

- any party or prospective party to the contract,
- the contracting party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer,
- any person with an ownership interest of more than 20 percent in the contracting party,
- any subcontractor listed in the contract, and
- any committee that is sponsored or controlled by the contracting party.

In addition to this prohibition on receiving or soliciting contributions, local law prohibits contractors and their affiliates from making contributions. The rule that applies to contributors is somewhat broader than the rule that applies to candidates -- the contribution ban applies from the start of negotiations on the contract instead of the submission of the contract for approval, and it prohibits contributions not only to City elective officers who must approve the contract but also to candidates for those offices.

See S.F. C&GC Code § 1.126.

Reporting Requirements Regarding Contractors Doing Business with the City

Every individual who holds a City elective office must notify the Ethics Commission, within five business days of the approval of a contract by the officer, or by the board on which the officer sits, or by the board of a state agency on which an appointee of the officer sits, of each contract so approved by filing SFEC-126 with the Ethics Commission.

An individual who holds City elective office need not file Form SFEC-126 with the Ethics Commission if the clerk or secretary of the board on which the individual serves or the board of a state agency on which an appointee of the officer serves has filed a Form SFEC-126 on behalf of the board. The filer may attach a copy of the minutes that record the approval of a contract to the Form SFEC-126, so long as the minutes reflect the information required by the Form SFEC-126 and the filer signs the Form SFEC-126. If the board passes a resolution directing its clerk or secretary to file Form SFEC-126 and the clerk or secretary fails to do so, the City elective officer is deemed to have violated section 1.126(c) unless the City elective officer has reason to know that Form SFEC-126 has not been filed. If the City elective officer is notified by the Ethics Commission that a Form SFEC-126 has not been filed, the City elective officer must file the form within 5 working days of such notice.

The Commission will post information regarding such contracts on its website

See S.F. C&GC Code § 1.126 and SFEC Regulations § 1.126-4

Due Diligence by Candidates

A candidate will meet the due diligence requirements related to the ban on contributions from contractors doing business with the City if the contributor certifies to the candidate that the following is true:

I am not an owner, director, officer, or named sub-contractor of any entity that is currently negotiating a contract with [select appropriate: City and County of San Francisco, name of City department, or the San Francisco Unified School District, the San Francisco Community College District, or board of a state agency that has a member who is appointed by a City elective officer], or any entity that received such a contract within the last six months.

See SFEC Regulations § 1.126-7

E. Receipt of Contributions

A contribution to a candidate committee is not considered received if it is not cashed, negotiated, or deposited and, in addition, if it is returned to the donor by the closing date of the campaign statement on which the contribution would otherwise be reported. If a contribution is made during the final 16 days before an election at which the candidate is to be voted on (the “late reporting period”), the contribution must be returned within 48 hours of receipt.

See S.F. C&GC Code § 1.114(f).

F. Cash Contributions Must be Less than \$100

Candidates may not accept contributions in the form of cash or money orders that total \$100 or more from a single contributor.⁴ Candidates may accept such contributions in the form of a written instrument, such as a check, credit card report or record of a transfer of funds drawn from the contributor's account.

See Cal. Gov't Code § 84300.

G. Coordination of Expenditures

When a candidate coordinates expenditures with a committee, expenditures made by that committee may be deemed contributions to the candidate subject to the contribution limits applicable to candidates. In order for an expenditure to be independent, it must **not** be made at the behest of the candidate; nor may the candidate coordinate, cooperate, consult, act in concert with or otherwise control the expenditure. In these cases, the expenditure shall be treated as a contribution. A candidate's provision to another person or entity of a photograph, biography, position paper or press release that is then used in connection with an expenditure is not deemed coordination, absent other facts indicating coordination.

See CCR § 18225.7; Cal. Gov't Code § 82031; S.F. C&GC Code § 1.115.

H. Solicitation and Receipt of Campaign Contributions by Appointed Boards and Commissions

State law prohibits members of appointed boards and commissions from soliciting contributions in excess of \$250 from persons who are parties to, or participants in, proceedings pending before them, and from making decisions affecting a source of campaign contributions of more than \$250. For further information on this ban, please see California Government Code section 84308 or contact the Fair Political Practices Commission.

