



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

**Date:** May 3, 2018

**To:** Members, San Francisco Ethics Commission

**From:** Pat Ford, Policy Analyst

**Re:** **Agenda Item 8 – File No. 170868 – Substitute Ethics Ordinance Introduced by Supervisor Jane Kim**

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**Summary:** This memorandum provides an overview of the ethics ordinance proposed by Supervisor Jane Kim (File No. 170868, the “Ordinance”), including the background of the Ordinance and an explanation of its provisions.

**Action Requested:** Staff recommends that the Commission approve the Ordinance and forward it to the Board for consideration.

Section I of this memorandum provides an overview of the procedural history of the Ordinance. Section II explains each provision that is contained in the Ordinance. Section III provides staff’s recommendation that the Commission approve the Ordinance.

### I. Background

Beginning in July of 2017, Staff began working with Supervisor Jane Kim and members of her staff to develop an ordinance containing several changes to the Campaign and Governmental Conduct Code (the “Code”). Supervisor Kim introduced this Ordinance, File No. 170868, on July 25, 2017. Supervisor Kim appeared at the Commission’s November 2017 regular meeting to urge the Commission and Staff to work with her office to develop and eventually approve the Ordinance. Staff engaged in multiple meetings with Supervisor Kim’s office and corresponded regularly to discuss potential provisions to be included in the Ordinance.

When the Anti-Corruption and Accountability Ordinance (the “ACAO”), which was initially approved by the Commission at its November 2017 meeting, came before the Board of Supervisors for consideration, Supervisor Kim moved to make several amendments to the ACAO that were based on various provisions of File No. 170868.

Supervisor Kim’s office has continued to work with Staff over the past weeks to further refine the Ordinance. On May 1<sup>st</sup>, a substitute version of the Ordinance was introduced at the Board of Supervisors. This version of the Ordinance is attached here as Attachment 1. This new version reflects agreement between Staff and Supervisor Kim’s office as to how to address areas of concern that staff had identified and removes the provisions that were incorporated into the ACAO.

## II. Provisions Included in the Ordinance

This section summarizes the provisions that are included in the version of the Ordinance attached here as Attachment 1.

### A. Non-Coordination Attestation by Candidates – Sections 1.115(e)

The Ordinance would add subsection (e) to section 1.115 of the Code, requiring all candidates who file campaign statements with the Commission to “attest, under penalty of perjury, that their candidate committees have not failed to report any expenditure made by another committee that would constitute a contribution to their candidate committees.” Under the California Government Code, a payment for a communication that is made in coordination with a candidate constitutes a contribution to that candidate.<sup>1</sup> This means that if a candidate coordinates with a committee (other than the candidate’s own controlled committee) in the course of making any communication or other payment, the candidate must report the communication or other payment as a contribution. By requiring candidates to attest that they have not failed to report any contributions from other committees, section 1.115(e) would effectively require candidates to attest did they have not surreptitiously coordinated with an outside committee.

This attestation requirement would help to educate candidates about the rules regarding independent expenditures, coordination, and reporting of “nonmonetary” contributions (contributions that do not take the form of a cash payment, loan, or debt). It may also provide a separate channel for enforcement against candidates who fail to report contributions from outside groups.

### B. Noting Acceptance of the Voluntary Expenditure Ceiling in the Voter Information Pamphlet – Section 1.128(c)

The Ordinance would amend section 1.128 to require that the voter information pamphlet note which candidates have accepted the Voluntary Expenditure Ceiling (VEC) and which have not. The VEC is a voluntary limit on the expenditures that certain candidates may make.<sup>2</sup> Such candidates are not required to abide by the VEC, and the VEC has no relation to the Independent Expenditure Ceiling (IEC) that is a prerequisite for participation in the public financing program.<sup>3</sup>

Noting which candidates have volunteered to comply with the VEC would likely further incentivize participation in this voluntary program because voters will clearly see which candidates accepted or rejected the VEC. VEC acceptance was previously noted in the voter information pamphlet until that practice was ended by an act of the Board of Supervisors in 2009.<sup>4</sup>

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<sup>1</sup> Cal. Gov. Code § 82015(b)(2).

