



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

Date: November 9, 2018

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Re: **AGENDA ITEM 5 – Discussion and possible action on draft regulations and ordinance regarding the public financing program.**

Summary: This memorandum presents Staff's proposed drafts of regulations and ordinance language to amend the City's public financing program. The drafts are based on the Commission's determination at the October 19, 2018 meeting to follow Staff's recommendations stemming from its recent review of the public campaign financing program.

Action Requested: Staff requests that the Commission review the draft regulations set forth as Attachment 1 and the draft ordinance language set forth as Attachment 2 and consider approving both items.

At its regularly scheduled meeting on October 19, 2018, Staff presented the Commission with a report detailing Staff's findings and recommendations following a comprehensive review of the City's public campaign financing program (the "Program"). The report recommended changes to both the regulations and the code that govern the Program. Those recommendations were as follows:

Regulatory Recommendations

1. Clarify that, for purposes of demonstrating the residency of a contributor, the address shown on any document must be a residential address.
 - The lack of clarity on this point in the regulations has created confusion for candidates. Some candidates have provided contributors' business addresses, which are not sufficient to prove residency.
2. Clarify that Address Verification Service (AVS) information showing the contributor's San Francisco residential address is an acceptable method for demonstrating residency.
 - The use of AVS information is a time effective method for candidates to prove contributor residency. The regulations should be updated to reflect this new technology.
 - Staff also added a definition of AVS to help candidates understand what the system is.

3. Remove Regulation 1.142-3(b)(7), a catchall category for forms of residency documentation.
 - This vague and rarely used category has created confusion for candidates, who do not understand what kinds of documentation it covers. It would be more transparent and predictable to have a finite set of clearly identified documents that candidates may submit.
4. Clarify that the Qualifying Request of any candidate who has not yet submitted a timely filed Statement of Participation indicating that he or she will participate in the Program will not be reviewed.
 - This approach will prevent instances in which a candidate's Qualifying Request has been reviewed and the candidate therefore believes that the Statement of Participation is not outstanding. Under this approach, Staff would instead inform the candidate that a review of the Qualifying Request cannot take place until the Statement of Participation has been filed.
5. Clarify that a resubmission of a Qualifying Request cannot include new contributions that were not previously included in the Qualifying Request, but that a refiling can include new contributions.
 - This clarifying regulation would help candidates understand the difference between refiling and resubmission
6. Clarify that appeals under Section 1.142(g) are only permitted in regard to a final determination on a timely filed Qualifying Request.
 - This regulation would help candidates to understand the type of appeals that can be heard under Section 1.142(g).
7. Create a standard of review for appeals under Section 1.142(g).
 - Creating a standard of review for public financing appeals would provide candidates and the Commission with a framework for evaluating whether a final determination should be vacated.
 - Staff's draft ordinance proposes the standard that the appellant must demonstrate that Staff's review of the candidate's Qualifying Request and related supporting documentation was arbitrary and capricious in a way that materially and adversely affected the final determination on the candidate's Qualifying Request.
 - An alternative standard of appeal could be for the Commission to presume that Staff's determinations are correct unless an appellant can demonstrate that a Staff determination is incorrect.

Legislative Recommendations

1. Change the deadline for filing the Statement of Participation to three days after the deadline for filing nomination papers.

- This revised deadline would provide candidates who declare their candidacy late in the nomination period to have more time to state their intention to participate in the public financing program.
2. Switch to an IEC mechanism whereby a candidate's IEC is permanently removed, rather than incrementally increased, when certain events occur.
 - The current system of incrementally raising the IEC throughout the election does not discourage candidate spending and only creates an additional compliance burden on candidates. The approach of permanently lifting the spending limit in certain circumstances is the more common approach in other jurisdictions.
 3. Change the definition of *Total Supportive Funds* to count candidate expenditures, rather than contributions.
 - This approach will eliminate instances in which one candidate's IEC being raised (or lifted) automatically triggers another candidate's IEC being raised (or lifted). Under Staff's proposal, only *spending* by a candidate (in addition to third party activity) could affect another candidate's IEC.
 - Staff reviewed the rate of expenditures by supervisorial candidates in the 2014 and 2016 elections and did not find a dramatic rise in candidate expenditures immediately before the election. Candidate expenditures tended to be evenly distributed over several months leading up to the election, with a gradual rise in spending in the three months before the election.
 - Officials in Seattle and Los Angeles were not aware of instances in those jurisdictions of candidates delaying expenditures for the purpose of preventing an opponent from being released from the spending limit.
 - Staff's proposed ordinance would also modify the periodic threshold reporting by candidates to be more closely tailored to expenditures, since this figure is what would matter for purposes of lifting spending limits.
 4. Eliminate the Trust Account Limit and the Campaign Contingency Account.
 - Requiring candidates to maintain a separate bank account to hold contributions that exceed the IEC does not reduce the likelihood that candidates will violate the IEC, nor does it enable Staff to more closely monitor compliance with the IEC. It creates an additional compliance burden on participating candidates.

