



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: June 22, 2016

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director

Re: **AGENDA ITEM 6 – Proposal by Supervisor Peskin to prohibit City elected officials from establishing candidate-controlled general purpose committees**

Summary This memo provides information regarding a proposal by Supervisor Peskin to amend City law to ban City elected officials from establishing candidate-controlled general purpose committees

Action Requested That the Commission request staff analysis and recommendations on the proposal for its consideration and possible action at the Commission's next Regular Meeting on July 25, 2016

Background

On June 7, 2016, Supervisor Aaron Peskin introduced an ordinance that proposes to amend the City's Campaign and Governmental Conduct Code ("SFC&GCC") to prohibit city elected officials from establishing candidate-controlled general purpose committees (File No. 160669). The proposed ordinance was referred on June 13, 2016, to the Ethics Commission for comment. Supervisor Peskin has requested that this item be scheduled as a Committee Report at the July 14 meeting of the Rules Committee, after which it is expected to be sent to the full Board for a first reading on July 19 and for final action on July 29.

On June 14, 2016, the Supervisor introduced an Ordinance Motion to submit the proposed ordinance to the voters for the November 2016 ballot (File No. 160699). That item was assigned to the Board's Rules Committee under a 30-day Rule.

Overview of Proposal

California Government Code Section 82016 defines a "controlled committee" to be a committee controlled by a candidate, where the candidate, or his or her agent, or another committee the candidate controls, has a significant influence on the actions or decisions of the committee.

A general purpose committee is defined under Government Code Section 82027.5. In general, it means committees formed or that exist primarily to support or oppose more than one candidate or ballot measure. A general purpose committee may be considered a "state general purpose committee" (such as a political party committee, or a committee to support

or oppose candidates or measures voted on in a state election, or in more than one county). It may also be considered a “county general purpose committee” if it is formed to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county. A “city general purpose committee” is a committee to support or oppose candidates or measures voted on in only one city.

At present, based on records on file with the Ethics Commission, two elected City officers have established a candidate controlled general purpose committee: “Mayor Ed Lee for San Francisco Committee” ID#1347217, formed April 18, 2012 and “Supervisor Mark Farrell for San Francisco Committee” ID#1381490, formed December 3, 2015.

Supervisor Peskin’s proposal would amend existing SFC&GCC Section 1.122 (see Appendix I) to prohibit local officeholders from controlling a general purpose committee. The amendments would also provide that if a local candidate controlled a general purpose committee prior to assuming office, the candidate would have 90 days to dispose of any campaign funds as surplus funds.

The Legislative Digest for the ordinance referred to the Ethics Commission appears at Attachment 1. Language of the ordinance proposal, as introduced, appears at Attachment 2. The Legislative Digest that accompanied the proposed Initiative Ordinance appears at Attachment 3, and the Initiative Ordinance itself appears at Attachment 4. Comment received by the public in connection with this item appears at Attachment 5.

Due to competing policy matters on the Commission’s immediate agenda, Staff has not yet had the opportunity to provide the Commission with its analysis or recommendations to support its development of a policy position on the proposed ordinance. Commission Staff has communicated with Supervisor Peskin’s office regarding the placement of the item on the Commission’s June 27th meeting agenda. In addition, the Supervisor’s office has been invited to send a representative to the Ethics Commission meeting next week to provide additional background for the Commission’s consideration.

Recommendation

To support the Commission’s full consideration of the proposal, Staff recommends reporting back to the Commission with its analysis and recommendations at the Commission’s next Regular Meeting on July 25, 2016. Depending on any preliminary issues or questions the Commission identifies during its discussion on June 27, the Commission also may wish to direct Staff to provide preliminary informal feedback based on the Staff analysis to the Rules Committee if the proposed item is heard in Rules Committee prior to the Commission’s meeting on July 25.

SFC&GCC SEC. 1.122. SOLICITATION OR ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS – LIMITATIONS.

(a) **DECLARATION OF INTENT REQUIRED.** No candidate or candidate committee shall solicit or accept, or cause to be solicited or accepted, any contribution unless and until the candidate has filed a declaration of intention to become a candidate for a specific City elective office with the Department of Elections on a form prescribed by the Director of Elections.