<sup>2</sup> “Candidates 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.” Campaign & Gov. Conduct Code § 1.128(a).

<sup>3</sup> See Campaign & Gov. Conduct Code § 1.140(b)(4), (c)(4).

<sup>4</sup> See File No. 090989, San Francisco Board of Supervisors (Nov. 10, 2009), available at <https://sfgov.legistar.com/View.ashx?M=F&ID=860772&GUID=70289EC6-A85B-4592-891E-1A92C75F62F3>.

C. Correcting Error in Code Regarding Threshold Reporting by Supervisorial Candidates – Section 1.152(a)(1)

Section 1.152 of the Code requires mayoral and supervisorial candidates to file reports when their campaign fundraising reaches certain monetary thresholds. The purpose of the reports is to allow staff to monitor fundraising for purposes of administering the public financing system. In order to be eligible to receive public financing, a supervisorial candidate must be opposed by another candidate who has raised at least \$10,000. By requiring supervisorial candidates to notify the Commission within twenty-four hours of reaching \$10,000 in contributions, Staff will always know whether a given supervisorial candidate is opposed by an opponent who has reached the \$10,000 threshold.

Section 1.152(a)(1) erroneously requires supervisorial candidates to file a report when they reach \$5,000 in contributions, rather than \$10,000. This misstates the appropriate threshold for reporting. The Ordinance would correct this error by changing the threshold number to \$10,000.

D. Clarifying Contents of the Public Financing Report – Section 1.156

Section 1.156 of the Code requires the Commission to submit a report to the Board of Supervisors after each City election in which there is a mayoral or supervisorial race. The report must “state the amount of public funds used to pay for election campaigns in that election ... the number of candidates who received public funds; ... the amount of qualified campaign expenditures made by all candidates in that election; and the amount of independent expenditures made in connection with the election.”

The Ordinance would add language specifying that the report must additionally analyze “the administration, efficacy, and operation of the City’s public financing program.” Presumably, this additional language would require more analysis of the program than what is currently required by law, which is limited to basic data about the program’s operations and spending in the election.

E. Information Regarding Third Party Spending – Section 1.165

The Ordinance would create a new statutory requirement that the Commission provide data on its website regarding independent expenditures supporting or opposing candidates in City elections. The data would have to reflect the most current information disclosed on committee statements and reports.

It is already established practice by Staff to make such information available to the public through its website. Statements and reports are posted immediately online, and the data disclosed on those documents is processed and displayed in a more readable and convenient format, called a *data dashboard*.<sup>5</sup> However, Staff are constantly exploring new methods for making data available to the public in more accessible and convenient formats that allow the public to quickly perform searches, view different subsets of data, and view data in a comprehensible and visually appealing layout. Staff are currently exploring how to empower the public to more easily navigate through chains of related campaign contributions and expenditures. An easy-to-use feature of this kind would allow users to trace back through a series of contributions to discover where funds originate and where committees who

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<sup>5</sup> See <https://sfethics.org/ethics/2018/03/campaign-finance-dashboards-june-5-2018-and-november-6-2018-elections.html> to access the Data Dashboards for the June 2018 and November 2018 elections.

receive those funds spend them. This would be a powerful tool for the public and the media in particular.

The statutory requirement that section 1.165 would create would serve as a mandate for Staff to continue this process of refining how independent expenditure data is made available.

#### **IV. Staff Recommendation**

Staff recommends that the Commission approve the Ordinance as it appears in Attachment 1.