At the October 19th meeting, the Commission voted to preliminarily adopt these recommendations and directed Staff to prepare draft regulations and ordinance language upon which the Commission could take action at its regularly scheduled November 16th meeting. Staff, working with the City Attorney's office, prepared draft language to carry out the recommendations. **Attachment 1** is a proposed set of regulations that would implement the seven regulatory changes proposed by Staff. **Attachment 2** is a draft ordinance that would implement the four legislative changes recommended by Staff. Staff requests

that the Commission review the draft ordinance and regulations. Staff recommends that the Commission adopt both sets of amendments.

Separately, at the request of Commissioner Kopp, Staff attached draft ordinance language implementing a proposal made by Supervisor Safai that would bar certain candidates from participating in the public financing program. This change to the law would bar any candidate who previously failed to account for \$10,000 or more of expenditures made during an election in which the candidate received public financing. If the Commission votes to approve this additional change to the public financing program, it would be possible to combine it with the larger ordinance (Attachment 2) that Staff is recommending. Draft language that would implement Supervisor Safai's proposal is attached here as **Attachment 3**.

ATTACHMENT 1



ETHICS COMMISSION

DRAFT AMENDMENTS TO CAMPAIGN FINANCE REFORM ORDINANCE REGULATIONS REGARDING PUBLIC FINANCING

Regulation 1.142-3: Supporting Material Required for Qualifying and Matching Contributions.

- (a) The supporting material and information required under sections 1.142(b) and 1.144(f) shall include the following:
- (1) A copy of the deposit slip and deposit receipt for each qualifying or matching contribution.
 - (2) Documentation showing that a contribution was made, such as:
 - i)(A) for contributions made by check, a copy of the check itself and a listing of all contributions in a batch of deposited checks (each batch should be numbered);
 - ii)(B) for contributions made by credit card, documentation from the credit card merchant showing the accountholder's name, the accountholder's billing address, the date the transaction was initiated, and the amount of the contribution; or
 - iii)(C) for cash contributions, a signed and dated contributor card that includes the committee's name, the amount of the contribution, and the contributor's name and residential address in San Francisco.
- (b) In addition, the supporting material shall demonstrate that the contributor is a San Francisco resident by providing evidence of any of the following:
- (1) the contributor uses a San Francisco residential address as the address on any bank account or any account with a financial institution, through the submission of copies of recent bank statements, ~~or~~ personal checks, or Address Verification Service information listing the account holder's address;
 - (2) the contributor uses a San Francisco residential address as a billing address, through the submission of copies of recent credit card or utility bills;

- (3) the contributor lives at a San Francisco address, through the submission of copies of a current deed or lease;
- (4) the contributor uses a San Francisco residential address as a mailing address, through the submission of copies of recent mail received by the contributor;
- (5) the contributor is currently registered to vote in San Francisco;
- (6) the contributor has represented to a government agency that he or she lives at a San Francisco address, through the submission of copies of a driver's license, passport, government-issued identification card, or tax returns; ~~or~~
- ~~(7) the contributor resides at a San Francisco address on a regular, ongoing basis, through the submission of any documents created or provided by a non-interested third party that independently confirm that the contributor lives in San Francisco.~~

For the purposes of this regulation, "Address Verification Service" shall mean the system used by credit card processors to verify that the address provided by a person using the credit card is the billing address for the credit card account.

~~(c)~~ A candidate may not submit affidavits or declarations as proof of a contributor's residency in San Francisco.

Regulation 1.142-6: Certification.

(a) Executive Director's Determination.