No person shall file a declaration of intention to become a candidate for more than one City elective office.

(b) **USE OF CAMPAIGN FUNDS.**

(1) **GENERAL.** Except as otherwise provided in this Chapter, funds in a candidate committee's campaign account may be used only on behalf of the candidacy for the office specified in the candidate's declaration of intention filed under Subsection (a) or for expenses associated with holding that office, provided that such expenditures are reasonably related to a legislative, governmental, or political purpose. Contributions solicited or accepted under this Section for one candidate shall not be expended for the candidacy of any other candidate for local, state or federal office, in support of or opposition to any measure or in support of or opposition to any state ballot proposition, or for donations to a charitable organization. Nothing in this section shall prohibit a candidate committee for a candidate in a ranked choice election from expending funds to support the ranking of another candidate if the primary purpose of the expenditure is to further the candidate's own campaign.

(2) **WITHDRAWAL FROM CANDIDACY.** If a candidate has withdrawn his or her candidacy, campaign funds held by that candidate's committee's Campaign Contribution Trust Account shall be:

- (A) returned on a "last in, first out" basis to those persons who have made said contributions;
- (B) donated to the City and County of San Francisco;
- (C) donated to a charitable organization;
- (D) used to pay outstanding campaign debts or accrued expenses;
- (E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
- (F) used for other permissible purposes established by the Ethics Commission by regulation.

(3) **SURPLUS FUNDS.** Surplus funds held by a candidate or committee shall be:

- (A) returned on a "last in, first out" basis to those persons who have made said contributions;
- (B) donated to a charitable organization;
- (C) donated to the City and County of San Francisco;
- (D) used to pay outstanding campaign debts or accrued expenses;
- (E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
- (F) used for other permissible purposes established by the Ethics Commission by regulation.

(c) **TRANSFER OF FUNDS.** Subject to the restrictions set forth in Subsection (b), at any time, funds held in a candidate committee's Campaign Contribution Trust Account may be transferred to any legally constituted committee established by the candidate under the California Political Reform Act, California Government Code section 81000 et seq. Contributions transferred under this subsection shall be attributed to specific contributors using a "first in, first out" or "last in, first out" accounting method. (Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Prohibiting Candidate-Controlled General Purpose Committees]

Ordinance amending the Campaign and Governmental Conduct Code to prohibit City elected officials from establishing candidate-controlled general purpose committees.

Existing Law

1. Local Law

San Francisco Campaign and Governmental Conduct Code Section 1.122 restricts how local candidates may use their campaign funds, i.e., campaign contributions. Section 1.122(b)(1) provides that campaign funds may be used only to further a candidate's election to office, or for expenses associated with holding that office, so long as those expenditures are reasonably related to a legislative, governmental, or political purpose.

Section 1.122(b)(3) provides that "surplus funds," e.g., funds remaining in a candidate's campaign account after the candidate leaves City elective office, must be:

- 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
- used to pay expenses associated with terminating the committee.

2. State Law

A "controlled committee" is a committee that is controlled directly or indirectly by a candidate. Cal. Gov. Code § 82016. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. A candidate may exercise significant influence over a committee in various ways, including being involved with decision-making or developing or implementing campaign strategy for the committee. See Pirayou Adv. Ltr., FPPC Adv. I-10-159, 2010 WL 5481367 (Dec. 13, 2010).

Under state law, a candidate typically cannot control more than one committee, except for committees formed to support or oppose ballot measures. See Bagatelos Adv. Ltr., CA FPPC Adv. I-89-240, 1989 WL 572585 (May 31, 1989).

FILE NO.

A “general purpose committee” is a committee that supports or opposes more than one candidate or ballot measure. Cal. Gov. Code § 82027.5. (In contrast, a “primarily formed committee” is a committee that supports or opposes a single candidate or measure. *Id.* § 82047.5.) Thus, a candidate-controlled general purpose committee may spend campaign funds to support or oppose multiple ballot measures.

Local elected officeholders are subject to both state and local law restrictions. So under existing law, a local officeholder could control a general purpose committee, but that committee could spend funds only on ballot measures, not to support or oppose other candidates.

