

SUPPLEMENT FOR SAN FRANCISCO COMMITTEES PRIMARILY FORMED TO SUPPORT OR OPPOSE BALLOT MEASURES

This guide is intended to be used as a
supplement to the Fair Political Practices
Commission's Manual 3



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I. INTRODUCTION

This guide summarizes local laws applicable to committees primarily formed to support or oppose a San Francisco ballot measure. It is intended to be used as a supplement to the Fair Political Practices Commission's (FPPC) Manual 3, which sets forth the basic rules for all state and local committees primarily formed to support or oppose a measure. Manual 3 is available from the Ethics Commission or the FPPC website. This guide is intended to answer the most frequently asked questions about applicable City 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 San Francisco primarily formed ballot measure committees. Because FPPC Manual 3 provides information on state requirements applicable to all state and local primarily formed ballot measure committees, such state requirements are not discussed in this guide.

A committee is considered to be a primarily formed ballot measure committee if it receives contributions for the qualification, passage or defeat of a single measure or two or more measures being voted upon in the same city, county or multi-county jurisdiction or state election. Committees formed to support or oppose ballot measures in more than one election, or in more than one jurisdiction, are general purpose committees.

Committee treasurers must review expenditures to ensure that the committee is filing as the correct committee type. A committee must never knowingly file as an incorrect type of committee with the intention of avoiding the appropriate legal disclosure of campaign contributions and expenditures to the public.

See discussion below and Title 2 of California Code of Regulations section 18247.5 for more information on how to determine whether a committee is a state or local committee or a general purpose or primarily formed committee.

Non-San Francisco committees and other persons who raise or spend funds to support or oppose San Francisco measures should pay particular attention to requirements imposed by local law. In particular, local reporting requirements during signature gathering periods may apply to State committees.

See Government (“Gov’t”) Code § 82047.5, 2 Cal Code of Regs. § 18247.5, and S.F. Campaign & Governmental Conduct (“S.F. C&GC”) Code § 1.113.

III. TRAINING AND RECORDKEEPING REQUIREMENTS

This section provides information on training for treasurers, and recordkeeping.

A. Training for 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. FPPC Manual 3 discusses in detail the responsibilities of a treasurer.

Also, every treasurer must attend the next campaign finance training conducted or sponsored by the Ethics Commission after the date the committee files either its original statement of organization or an amendment to its statement of organization designating a new treasurer.

An individual who serves as treasurer for more than one committee is not required to attend a training if that individual has attended a training within the previous 12 months.

A 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. An assistant treasurer who signs campaign statements is also required to complete a training. After completing the training requirement, treasurers and assistant treasurers must submit a Certification of Training Form (Form SFEC-107) to the Ethics Commission.

See 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 treasurer, principal officer(s) and controlling candidate, if any, 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 3 at pages 2-1 to 2-4 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. RULES THAT APPLY TO CANDIDATE-CONTROLLED BALLOT MEASURE COMMITTEES

A primarily formed ballot measure committee is a candidate-controlled committee if a candidate (or his or her representative) has significant influence on the actions or decisions of the committee. A candidate-controlled ballot measure committee may not make expenditures urging the election or defeat of a candidate. When a controlled ballot measure committee makes expenditures that refer to or identify the controlling candidate or another candidate (i.e., electioneering communications), the committee may be required to file reports with the Ethics Commission using SFEC Form 162 Electioneering Communication Report. See section V.C. below for more information.

A candidate-controlled ballot measure committee:

- May not make expenditures urging the election or defeat of candidates (including the controlling candidate), and may not make contributions to other committees for this purpose;
- May not make expenses associated with the controlling candidate's campaign for elective office;
- May not be used as an officeholder account;
- May not receive contributions from any City contractor that is prohibited from contributing to the controlling candidate;
- Must file campaign statements at the same time and in all locations in which the controlling candidate's committees file; and
- Must include the name of the controlling candidate in the committee's name.

See Gov't Code §§ 82016, 84215 and 85201; 2 Cal. Code of Regs. § 18405; and S.F. C&GC Code § 1.126.

V. FILING OF CAMPAIGN STATEMENTS

FPPC Manual 3 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 primarily formed ballot measure committees.

A. Electronic Filing of Campaign Statements

All San Francisco 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 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, 496, 497, and 465.¹

See S.F. C&GC Code § 1.112.

B. Statements Required During Signature Gathering Periods

FPPC Manual 3 explains that ballot measure committees are required to file the following types of campaign statements: 1) semi-annual statements (periods covering through June 30 and December 31); 2) quarterly statements (periods covering through March 30 and September 30) in any six-month period in which the measure(s) being supported or opposed by the committee is not being voted upon and has not been voted upon; and 3) pre-election statements in the six-month period in which the measure(s) is on the ballot.

In addition to the campaign statements described above, local law requires any committee that raises or spends funds to support or oppose a recall, initiative or referendum petition to file campaign disclosure statements during periods in which signatures are gathered. A committee is required to file campaign disclosure statements during signature gathering periods if it is any of the following:

¹ The Ethics Commission has also prescribed an electronic filing format for FPPC Form 461. However Form 461 is not used by recipient committees.

- A committee primarily formed to support or oppose the qualification of a measure; or
- A recipient committee that is a proponent of a recall, initiative or referendum petition; or
- A committee that makes independent expenditures totaling \$1,000 or more in a calendar year to support or oppose the qualification of a measure and that is either a general purpose recipient or independent expenditure committee.

To comply with the filing requirements of S.F. C&GC Code section 1.113, a committee primarily formed to support or oppose a recall, initiative or referendum petition must file FPPC Form 460 during the signature gathering period.