- (1) The Executive Director shall determine whether to certify a candidate no later than 30 days after the candidate submits the documents required under sections 1.142(a) and 1.142(b).
- (2) Any candidate who files Form SFEC-142(a) indicating an intent to participate in the public financing program but who fails to file Form SFEC-142(b) by the 70th day before the election is ineligible to participate in the public financing program and the Executive Director shall notify the candidate that he or she is ineligible.
- (3) The Executive Director may take whatever steps he or she deems necessary to determine whether to certify a candidate including, but not limited to, reviewing the materials submitted by a candidate, auditing a candidate's records, and interviewing a candidate's contributors. In addition, the Executive Director may require any candidate to file Form SFEC-152(a)-1 or SFEC-152(b)-1 in order to determine whether a candidate who seeks public financing is opposed by another candidate pursuant to section 1.140(b)(3) or 1.140(c)(3).
- (4) The Executive Director may not review a Form SFEC-142(b) filed by a candidate unless and until the candidate has filed a Form SFEC-142(a) indicating an intent to participate in the public financing program.
- (5) The Executive Director may not review a Form SFEC-142(b) filed by a candidate if the candidate has failed to file the Form SFEC-142(b) by the deadline established by Section 1.142(b) or, for resubmissions, the deadline established by Section 1.142(f).

(b) Conditional Certification.

- (1) The Executive Director may conditionally certify a candidate for the Board of Supervisors in order to comply with the 30-day requirement set forth in subsection (a) of this regulation and subsection (c) of section 1.142. The Executive Director may issue a conditional certification if a candidate for the

Board of Supervisors has satisfied every requirement for certification except the requirement that the candidate be opposed by another candidate who has either established eligibility to receive public financing, or has received contributions or made expenditures which in the aggregate equal or exceed \$510,000. A candidate who has received a conditional certification shall be eligible to begin to receive public financing at any time after the Executive Director determines that the candidate is opposed by another candidate who has either established eligibility to receive public financing, or has received contributions or made expenditures which in the aggregate equal or exceed \$510,000. A conditional certification, by itself, does not establish that a candidate is eligible to receive public funds.

(2) The Executive Director may conditionally certify a candidate for the Mayor in order to comply with the 30-day requirement set forth in subsection (a) of this regulation and subsection (c) of section 1.142. The Executive Director may issue a conditional certification if a candidate for Mayor has satisfied every requirement for certification except the requirement that the candidate be opposed by another candidate who has either established eligibility to receive public financing, or has received contributions or made expenditures which in the aggregate equal or exceed \$50,000. A candidate who has received a conditional certification shall be eligible to begin to receive public financing at any time after the Executive Director determines that the candidate is opposed by another candidate who has either established eligibility to receive public financing, or has received contributions or made expenditures which in the aggregate equal or exceed \$50,000. A conditional certification, by itself, does not establish that a candidate is eligible to receive public funds.

(c) Refiling.

Any candidate who has filed a Form SFEC-142(b) may, at any time on or before the 70th day before the election in which the candidate will appear on the ballot, withdraw and refile a Form SFEC-142(b) and supporting documentation. To withdraw a Form SFEC-142(b), a candidate must state in a writing sent to the Commission, via email, U.S. mail, or personal delivery, that the candidate is withdrawing the previously filed Form SFEC-142(b). When refiling, a candidate may include qualifying contributions and supporting documentation that were not included in the Form SFEC-142(b) that was withdrawn. As set forth in Section 1.142(e), the Executive Director must determine whether to certify a candidate no later than 30 days after a candidate refiles a Form SFEC-142(b), provided that the Executive Director shall make his or her determination no later than the 55th day before the election.

(d) Resubmission.

Any candidate who is notified by the Executive Director that the candidate's Form SFEC-142(b) and supporting documentation do not establish the candidate's eligibility is ineligible to receive public funding may, within five business days of the date of notification, resubmit his or her declaration Form SFEC-142(b) and supporting documentation. When resubmitting a Form SFEC-142(b), the candidate may not include additional qualifying contributions but may include additional supporting documentation. If the candidate does not timely resubmit, the Executive Director's determination is final. If, after reviewing resubmitted materials, the Executive Director does not certify the candidate's eligibility, the Executive Director shall notify the candidate of his or her final determination. Additional resubmissions may be permitted in the Executive Director's discretion, provided that no resubmissions for certification may be made later than the 60th day before the election. If the candidate fails to resubmit in the time specified by the Executive Director, or if no further resubmissions are permitted, the Executive Director's determination is final.