Amendments to Current Law

The proposed amendments would amend Section 1.122 to prohibit local officeholders from controlling a general purpose committee. The amendments would also provide that if a local candidate controlled a general purpose committee prior to assuming office, the candidate would have 90 days to dispose of any campaign funds as surplus funds.

Background Information

The City’s campaign finance laws are found in the Article I, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code, also referred to as the Campaign Finance Reform Ordinance (“CFRO”). Most of CFRO’s provisions were initially adopted by the voters and if the voters do not approve any amendments themselves, any other changes are subject to special approval requirements. The City may only amend the CFRO if:

- the amendment furthers the purposes of this 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 the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and
- the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

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1 [Campaign and Governmental Conduct Code - Prohibiting Candidate-Controlled General
2 Purpose Committees]

3 **Ordinance amending the Campaign and Governmental Conduct Code to prohibit City**
4 **elected officials from establishing candidate-controlled general purpose committees.**

5 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
6 **Additions to Codes** are in *single-underline italics Times New Roman font*.
7 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
8 **Board amendment additions** are in double-underlined Arial font.
9 **Board amendment deletions** are in ~~strikethrough Arial font~~.
10 **Asterisks (* * * *)** indicate the omission of unchanged Code
11 subsections or parts of tables.

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

13 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
14 revising Sections 1.104 and 1.122, to read as follows:

15 **SEC. 1.104. DEFINITIONS.**

16 Whenever in this Chapter the following words or phrases are used, they shall mean:

17 * * * *

18 "Candidate" shall be defined as set forth in the California Political Reform Act,
19 California Government Code section 81000, et seq., but shall include only candidates for City
20 elective office.

21 "Candidate committee" shall mean a ~~committee controlled by a candidate, and~~ candidate-
22 controlled committee that is primarily formed to support that candidate's election for City elective
23 office.

24 "Candidate-controlled committee" shall mean a controlled committee that is controlled by a
25 candidate.

* * * *

1 "Controlled committee" shall be defined as set forth in the California Political Reform
2 Act, California Government Code section 81000, et seq.

3 * * * *

4 "General purpose committee" shall be defined as set forth in the California Political
5 Reform Act, California Government Code section 81000, et seq.

6 * * * *

7 **SEC. 1.122. SOLICITATION OR ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS**
8 **– LIMITATIONS.**

9 (a) DECLARATION OF INTENT REQUIRED. No candidate or candidate committee
10 shall solicit or accept, or cause to be solicited or accepted, any contribution unless and until
11 the candidate has filed a declaration of intention to become a candidate for a specific City
12 elective office with the Department of Elections on a form prescribed by the Director of
13 Elections.

14 No person shall file a declaration of intention to become a candidate for more than one
15 City elective office.

16 (b) USE OF CAMPAIGN FUNDS.

17 (1) GENERAL. Except as otherwise provided in this Chapter, funds in a
18 candidate committee's campaign account may be used only on behalf of the candidacy for the
19 office specified in the candidate's declaration of intention filed under Subsection (a) or for
20 expenses associated with holding that office, provided that such expenditures are reasonably
21 related to a legislative, governmental, or political purpose. Contributions solicited or accepted
22 under this Section for one candidate shall not be expended for the candidacy of any other
23 candidate for local, state or federal office, in support of or opposition to any measure or in
24 support of or opposition to any state ballot proposition, or for donations to a charitable
25 organization. Nothing in this section shall prohibit a candidate committee for a candidate in a

1 ranked choice election from expending funds to support the ranking of another candidate if the
2 primary purpose of the expenditure is to further the candidate's own campaign.

3 (2) PROHIBITING CANDIDATE-CONTROLLED GENERAL PURPOSE

4 COMMITTEES. No candidate holding City elective office may control a candidate-controlled general
5 purpose committee. Any candidate who controls a candidate-controlled general purpose committee
6 prior to assuming City elective office shall return, use, or dispose of all funds held by the committee
7 using the means specified in subsection (b)(4) within 90 days of the date that the candidate assumes
8 office.