I. Payments Made at the Behest of an Elected Official

A City elective officer who has engaged in fundraising for legislative, governmental or charitable purposes, other than for his or her own campaign, may be subject to reporting requirements. If the City elective officer has raised funds that reach or exceed \$5,000 from the same source in a calendar year, the officer must complete and file a form with the officer's agency, which must forward a copy of the report to the Ethics

⁴ A candidate may not accept \$100 in cash (e.g., paper money, money orders, and cashier's checks). The FPPC has advised that committees should not accept more than \$99.99 in cash, even if they give change back to the contributor. For example, if a contributor gives \$100 in cash, the committee may not give change of \$0.01 in order to comply with the \$99.99 cash limit.

Commission. The form may be found at the Commission's website, at www.sfgov/ethics. City elective officers must file the required form within 30 days of reaching the \$5,000 threshold.

See Cal. Gov't Code § 82015(b)(2)(B)(iii).

J. Officeholder Expenses

Candidates who are officeholders may not establish a separate officeholder account. Officeholder expenses may be paid from the candidate's campaign account in accordance with state law.

See S.F. C&GC Code § 1.108; Ethics Commission Advice Letter (June 17, 2002); Cal. Gov't Code § 89510(b).

VI. USE OF CAMPAIGN FUNDS AND SURPLUS FUNDS

A candidate may use funds in his or her campaign account for only two purposes: (1) running for City elective office; and (2) if elected, paying for expenses associated with holding that office. A candidate may **not** use campaign funds to support any other candidate, to support or oppose any ballot measure, or to make a contribution to any charitable organization. Also, campaign funds may not be used to compensate a candidate's spouse or domestic partner for any services rendered to the campaign.

A candidate who has ceased to be a candidate or who fails to qualify for the ballot must dispose of his or her unused campaign funds by (1) returning the funds on a "last in, first out" basis to the candidate's contributors, (2) donating the funds to the City or a charitable organization, (3) paying outstanding campaign debts, or (4) paying expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits. Similarly, when campaign funds become surplus funds, the candidate must return any unused campaign funds to his or her contributors on a "last in, first out" basis and /or donate the funds to the City or a charitable organization, use the funds to pay outstanding campaign debt or to pay expenses associated with terminating the committee.⁵

See Cal. Gov't Code § 84307.5; S.F. C&GC Code § 1.122.

⁵ Surplus funds are funds that remain in a candidate's campaign account at the time the candidate leaves City elective office, or at the end of the post-election reporting period following the defeat of the candidate, whichever occurs last.

Use of Remaining Funds for a Future Election

To use funds remaining in the campaign bank account for a future election, a candidate must take the following actions no later than the date that the funds become surplus funds: file a new Form 501 Candidate Intention Statement, file a Declaration of Intention to Solicit/Accept Contributions, open a new bank account, and file a new Form 410 Statement of Organization for the future office (i.e., establish a new committee). A candidate may use the same committee only if the funds will be used for a future election to the same office. Once funds become surplus campaign funds, they are subject to the restrictions discussed above and may not be used for a future election.

If you decide to use your remaining funds for a future office, you must attribute the funds to contributors using a “first in, first out” or “last in, first out” accounting method. You must file a statement, *Form SFEC-122*, with the Ethics Commission to disclose whether you used “first in, first out” or “last in, first out.” The statement must also include information regarding the contributions that were transferred, such as the date of the contribution, the contributor’s name and the contribution amount. You must also itemize such contributions on the first *Form 460* that you file for your new committee.

Candidates for Mayor or the Board of Supervisors who receive public funding should consult the relevant supplemental guide because additional requirements and restrictions apply to funds that remain after the election.

See Cal. Gov’t Code § 89519; CCR § 18951; S.F. C&GC Code § 1.122.