(d) Appeals to Commission.

(1) A candidate may appeal to the Ethics Commission the Executive Director's final determination not to certify or conditionally certify the candidate. Either the Ethics Commission or a member of the Commission designated by the Commission may consider and decide such appeals. The candidate must deliver the written appeal to the Ethics Commission within five calendar days of the Executive Director's final determination.

(2) A final determination is a finding by the Executive Director, made following a review pursuant to Section 1.142(c) or 1.142(f), that a Form SFEC-142(b) and supporting documentation timely filed by a candidate pursuant to Section 1.142(b) does or does not establish the candidate's eligibility for public funding. A candidate who has failed to timely file a Form SFEC-142(a) or Form SFEC-142(b) may not appeal his or her failure to meet a deadline established by CFRO or these regulations to the Commission.

(3) The Commission may vacate the Executive Director's final determination that a candidate's Form SFEC-142(b) and supporting documentation fail to establish the candidate's eligibility for public funding if the candidate demonstrates that Staff's review of the Form SFEC-142(b) and supporting documentation was arbitrary and capricious in a way that materially and adversely affected the Executive Director's final determination.

ATTACHMENT 2

[Campaign and Governmental Conduct Code - Public Campaign Financing]

Ordinance amending the Campaign and Governmental Conduct Code to modify the operation of individual expenditure ceilings for publicly financed candidates for Board of Supervisors and Mayor.

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

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

Section 1. Chapter 1 of the Campaign and Governmental Conduct Code is hereby amended by revising Sections 1.104, 1.108, 1.140, 1.142, 1.143, and 1.152, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter 1 the following words or phrases are used, they shall mean:

* * * *

"Total Supportive ~~Funds~~ Spending" shall mean the sum of all ~~contributions received~~ expenditures made or expenses incurred by a candidate committee supporting a candidate for Mayor or the Board of Supervisors, ~~other than any funds in the candidate's Campaign Contingency Account exceeding the candidate committee's Trust Account Limit~~, plus the expenditures made or expenses incurred by any person or persons for the purpose of making independent expenditures, electioneering communications, or member communications in support of that same candidate.

1 ~~"Trust Account Limit" shall mean the amount of funds in the Campaign Contribution Trust~~
2 ~~Account of a candidate committee supporting a candidate for Mayor or the Board of Supervisors whom~~
3 ~~the Ethics Commission has certified as eligible to receive public funds under this Chapter such that the~~
4 ~~expenditure of this amount would cause the candidate to reach, but not exceed, the candidate's~~
5 ~~Individual Expenditure Ceiling. The Trust Account Limit shall be reduced as the candidate spends~~
6 ~~money and shall be increased when his or her Individual Expenditure Ceiling increases.~~

7 * * * *

8
9 **SEC. 1.108. CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST**
10 **~~ACCOUNTS AND CAMPAIGN CONTINGENCY ACCOUNTS.~~**

11 ~~(a) CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST ACCOUNTS.~~

12 (1) (a) Establishment of Account. Each treasurer for a candidate committee shall
13 establish a Campaign Contribution Trust Account for the candidate committee at an office of a
14 bank located in the City and County of San Francisco. All expenditures by the candidate
15 committee for the City elective office sought shall be made from that account.

16 ~~(2)~~ (b) Prohibition on Multiple Officeholder Accounts. All funds, services, or in-kind
17 contributions received by a candidate committee for expenses incurred directly in connection
18 with carrying out the candidate's usual and necessary duties of holding office shall be
19 deposited, credited, or otherwise reported to the candidate committee's Campaign
20 Contribution Trust Account. Such contributions shall be subject to the contribution limits in
21 Section 1.114 of this Chapter 1. An elected officeholder may not establish or control any other
22 committees or accounts for the purpose of making officeholder expenses. Nothing in this
23 Section 1.108 shall prohibit an officer from spending personal funds on official activities.