The table below shows reporting periods and filing deadlines that apply to statements filed during signature gathering periods. These filing periods apply from the time that a committee begins to circulate a signature petition and cover through the earlier of the date that the signature petitions are submitted or the submission date under state law.

Filing Deadline	Reporting Period
the 5 th day of every month	covering through the last day of the previous month
the 20 th day of every month	covering through the 15 th day of the month
the 5 th day of the month following the end of the circulation period to disclose contributions or expenditures made during the signature gathering period	covering through the last day of the previous month

Also, within one business day of the first date that a petition is circulated to qualify a measure for the ballot, the proponent must file a Notice for Initiative, Recall and Referendum Petitions (SFEC Form-113) with the Ethics Commission to inform the Commission that the proponent has begun to circulate the petition.²

See S.F. C&GC Code § 1.113; SFEC Regulations §§ 1.113-1, 1.113-2, 1.113-3, 1.113-4 and 1.113-5.

² You may file this form by email (ethics.commission@sfgov.org) or facsimile (415-252-3112).

C. Expenditures Relating to Candidates for City Elective Office³

In addition to the forms listed above, a person (including a committee) may have to file other forms when they make independent expenditures, member communications or electioneering communications relating to a candidate for City elective office.

Most notably, ballot measure committees may trigger filing and disclaimer requirements under San Francisco's rules on electioneering communications if their communications make reference to a candidate for City elective office, but do not explicitly support or oppose the candidate.

An electioneering communication is a communication that: 1) refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election; and 2) is distributed within 90 days before an election for the City elective office sought by the candidate or a recall election regarding the City elective officer to 500 or more persons eligible to vote in that election.

An example of an electioneering communication made by a primarily formed ballot measure committee is the dissemination of a communication (i.e., a mailer) that advocates for or against the measure(s) for which the committee was formed but clearly features a photo of a candidate for City elective office or makes reference to the candidate.

When a committee makes electioneering communications totaling \$1,000 or more per candidate during the 90 days prior to an election, the committee must file SFEC Form 162 Electioneering Communications Report along with a copy of the communication. Form 162 and the communication must be filed by email or personal delivery within 24 hours of making the electioneering communication.⁴

Payments for a communication that refers only to one candidate are attributable entirely to that candidate. Payments for a communication that refers to more than one candidate, or also refers to one or more ballot measures, should be apportioned among each candidate and measure according to the relative share of the communication dedicated to that candidate or measure.

³ A City elective office includes the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Member of the Board of Education of the San Francisco Unified School District and Member of the Governing Board of the San Francisco Community College District.

⁴ A ballot measure committee that makes independent expenditures of \$1,000 or more for or against a City candidate within 90 days of an election, must file a late independent expenditure report (Form 496) within 24 hours. Similarly, a "member communication" advocating for or against a City candidate of \$1,000 or more per candidate will also trigger 24 hour reporting (SFEC Form 163) within 90 days of an election.

Complying with the disclaimer rules (see below) for ballot measure committees will constitute compliance with the electioneering communications disclaimer rules.

See S.F. C&GC Code §§ 1.161 and 1.162.

D. Expenditures to Support a Person who has not Qualified as a Candidate

A draft committee is any person, entity or group of persons that receives or spends \$1,000 or more to support the qualification or election of an identifiable person to City elective office who has not qualified as a candidate. A draft committee must file campaign statements that are required to be filed by a primarily formed committee supporting a candidate.

Expenditures made by a draft committee are considered to be independent expenditures. Additional filing requirements apply when a committee makes independent expenditures for a candidate for City elective office. See Ethics Commission staff for guidance.

VI. POLITICAL ADVERTISING DISCLAIMERS

State and local law impose filing and disclaimer requirements on committees that pay for communications relating to ballot measures. In general, a ballot measure committee must include the following disclaimers: 1) "Paid for by *committee name*," 2) Financial disclosures are available at sfethics.org, and if applicable, 3) Major funding by (name of top two donors of **\$20,000** or more). Mass mailings also require the sender's address. For detailed information about these requirements and relevant formatting rules, see the San Francisco Ethics Commission's Political Advertising Disclaimers Charts.

See S.F. C&GC Code §§ 1.161 and 1.162.

VII. 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 may result in the forfeiture of the contribution to the City's General Fund, in addition to other penalties.

See S.F. C&GC Code §§ 1.106, 1.114(e), 1.114(f) and 1.170; and Gov't Code § 91000 *et seq.*

VIII. USE OF CAMPAIGN FUNDS AND SURPLUS FUNDS

Campaign funds may not be used for personal benefit. The expenditure of campaign funds must be *reasonably* related to a political, legislative, or governmental purpose. An expenditure must be *directly* related to a political, legislative or governmental purpose if it confers a substantial personal benefit on any individual authorized to approve campaign expenditures. See FPPC disclosure manuals for more information on allowable uses of campaign funds.

Funds held by San Francisco primarily formed ballot measure committees become "surplus funds" at the end of the post-election reporting period following the election at which the measure appeared on the ballot. Surplus funds held by a committee may be used only for the following purposes: returned on a "last in, first out" basis to contributors; donated to a charitable organization; donated to the City; used to pay outstanding campaign debts or accrued expenses; or used to pay expenses associated with terminating the committee.

See S.F. C&GC Code §§ 1.104(y) and 1.122.

IX. 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. The Ethics Commission randomly selects 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.

X. CONCLUSION

As noted above, this guide is intended to answer the most frequently asked questions about laws applicable to primarily formed ballot measure 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.