VII. PAYMENT OF ACCRUED EXPENSES

Any candidate who accepts goods or services on credit must pay for such accrued expenses in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. Each and every calendar day any accrued expense remains partially or wholly unpaid after the 180 days constitutes a separate violation.

See S.F. C&GC Code § 1.118.

VIII. POLITICAL ADVERTISING DISCLAIMERS

State and local laws impose disclaimer requirements on committees that pay for communications. In general, a candidate committee making expenditures for communications must include the following disclaimer statements: 1) “Paid for by *committee name*,” and 2) “Financial disclosures available at sfethics.org.” Mass mailings also require the sender’s address. **For detailed information about these requirements**

and the relevant formatting rules, see the *San Francisco Ethics Commission’s Political Advertising Disclaimers Chart for Communications by City Candidate Committees for their own Election.*

In addition to these disclaimer requirements, local law imposes filing requirements on communications that are mass mailings.

See S.F. C&GC Code § 1.161.

IX. PUBLIC FUNDING OF CAMPAIGNS

San Francisco’s public financing program provides partial public funding for candidates for Mayor or the Board of Supervisors to help defray the costs of elections. Candidates for Mayor or the Board of Supervisors should consult the relevant Supplemental guide to learn about requirements relating to the public financing program.

X. LATE FEES, FORFEITURES AND FINES

Any person who violates any of the reporting requirements, in either state or local law may be subject to fees, penalties and/or imprisonment. Fines vary depending on the violation but potentially are significant and can be as much as \$5,000 per violation or three times the amount of money received or spent in excess of legal limits, whichever is greater.

In addition to any other penalties that may be imposed, late fees for filing campaign reports after the filing deadline are \$10 per day for paper filings, limited to the amount of activity during the reporting period or \$100, whichever is greater. The late fee for electronic statements is \$25 per day and is limited to the cumulative amount reported for the period covered by the late statement or \$250, whichever is greater.

Failure to report contributions or complete contributor information may result in forfeiture of the contributions. Prior to depositing contributions that total \$100 or more, a committee must obtain and report complete contributor information including the contributor’s name, date of contribution, the contributor’s street address and the contributor’s occupation and employer information.

Employer information for contributors who are not employed, such as students, retired, or unemployed contributors may be left blank but the relevant occupation information (i.e., “student” or “retired” or “unemployed”) must be reported in the occupation field. Committees must report the business name of self-employed contributors. If there is no business name, or if the business name is simply the contributor’s own name, indicate the occupation (i.e., “painter”) and “self-employed/same” as the business name. Some professions require a business name (i.e., “owner” or “manager” must have a business

name), while others (i.e., “attorney” or “babysitter”) may or may not. Please contact Ethics Commission staff if you have questions.

Failure to obtain and report contributor information on campaign statements, accepting contributions in excess of the contribution limit, accepting contributions from corporations or accepting contributions from contractors who do business with the City may result in the forfeiture of such contributions to the City’s General Fund, in addition to other penalties.

See S.F. C&GC Code §§ 1.106, 1.114, 1.126 and 1.170; and Gov't Code § 91000 et seq.

XI. AUDITS

Each committee’s campaign activity may be subject to audit by the Ethics Commission, the FPPC or the Franchise Tax Board. Audits are conducted to determine whether committees have complied with applicable requirements and prohibitions imposed by State and local law. All candidates who receive public funding are audited. The Ethics Commission randomly selects non-publicly funded candidate committees for audit. As stated above, treasurers should retain records related to contributions and expenditures for four years from the date that the campaign statement disclosing such contributions and expenditures is filed.

See S.F. Charter, Article XV, C3.699-11(4); S.F. C&GC Code § 1.150; and Gov't Code § 90000, et. seq.

XII. CONCLUSION

As noted above, this guide is intended to answer the most frequently asked questions about laws applicable to recipient committees other than candidate-controlled committees, and is by necessity general. Any specific questions regarding these laws should be directed to the Ethics Commission at (415) 252-3100 or the California Fair Political Practices Commission’s toll-free number at (866) 275-3772. Questions regarding San Francisco laws should be directed to the Ethics Commission.