24 ~~(3) Account Limits. A candidate committee controlled by a candidate for Mayor or the~~
25 ~~Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds~~

1 ~~under this Chapter shall not, at any time before the date of the election for which the candidate has~~
2 ~~been certified, have an amount of funds greater than the candidate committee's Trust Account Limit in~~
3 ~~its Campaign Contribution Trust Account, unless those contributions are immediately transferred into~~
4 ~~the candidate committee's Campaign Contingency Account.~~

5 ~~(b) CAMPAIGN CONTINGENCY ACCOUNTS FOR CANDIDATE COMMITTEES FOR~~
6 ~~MAYOR AND THE BOARD OF SUPERVISORS.~~

7 ~~(1) Notwithstanding any other section of this Code, including Subsection (a)(2), a~~
8 ~~candidate committee controlled by a candidate for Mayor or the Board of Supervisors whom the Ethics~~
9 ~~Commission has certified as eligible to receive public funds under this Chapter may maintain a~~
10 ~~Campaign Contingency Account separate from its Campaign Contribution Trust Account into which it~~
11 ~~may deposit money contributions in anticipation that the Ethics Commission will raise the candidate's~~
12 ~~Individual Expenditure Ceiling. All money contributions deposited into this account shall be reported~~
13 ~~as if it were deposited into the candidate committee's Campaign Contribution Trust Account.~~

14 ~~(2) No candidate committee may deposit any funds into its Campaign Contingency~~
15 ~~Account if the amount of funds in the candidate committee's Campaign Contribution Trust Account is~~
16 ~~less than the candidate committee's Trust Account Limit.~~

17 ~~(3) No expenditures shall be made from a Campaign Contingency Account established~~
18 ~~pursuant to this section. Funds may be transferred from the candidate committee's Campaign~~
19 ~~Contingency Account to the candidate committee's Campaign Contribution Trust Account, provided~~
20 ~~that the amount of funds in the Campaign Contribution Trust Account does not exceed the candidate~~
21 ~~committee's Trust Account Limit. All funds that qualify as matching contributions and are transferred~~
22 ~~from the Campaign Contingency Account to the Campaign Contribution Trust Account shall be eligible~~
23 ~~to be matched with public funds in accordance with the procedures set forth in this Chapter. Within ten~~
24 ~~days after the date of the election, the candidate committee shall turn over all funds in the Campaign~~
25 ~~Contingency Account to the Election Campaign Fund.~~

1 **SEC. 1.140. ELIGIBILITY TO RECEIVE PUBLIC FINANCING.**

2 (a) REQUIREMENTS FOR ALL CANDIDATES. To be eligible to receive public
3 financing of campaign expenses under this Chapter I, a candidate must:

4 (1) Have filed a statement indicating that ~~he or she~~ the candidate intends to
5 participate in the public financing program under Section 1.142 of this Chapter.

6 (2) Agree to the following conditions:

7 (A) The candidate bears the burden of providing that each contribution
8 the candidate relies upon to establish eligibility is a qualifying contribution;

9 (B) The candidate bears the burden of proving that expenditures made
10 with public funds provided under this Chapter comply with Section 1.148 of this Chapter;

11 (C) The candidate will not make any payments to a contractor or vendor
12 in return for the contractor or vendor making a campaign contribution to the candidate or
13 make more than a total of 50 payments, other than the return of a contribution, to contractors
14 or vendors that have made contributions to the candidate;

15 (D) Notwithstanding Sections 1.114 and 1.116, the candidate shall not
16 loan or donate, in total, more than \$5,000 of his or her own money to the campaign;

17 (E) The candidate shall not accept any loans to his or her campaign with
18 the exception of a candidate's loan to his or her own campaign as permitted by this Section
19 1.140; and

20 (F) The candidate shall agree to participate in at least three debates with
21 the candidate's opponents.

22 (3) Have paid any outstanding late fines or penalties, owed to the City by the
23 candidate or any of the candidate's previous campaign committees, which were imposed for
24 violations of this Code or the campaign finance provisions of the California Political Reform
25

1 Act (Government Code Sections 84100-85704), provided that the Ethics Commission had
2 notified the candidate of such fines or penalties by the time of certification.

3 (4) Have filed any outstanding forms, owed to the City by the candidate or any
4 of the candidate's previous campaign committees, which were required to be filed pursuant to
5 this Code or the campaign finance provisions of the Political Reform Act (Government Code
6 Sections 84100-85704), provided that the Ethics Commission had notified the candidate of
7 such outstanding forms by the time of certification.