9 (23) WITHDRAWAL FROM CANDIDACY. If a candidate has withdrawn his or
10 her candidacy, campaign funds held by that candidate's committee's Campaign Contribution
11 Trust Account shall be:

- 12 (A) returned on a "last in, first out" basis to those persons who have
13 made said contributions;
- 14 (B) donated to the City and County of San Francisco;
- 15 (C) donated to a charitable organization;
- 16 (D) used to pay outstanding campaign debts or accrued expenses;
- 17 (E) used to pay expenses associated with terminating the committee,
18 such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
- 19 (F) used for other permissible purposes established by the Ethics
20 Commission by regulation.

21 (34) SURPLUS FUNDS. Surplus funds held by a candidate or committee shall
22 be:

- 23 (A) returned on a "last in, first out" basis to those persons who have
24 made said contributions;
- 25 (B) donated to a charitable organization;

1 (C) donated to the City and County of San Francisco;
2 (D) used to pay outstanding campaign debts or accrued expenses;
3 (E) used to pay expenses associated with terminating the committee,
4 such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
5 (F) used for other permissible purposes established by the Ethics
6 Commission by regulation.

7 (c) TRANSFER OF FUNDS. Subject to the restrictions set forth in Subsection (b), at
8 any time, funds held in a candidate committee's Campaign Contribution Trust Account may be
9 transferred to any legally constituted committee established by the candidate under the
10 California Political Reform Act, California Government Code section 81000 et seq.
11 Contributions transferred under this subsection shall be attributed to specific contributors
12 using a "first in, first out" or "last in, first out" accounting method.

13
14 Section 2. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
23 additions, and Board amendment deletions in accordance with the "Note" that appears under
24 the official title of the ordinance.

25

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 ANDREW SHEN
5 Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Campaign and Governmental Conduct Code - Prohibiting Candidate-Controlled General Purpose Committees]

Motion ordering submitted to the voters an Ordinance amending the Campaign and Governmental Conduct Code to prohibit City elected officials from establishing candidate-controlled general purpose committees, at an election to be held on November 8, 2016.

Existing Law

1. Local Law

San Francisco Campaign and Governmental Conduct Code Section 1.122 restricts how local candidates may use their campaign funds, i.e., campaign contributions. Section 1.122(b)(1) provides that campaign funds may be used only to further a candidate's election to office, or for expenses associated with holding that office, so long as those expenditures are reasonably related to a legislative, governmental, or political purpose.

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A “general purpose committee” is a committee that supports or opposes more than one candidate or ballot measure. Cal. Gov. Code § 82027.5. (In contrast, a “primarily formed committee” is a committee that supports or opposes a single candidate or measure. *Id.* § 82047.5.) Thus, a candidate-controlled general purpose committee may spend campaign funds to support or oppose multiple ballot measures.

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Amendments to Current Law

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1 [Initiative Ordinance - Campaign and Governmental Conduct Code - Prohibiting Candidate-
2 Controlled General Purpose Committees]

3 **Motion ordering submitted to the voters an Ordinance amending the Campaign and**
4 **Governmental Conduct Code to prohibit City elected officials from establishing**
5 **candidate-controlled general purpose committees, at an election to be held on**
6 **November 8, 2016.**

7
8 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
9 voters of the City and County of San Francisco, at an election to be held on November 8,
10 2016.

11
12 **Ordinance amending the Campaign and Governmental Conduct Code to prohibit City**
13 **elected officials from establishing candidate-controlled general purpose committees.**

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9 * * * *

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12 * * * *

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15 * * * *

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10 ranked choice election from expending funds to support the ranking of another candidate if the
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14 purpose committee. Any candidate who controls a candidate-controlled general purpose committee
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20 Contributions transferred under this subsection shall be attributed to specific contributors
21 using a "first in, first out" or "last in, first out" accounting method.
22

23 Section 2. Scope of Ordinance. In enacting this ordinance, the People of the City and
24 County of San Francisco intend to amend only those words, phrases, paragraphs,
25 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other

1 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
2 or deletions, in accordance with the "Note" that appears under the official title of the
3 ordinance.

4

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

7 By: _____
8 ANDREW SHEN
9 Deputy City Attorney

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From: Pelham, LeeAnn (ETH)
Sent: Wednesday, June 22, 2016 6:39 AM
To: 'LARRY BUSH' [REDACTED] >
Subject: RE: Ballot measure -- ban on candidate-controlled committees

Good Morning, Larry,
Thanks I will include your comments to the Commission with the materials provided today in connection with this item.