1 [Campaign and Governmental Conduct Code - Campaign Finance Amendments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to 1) require**  
 4 **candidates to attest to the lack of any coordination with other committees; and 2)**  
 5 **require that the Voter Information Pamphlet note which candidates have agreed to**  
 6 **voluntary spending limits.**

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

11

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 adding Section 1.165, and revising Sections 1.115, 1.128, 1.152, and 1.156, to read as  
 15 follows:

16 **SEC. 1.115. COORDINATION OF EXPENDITURES.**

17 (a) **General.** An expenditure is not considered independent and shall be treated as a  
 18 contribution from the person making the expenditure to the candidate on whose behalf, or for  
 19 whose benefit the expenditure is made, if the expenditure funds a communication that  
 20 expressly advocate the nomination, election or defeat of a clearly identified candidate and is  
 21 made under the following circumstance:

22 (1) The expenditure is made at the request, suggestion, or direction of, or in  
 23 cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for  
 24 whose benefit, the expenditure is made; or

25

1 (2) The communication funded by the expenditure is created, produced or  
2 disseminated:

3 (A) After the candidate has made or participated in making any decision  
4 regarding the content, timing, location, mode, intended audience, volume of distribution, or  
5 frequency of placement of the communication; or

6 (B) After discussion between the creator, producer or distributor of a  
7 communication, or the person paying for that communication, and the candidate or committee  
8 regarding the content, timing, location, mode, intended audience, volume of distribution or  
9 frequency of placement of that communication, the result of which is agreement on any of  
10 these topics.

11 (b) **Rebuttable Presumption of Coordination.** In addition to ~~Subsection (a) of this~~  
12 ~~section~~ subsection (a), there shall be a presumption that an expenditure funding a  
13 communication that expressly advocates the nomination, election or defeat of a clearly  
14 identified candidate is not independent of the candidate on whose behalf or for whose benefit  
15 the expenditure is made, when:

16 (1) It is based on information about the candidate or committee's campaign  
17 needs or plans provided to the spender by the candidate;

18 (2) It is made by or through any agent of the candidate in the course of the  
19 agent's involvement in the current campaign;

20 (3) The spender retains the services of a person, including a campaign  
21 consultant, who provides, or has provided, the candidate with professional services related to  
22 campaign or fund raising strategy for that same election;

23 (4) The communication replicates, reproduces, republishes or disseminates, in  
24 whole or in substantial part, a communication designed, produced, paid for or distributed by  
25 the candidate; or

1           (5) In the same election that the expenditure is made, the spender or spender's  
2 agent is serving or served in an executive or policymaking role for the candidate's campaign  
3 or participated in strategy or policy making discussions with the candidate's campaign relating  
4 to the candidate's pursuit of election to office and the candidate is pursuing the same office as  
5 a candidate whose nomination or election the expenditure is intended to influence.

6           (c) **Exceptions.** Notwithstanding the foregoing, an expenditure shall not be  
7 considered a contribution to a candidate merely because:

8                   (1) The spender interviews a candidate on issues affecting the spender;

9                   (2) The spender has obtained a photograph, biography, position paper, press  
10 release, or similar material from the candidate;

11                   (3) The spender has previously made a contribution to the candidate;

12                   (4) The spender makes an expenditure in response to a general, non-specific  
13 request for support by a candidate, provided that there is no discussion with the candidate  
14 prior to the expenditure relating to details of the expenditures;

15                   (5) The spender has invited the candidate or committee to make an appearance  
16 before the spender's members, employees, shareholders, or the families thereof, provided  
17 that there is no discussion with the candidate prior to the expenditure relating to details of the  
18 expenditure;

19                   (6) The spender informs a candidate that the spender has made an expenditure  
20 provided that there is no other exchange of information not otherwise available to the public,  
21 relating to the details of the expenditure; or

22                   (7) The expenditure is made at the request or suggestion of the candidate for  
23 the benefit of another candidate or committee.



1 (d) **Definition.** For purposes of ~~this Section~~ subsections (a)-(c), the terms "candidate"  
2 includes an agent of the candidate when the agent is acting within the course and scope of  
3 the agency.