8 (5) Have no finding by a court or by the Ethics Commission after a hearing on
9 the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally
10 violated any Section of this Code or the campaign finance provisions of this California Political
11 Reform Act (Government Code Sections 84100-85704). For purposes of this Section 1.140, a
12 plea of nolo contendere constitutes a finding by a court of a willful violation.

13 (b) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR THE BOARD OF
14 SUPERVISORS. To be eligible to receive public financing of campaign expenses under this
15 Chapter 1, a candidate for the Board of Supervisors must:

16 (1) Be seeking election to the Board of Supervisors and be eligible to hold the
17 office sought;

18 (2) Have a candidate committee that has received at least \$10,000 in qualifying
19 contributions from at least 100 contributors before the 70th day before the election; or, if the
20 candidate is an incumbent member of the Board of Supervisors, have a candidate committee
21 that has received at least \$15,000 in qualifying contributions from at least 150 contributors
22 before the 70th day before the election;

23 (3) Be opposed by another candidate who has either established eligibility to
24 receive public financing, or whose candidate committee has received contributions or made
25 expenditures which in the aggregate equal or exceed \$10,000; and

1 (4) Agree that his or her candidate committee will not make qualified campaign
2 expenditures that total more than the candidate's Individual Expenditure Ceiling of \$250,000,
3 ~~or as adjusted~~ unless the Ethics Commission has lifted the candidate's Individual Expenditure Ceiling
4 under Section 1.143 of this Chapter.

5 (c) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR MAYOR. To be eligible
6 to receive public financing of campaign expenses under this Chapter I, a candidate for Mayor
7 must:

8 (1) Be seeking election to the office of Mayor and be eligible to hold the office
9 sought;

10 (2) Have a candidate committee that has received at least \$50,000 in qualifying
11 contributions from at least 500 contributors by the 70th day before the election; or, if the
12 candidate is the incumbent Mayor, have a candidate committee that has received at least
13 \$75,000 in qualifying contributions from at least 750 contributors by the 70th day before the
14 election;

15 (3) Be opposed by another candidate who has either established eligibility to
16 receive public financing, or whose candidate committee has received contributions or made
17 expenditures that in the aggregate equal or exceed \$50,000; and

18 (4) Agree that his or her candidate committee will not make qualified campaign
19 expenditures that total more than the candidate's Individual Expenditure Ceiling of
20 \$1,475,000, ~~or as adjusted~~ unless the Ethics Commission has lifted the candidate's Individual
21 Expenditure Ceiling under Section 1.143 of this Chapter.

22 (d) ADJUSTMENT OF EXPENDITURE LIMITS AND THRESHOLDS. The Ethics
23 Commission is authorized to adjust:

24 (1) The figures in ~~S~~subsections (b)(4) and (c)(4) to reflect changes in the
25 California Consumer Price Index, provided that such adjustments shall be rounded off to the

1 nearest \$1,000 for candidates for the Board of Supervisors and the nearest \$5,000 for
2 candidates for Mayor;

3 (2) The figure in ~~§~~subsection (a)(2)(D) ~~of this Section~~ to reflect changes in the
4 California Consumer Price Index, provided that such adjustments shall be rounded off to the
5 nearest \$1,000;

6 (3) The figures in ~~§~~subsections (b)(2) and (b)(3) ~~of this Section~~ to reflect changes
7 in the California Consumer Price Index, provided that such adjustments shall be rounded off
8 to the nearest \$500;

9 (4) The figures in ~~§~~subsections (c)(2) and (c)(3) ~~of this Section~~ to reflect changes
10 in the California Consumer Price Index, provided that such adjustments shall be rounded off
11 to the nearest \$5,000; and

12 (5) The maximum amount of a contribution that constitutes a qualifying
13 contribution pursuant to Section 1.104 to reflect changes in the California Consumer Price
14 Index, provided that such adjustments shall be rounded off to the nearest \$10.

15
16 **SEC. 1.142. PROCESS FOR ESTABLISHING ELIGIBILITY; CERTIFICATION BY**
17 **THE ETHICS COMMISSION.**

18 (a) STATEMENT OF PARTICIPATION OR NON-PARTICIPATION. Each candidate
19 for the Board of Supervisors or Mayor must sign and file a Statement of Participation or Non-
20 Participation in the public financing program. The statement must be filed by the candidate
21 with the Ethics Commission no later than the third day following the deadline for filing
22 nomination papers. On the statement, each candidate shall indicate whether ~~he or she~~ the
23 candidate intends to participate in the public financing program. A statement of participation or
24 non-participation may not be amended after the deadline for filing nomination papers.