Regards,
LeeAnn

From: LARRY BUSH [mailto:[REDACTED]]
Sent: Wednesday, June 22, 2016 5:02 AM
To: sharyn saslafsky <[REDACTED]>; Hulda Garfalo [REDACTED] >; Oliver Luby <[REDACTED]>; Joseph Kelly <joe@kellyandiribarren.com>; Charles Marsteller <[REDACTED]>; Elena Schmid <[REDACTED]>; bob dockendorff <[REDACTED]>; Paul H.Melbostad <[REDACTED]>; Marc Saloman <[REDACTED]>; Robert vanRavenswaay <[REDACTED]>; Bob Planthold <[REDACTED]>; Joe Julian <[REDACTED]>; John Sinclair <[REDACTED]>; Alex Kaplan <akaplan@represent.us>; Zach Goldfine <[REDACTED]>; Helen Grieco <hgrieco@commoncause.org>; Bob Stern <[REDACTED]>; Gary <[REDACTED]>
Cc: Pelham, LeeAnn (ETH) <leeann.pelham@sfgov.org>; [REDACTED]; Peter Keane <[REDACTED]>
Subject: Ballot measure -- ban on candidate-controlled committees

This was submitted for the November ballot by Peskin, Avalos, Mar and Kim

In research indicated that San Francisco is the only jurisdiction, other than state legislators, where local officeholders have a general purpose committee: Ed Lee and Mark Farrell. The 2013/14 Civil Grand Jury identified this as a significant back door for contractors and others to make unlimited contributions to a city official's General Purpose committee. Under a 2014 Superior Court decision (FPPC v Reed), these committees can spend their funds in support or opposition of a candidate for an office other than the one they hold.

It also exists past a single election and beyond a single ballot measure, thus becoming a revolving fund that can operate even in non-election cycles. With his authority, an officer can essentially fund ongoing expenses of a political machine, including paying for polls, attorneys, fundraisers and staff on the basis there may be a potential ballot measure. It has the potential to also pay for ads, mailers, and other campaign materials as well as to contribute to specific ballot measure committees.

Mark Farrell established a Supervisor Mark Farrell for San Francisco Committee in December 2015 at the same time he was under investigation by the Ethics Commission. It has raised \$56,000 at its most recent filing, spent \$34,88 including \$26,781 in accrued expenses. Farrell has

not established a Legal Defense Fund, which is the only legal source to pay for attorney and other costs associated with defense against actions based on a campaign or campaign committee.

Farrell's contributors are Ron Conway (\$19,500), Thomas Coates (\$19,500). Coates is the proponent of a past statewide measure to repeal rent control and was the major donor to the committee at issue in the Ethics finding against Farrell. Farrell has now contributed \$11,492 to June 2015 **[**]** Prop A (Mayor sponsored) and Prop B (Farrell sponsored). He has paid the political consulting firm of Whitehurst, Mosher \$22,985 for campaign literature. He also has incurred significant accrued expenses to the Law Firm of James Sutton, the same law firm representing him before the Ethics Commission and now suing the Ethics Commission. The Sutton Firm is also the attorney for several ballot measures.

This does not affect the ability of an officer to have a ballot measure committee that exists for a specific election and a specific ballot measure. In those cases, the name of the committee itself is required to name the ballot measure.

Friends of Ethics provided quotes for a Peskin release endorsing this measure. In 2015, Bob Stern and Corey Cook appeared before the SF Ethics Commission to outline how these committees and other candidate-controlled committees can circumvent San Francisco's cap on contributions to the candidate's committee. It also now can operate freely following Ethics earlier "reform" that essentially nullified the voter-approved Proposition X that allowed officers to have an officeholder account.

The measure would:

- * prohibit local officeholders from controlling a general purpose committee
- * if a local candidate controlled a general purpose committee prior to assuming office, the candidate would have 90 days to dispose of any campaign funds as surplus funds

[FPPC Legal Text.pdf](#)

[FPPC Legislative Digest.pdf](#)

[** If possible can you note I asked for a correction. The Farrell spending was for the June 2016 election not the June 2015 election**]