Jeffrey Pierce, SBN 293085
Acting Director of Enforcement
LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO ETHICS COMMISSION

In the Matter of:

JOHN AVALOS FOR MAYOR 2011 AND JOHN AVALOS, RESPONDENT

CASE NO. 13-150618

ACCUSATION

BACKGROUND

On May 7, 2018, the Ethics Commission ("the Commission") held a Probable Cause Hearing in closed session concerning the above-captioned matter and determined that probable cause exists to believe that John Avalos ("Respondent") committed ten violations of the California Government Code and of the San Francisco Campaign and Governmental Conduct Code by failing to maintain campaigns records and failing to disclose campaign expenditures. This Accusation has been issued pursuant to Section IX(A) of the San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings effective March 28, 2016 ("Enforcement Regulations") and is a public document.

JURISDICTION

The San Francisco Charter authorizes and requires the Ethics Commission to investigate alleged violations of the charter or City ordinances relating to campaign finance, lobbying, conflicts of interest and governmental ethics whenever the Commission, upon the sworn complaint or on its own initiative, determines that there is sufficient cause to conduct an investigation. S.F. Charter § C3.699-13(a). The Commission enforces the Campaign Finance Reform Ordinance ("CFRO"), San Francisco Campaign &

Governmental Conduct Code ("SF C&GCC") Article 1, Chapter 1, and the Political Reform Act ("PRA"), California Government Code section 81000 *et seq.*, which the Campaign & Governmental Conduct Code incorporates as to local elections. SF C&GCC § 1.106.

The PRA was enacted by California voters with the purpose, in part, that "[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." See Gov't Code § 81002. In enacting CFRO, it was the purpose and intent of the People of the City and County of San Francisco to, among other things, "provide full and fair enforcement of all the provisions in this Chapter;" "assist voters in making informed electoral decisions and ensure compliance with campaign contribution limits through the required filing of campaign statements detailing the sources of campaign contributions and how those contributions have been expended," and "[h]elp restore public trust in governmental and electoral institutions." See SF C&GCC § 1.100(b).

PROBABLE CAUSE STANDARD

The Commission may find that probable cause exists to believe a violation of law has occurred only if a person of ordinary caution and prudence would conclude, based on the evidence, that there is a reasonable ground to suspect that the respondent has committed the violation. Enforcement Reg. § VIII(A)(4).

APPLICABLE LAW

California Government Code section 84104 provides that it is the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts that are necessary to prepare campaign statements, and to retain the documents for a period of four years following the date the appropriate campaign statement is filed. Section 84104 is incorporated into the Campaign Finance Reform Ordinance at S.F. C&GCC sections 1.106 and 1.109.

California Government Code, section 84200(a), incorporated into local law by San Francisco Campaign and Governmental Conduct Code, section 1.106, provides that elected officers, candidates, and committees pursuant to California Government Code, section 82013(a), shall file semi-annual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. These public disclosure statements report itemized campaign contributions, expenditures, outstanding debts and cash on hand.

SUMMARY OF ALLEGED FACTS

On April 18, 2011, then-Supervisor John Avalos formed the committee "John Avalos for Mayor 2011" ("the Committee") as a candidate-controlled committee for the purpose of advancing his candidacy for Mayor in the November 2011 election. In the course of the campaign, Respondent qualified for the City's public financing program and received \$461,479 in public funds in support of his candidacy.

On June 15, 2015, Ethics Commission audit staff completed the final audit for Respondent's Committee. On June 18, 2015, audit staff referred the audit report to enforcement staff, which included the material findings that the Committee failed to maintain complete campaign records for contributions and expenditures and failed to disclose campaign expenditures. Also on June 18, 2015 and pursuant to the requirement under Charter section C3.699-13(a), enforcement staff referred the matter to the City Attorney and District Attorney, thereby satisfying the statute of limitations for administrative enforcement that CFRO provides. SF C&GCC § 1.168(c)(3).

In December of 2015, Respondent provided the Commission additional documents for review, and on February 29, 2016, the Commission provided Respondent a letter summarizing its analysis of the documents Respondent had submitted and updated its audit findings accordingly. The Commission's updated audit still included findings that the Committee failed to maintain complete campaign records for contributions and expenditures and failed to disclose campaign expenditures.

Following issuance of the updated audit and further investigation into its findings, Ethics Commission staff issued a probable cause report on January 31, 2018. On March 31, 2018, Respondent provided a written response to the Commission. The Ethics Commission held a probable cause hearing regarding this matter on May 7, 2018. Respondent attended the Probable Cause Hearing with representation. At the conclusion of the hearing and on the basis of the entire evidentiary record, the Commission determined that there was probable cause to believe that Respondent committed all ten violations as presented in the Probable Cause Report.

SUMMARY OF ALLEGED VIOLATIONS

The Commission's finding of Probable Cause alleges ten counts against the Respondent.

Counts 1 and 2

Failure to maintain complete records for contributions received.

In total, Respondent failed to provide documentation to the Ethics Commission evidencing \$2,278 in non-monetary contributions, or 1 percent of the Committee's total contributions.

Count 1. By failing to maintain complete contribution records covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 2. By failing to maintain complete contribution records covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Counts 3 through 6

Failure to maintain complete records for expenditures made.

In total, Respondent failed to provide documentation to the Ethics Commission evidencing \$103,164 in expenditures, or 16 percent of total expenditures.

Count 3. By failing to maintain complete expenditure records covering the reporting period of January through June 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 4. By failing to maintain complete expenditure records covering the reporting period of July through September 24, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 5. By failing to maintain complete expenditure records covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 6. By failing to maintain complete expenditure records covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Counts 7 through 10

Failure to disclose campaign expenditures.

In total, Respondent failed to timely report approximately \$137,471, or 21 percent of total expenditures on its campaign statements (FPPC Form 460) over four reporting periods in 2011: 1/1-6/30; 7/1-9/24; 9/25-10/22; and 10/23-12/31.

Count 7. By failing to disclose expenditures covering the reporting period of January through June 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 8. By failing to disclose expenditures covering the reporting period of July 1 through September 24, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

Count 9. By failing to disclose expenditures covering the reporting period of September 25 through October 22, 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109. **Count 10.** By failing to disclose expenditures covering the reporting period of October 23 through December 2011, Respondent committed one violation of SF C&GCC §§ 1.106 & 1.109.

ADMINISTRATIVE HEARING

When the Commission determines that probable cause exists to believe a provision of the charter or City ordinance has been violated, it may hold a public hearing to determine if such a violation did in fact occur. S.F. Charter § C3.699-13(c)(i). If the parties to this matter do not stipulate to the entry of an order, the Commission will therefore proceed to a public administrative hearing. Enforcement Reg. § VIII(C)(1). If the Commission determines on the basis of substantial evidence presented at the hearing that a violation has occurred, it will issue an order which may require the Respondent (1) to cease and desist the violation, (2) to file any reports, statements or other documents or information required by law, and/or (3) to pay a monetary penalty to the general fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. S.F. Charter § C3.699-13(c)(i).

ADDRESS FOR ALL SERVICE OR DELIVERY

Wherever the Regulations require service on or delivery to the Commission, the Chairperson, its members, or the Executive Director, service and delivery shall be effected at the Commission office:

San Francisco Ethics Commission

Attn: Enforcement Division

25 Van Ness Avenue, Suite 220

San Francisco, CA 94102

Dated: May 17, 2018

LeeAnn Pelham

LEEANN PELHAM, Executive Director San Francisco Ethics Commission