1 If any deadline imposed by this subsection (a) falls on a Saturday, Sunday, or legal holiday, the
2 deadline shall be the next business day.

3 (b) DECLARATION BY CANDIDATE. To become eligible to receive public financing
4 of campaign expenses under this Chapter 1, a candidate shall declare, under penalty of
5 perjury, that the candidate satisfies the requirements specified in Section 1.140. Candidates
6 shall be permitted to submit the declaration and any supporting material required by the Ethics
7 Commission to the Ethics Commission no earlier than nine months before the date of the
8 election, but no later than the 70th day before the election. Once the declaration and
9 supporting material are submitted, they may not be amended. The declaration and supporting
10 material may be withdrawn and refiled, provided that the refiling is made no later than the 70th
11 day before the election.

12 If any deadline imposed by this ~~§~~subsection (b) falls on a Saturday, Sunday, or legal
13 holiday, the deadline shall be the next business day.

14 (c) DETERMINATION OF ELIGIBILITY. The Executive Director of the Ethics
15 Commission shall review the candidate's declaration and supporting material to determine
16 whether the candidate is eligible to receive public funds under this Chapter 1. The Executive
17 Director may audit the candidate's records, interview contributors, and take whatever steps
18 the Executive Director deems necessary to determine eligibility. At the request of the
19 Executive Director, the Controller shall assist in this review process.

20 (d) DETERMINATION OF OPPOSITION. To determine whether a candidate for the
21 Board of Supervisors is opposed as required under Section 1.140(b)(3) of this Chapter 1 or a
22 candidate for Mayor is opposed as required under Section 1.140(c)(3) of this Chapter, the
23 Executive Director shall review the material filed pursuant to Section 1.152 of this Chapter,
24 and may review any other material.
25

1 (e) CERTIFICATION. If the Executive Director determines that a candidate for Mayor
2 or the Board of Supervisors has satisfied the requirements of Section 1.140, the Executive
3 Director shall notify the candidate and certify to the Controller that the candidate is eligible to
4 receive public financing under this Chapter 1. The Executive Director shall not certify that a
5 candidate is eligible to receive public financing if the candidate's declaration or supporting
6 material is incomplete or otherwise inadequate to establish eligibility. ~~Except as provided in~~
7 ~~subsection (h), the~~ The Executive Director shall determine whether to certify a candidate no later
8 than 30 days after the date the candidate submits his or her declaration and supporting
9 material, provided that the Executive Director shall make all determinations regarding whether
10 to certify a candidate no later than the 55th day before the election.

11 (f) RESUBMISSION. If the Executive Director declines to certify that a candidate is
12 eligible to receive public financing under this Chapter 1, the Executive Director shall notify the
13 candidate. Notwithstanding Section 1.142(b) of this Chapter, the candidate may, within five
14 business days of the date of notification, resubmit the declaration and supporting material. If
15 the candidate does not timely resubmit, the Executive Director's determination is final.

16 If, after viewing resubmitted material, the Executive Director declines to certify that a
17 candidate is eligible to receive public financing under this Chapter, the Executive Director
18 shall notify the candidate of this fact. Additional resubmissions may be permitted in the
19 Executive Director's discretion. If the candidate fails to resubmit in the time specified by the
20 Executive Director, or if no further resubmissions are permitted, the Executive Director's
21 determination is final.

22 (g) APPEAL TO THE ETHICS COMMISSION. If the Executive Director declines to
23 certify that a candidate is eligible to receive public financing under this Chapter 1, the
24 candidate may appeal the Executive Director's final determination to the Ethics Commission.
25

1 The candidate must deliver the written appeal to the Ethics Commission within five days of the
2 date of notification of the Executive Director's determination.

3
4 **SEC. 1.143. ADJUSTING LIFTING INDIVIDUAL EXPENDITURE CEILINGS.**

5 This Section 1.143 shall apply only if the Ethics Commission has certified that at least
6 one candidate for Mayor or the Board of Supervisors is eligible to receive public funds under
7 this Chapter 1.