4 (e) **Candidate Statements Regarding Coordination of Expenditures.** Candidates required to  
5 file campaign disclosure statements with the Ethics Commission shall attest, under penalty of perjury,  
6 that their candidate committees have not failed to report any expenditure made by another committee  
7 that would constitute a contribution to their candidate committees. Candidates shall file the form  
8 required by this subsection (e) on the deadlines established by Section 1.135 for supplemental  
9 preelection statements.

10  
11 **SEC. 1.128. ACCEPTANCE OR REJECTION OF VOLUNTARY EXPENDITURE**  
12 **CEILINGS.**

13 (a) **Eligible Candidates.** Candidates for Assessor, City Attorney, District Attorney,  
14 Public Defender, Sheriff, Treasurer, the Board of Education of the San Francisco Unified  
15 School District or the Governing Board of the San Francisco Community College District may  
16 accept the applicable voluntary expenditure ceiling. Candidates for the Board of Supervisors  
17 or Mayor may not accept a voluntary expenditure ceiling.

18 (b) **Acceptance of Voluntary Expenditure Ceiling.** To accept the applicable voluntary  
19 expenditure ceiling, a candidate must file a statement with the Ethics Commission accepting  
20 the applicable voluntary expenditure ceiling. A candidate who has filed such a statement may not  
21 make qualified campaign expenditures in excess of the voluntary expenditure ceiling, unless under  
22 Section 1.134, the Ethics Commission has lifted the applicable voluntary expenditure ceiling. The  
23 candidate shall file this statement no later than the deadline for filing nomination papers with  
24 the Department of Elections. A candidate may not withdraw the statement accepting the  
25 voluntary expenditure ceiling after filing the statement. A candidate may not file the statement

1 accepting the applicable voluntary expenditure ceiling if the Ethics Commission has lifted the  
2 voluntary expenditure ceiling under Section 1.134 of this Chapter.

3 **(c) Voter Information Pamphlet.**

4 **(1) Notice regarding each eligible candidate.** *The Director of Elections shall include*  
5 *in the Voter Information Pamphlet a notice informing voters whether each candidate for Assessor, City*  
6 *Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the San*  
7 *Francisco Unified School District or the Governing Board of the San Francisco Community College*  
8 *District has accepted the voluntary expenditure ceiling. For candidates who have accepted the*  
9 *voluntary expenditure ceiling, the notice shall state: “The above candidate has accepted the City’s*  
10 *voluntary spending limit.” For candidates who have not accepted the voluntary expenditure ceiling,*  
11 *the notice shall state: “The above candidate has NOT accepted the City’s voluntary spending limit.”*  
12 *If a candidate was precluded from accepting the voluntary expenditure ceiling because the expenditure*  
13 *ceiling for a particular race was lifted under Section 1.134 of the Chapter before the candidate filed the*  
14 *statement required by this Section, the notice for that candidate shall state: “The City’s voluntary*  
15 *spending limit was lifted before the candidate decided whether to accept or not accept the limit.” The*  
16 *notice shall be printed in the same font size and type, and on the same page, as the candidate’s*  
17 *statement of qualifications.*

18 **(2) Notice regarding candidates for the Board of Supervisors and Mayor.** *The*  
19 *Director of Elections shall include in the Voter Information Pamphlet a notice informing voters that*  
20 *candidates for the Board of Supervisors and Mayor are not eligible to accept voluntary expenditure*  
21 *ceilings. Within 60 days after the effective date of the ordinance in Board File No. \_\_\_\_\_, after*  
22 *consulting with the Executive Director of the Ethics Commission, the Director of Elections shall*  
23 *determine the wording of the notice.*

24 **(e) (d) Website.** The Ethics Commission shall maintain, on its website, a list of the  
25 candidates who have accepted the voluntary expenditure ceiling. If the Ethics Commission

1 has lifted a voluntary expenditure ceiling for a particular race under Section 1.134 of this  
2 Chapter, the Ethics Commission shall instead maintain a list of the candidates who have  
3 accepted, but are no longer subject to the voluntary expenditure ceiling in that race.

4 ~~(d) A candidate who has accepted the applicable voluntary expenditure ceiling and makes~~  
5 ~~qualified campaign expenditures in excess of the voluntary expenditure ceiling, at a time when the~~  
6 ~~Ethics Commission has not lifted the applicable voluntary expenditure ceiling, is subject to the~~  
7 ~~penalties in Section 1.170.~~

8  
9 **SEC. 1.152. SUPPLEMENTAL REPORTING IN ELECTIONS FOR BOARD OF**  
10 **SUPERVISORS AND MAYOR.**

11 (a) ELECTIONS FOR THE BOARD OF SUPERVISORS.

12 (1) In addition to the campaign disclosure requirements imposed by the  
13 California Political Reform Act and other provisions of this Chapter, each candidate committee  
14 supporting a candidate for the Board of Supervisors shall file a statement with the Ethics  
15 Commission indicating when the committee has received contributions to be deposited into its  
16 Campaign Contribution Trust Account or made expenditures that equal or exceed ~~\$5,000~~  
17 \$10,000 within 24 hours of reaching or exceeding that amount.

18 (2) In addition to the supplemental report in Subsection (a)(1) of this Section,  
19 each candidate committee supporting a candidate for the Board of Supervisors shall file a  
20 statement with the Ethics Commission disclosing when the committee has received  
21 contributions to be deposited into its Campaign Contribution Trust Account or made  
22 expenditures that in the aggregate equal or exceed \$100,000. The candidate committee shall  
23 file this report within 24 hours of reaching or exceeding the threshold. Thereafter, the  
24 candidate committee shall file an additional supplemental report within 24 hours of every time  
25 the candidate committee receives additional contributions to be deposited into its Campaign

1 Contribution Trust Account or makes additional expenditures that in the aggregate equal or  
2 exceed \$10,000.

3 (3) The Executive Director shall post the information disclosed on statements  
4 required by this subsection on the website of the Ethics Commission within two business days  
5 of the statement's filing.

6 \* \* \* \*

7 **SEC. 1.156. REPORT TO THE MAYOR AND BOARD OF SUPERVISORS - PUBLIC**  
8 **FINANCING.**

9 Following each election at which the Mayor or members of the Board of Supervisors  
10 are elected, the Ethics Commission shall submit a report to the Mayor and Board of  
11 Supervisors *regarding the administration, efficacy, and operation of the City's public financing*  
12 *program*. The report shall state the amount of public funds used to pay for election campaigns  
13 in that election and such other information as the Ethics Commission deems useful, including  
14 the number of candidates who received public funds; the number of nonparticipating  
15 candidates; the amount of qualified campaign expenditures made by all candidates in that  
16 election; and the amount of independent expenditures made in connection with the election.

17  
18 **SEC. 1.165. INFORMATION REGARDING THIRD-PARTY SPENDING IN MUNICIPAL**  
19 **ELECTIONS.** *Prior to each municipal election, the Ethics Commission shall create a public webpage*  
20 *that provides the most readily available information regarding independent expenditures made in*  
21 *support of or opposition to candidates appearing on the ballot for that election.*

22  
23 Section 2. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

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

10  
11 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word  
12 of this ordinance, or any application thereof to any person or circumstance, is held to be  
13 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
14 shall not affect the validity of the remaining portions or applications of the ordinance. The  
15 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
16 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
17 unconstitutional without regard to whether any other portion of this ordinance or application  
18 thereof would be subsequently declared invalid or unconstitutional.

19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22 By: \_\_\_\_\_  
23 ANDREW SHEN  
24 Deputy City Attorney

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