8 (a) The Executive Director shall ~~adjust~~ lift the Individual Expenditure Ceiling, ~~of and the~~
9 Individual Expenditure Ceiling shall no longer be binding on a candidate for Mayor, ~~to an amount~~
10 ~~equal to~~ if the sum of the Total Opposition Spending against that candidate and the highest
11 level of the Total Supportive ~~Funds~~ Spending of any other candidate for Mayor ~~if such amount~~ is
12 greater than \$1,475,000, ~~provided that the Executive Director may adjust a candidate's Individual~~
13 ~~Expenditure Ceilings only in increments of \$100,000.~~

14 (b) The Executive Director shall ~~adjust~~ lift the Individual Expenditure Ceiling, ~~of and the~~
15 Individual Expenditure Ceiling shall no longer be binding on a candidate for the Board of
16 Supervisors, ~~to an amount equal to~~ if the sum of the Total Opposition Spending against that
17 candidate and the highest level of the Total Supportive ~~Funds~~ Spending of any other candidate
18 for the same office on the Board of Supervisors ~~if such amount~~ is greater than \$250,000,
19 ~~provided the Executive Director may adjust a candidate's Individual Expenditure Ceiling only in~~
20 ~~increments of \$10,000.~~

21 (c) The Executive Director shall promptly review statements filed pursuant to state and
22 local law, including Government Code section 84204 and Sections 1.161, 1.162, and 1.163 of
23 this Chapter 1, to determine whether a communication supports or opposes one or more
24 candidates.
25

1 Factors the Executive Director shall use to determine whether the communication
2 supports or opposes one or more candidates include the following:

- 3 (1) whether the communication clearly identifies one or more candidates;
- 4 (2) the timing of the communication;
- 5 (3) the voters targeted by the communication;
- 6 (4) whether the communication identifies any candidate's position on a public
7 policy issue and urges the reader or viewer to take action, including calling the candidate to
8 support or oppose the candidate's position;
- 9 (5) whether the position of one or more candidates on a public policy issue has
10 been raised as distinguishing these candidates from others in the campaign, either in the
11 communication itself or in other public communications;
- 12 (6) whether the communication is part of an ongoing series of substantially
13 similar advocacy communications by the organization on the same issue; and
- 14 (7) any other factors the Executive Director deems relevant.

15 (d) Within one business day of the date that the Executive Director makes a
16 determination under Subsection (c), either the candidate(s) identified in the communication or
17 any candidate seeking the same City elective office as the candidate identified in the
18 communication may object to the Executive Director's determination. The Executive Director
19 shall respond to any objection within one business day of receiving the objection.

20 (e) Within one business day of the Executive Director's response, either the
21 candidate(s) identified in the communication or any candidate seeking the same City elective
22 office as the candidate identified in the communication may submit to the Executive Director a
23 request that the Ethics Commission review the Executive Director's determination. Within one
24 business day of receiving the request, the Executive Director shall notify each Commissioner
25 of the candidate's request.

1 If within one business day of the Executive Director's notice, two or more members of
2 the Commission inform the Executive Director that they would like to review the determination,
3 the Executive Director shall schedule a meeting of the Commission on a date that occurs
4 within one week of the Commissioners' requests. If three members of the Commission vote to
5 overrule the Executive Director's determination, the Commission shall make a final
6 determination based on the factors set forth above.

7 (f) If no candidate objects to the Executive Director's determination, if no candidate
8 requests review by the Commission of the Executive Director's determination, if a request is
9 made and two or more members of the Commission do not request to review the
10 determination, or within one week of two members of the Commission requesting to review
11 the Executive Director's determination, at least three members of the Commission do not vote
12 to overrule the Executive Director's determination, the Executive Director's determination shall
13 become final.

14 The Executive Director shall determine whether to ~~adjust~~ lift the Individual Expenditure
15 Ceilings of each candidate for Mayor or the Board of Supervisors pursuant to either
16 ~~Subsection (a) or (b) of this Section~~ within one business day of a final determination.

17
18 **SEC. 1.152. SUPPLEMENTAL REPORTING IN ELECTIONS FOR BOARD OF**
19 **SUPERVISORS AND MAYOR.**

20 (a) ELECTIONS FOR THE BOARD OF SUPERVISORS.

21 (1) In addition to the campaign disclosure requirements imposed by the
22 California Political Reform Act and other provisions of this Chapter 1, each candidate
23 committee supporting a candidate for the Board of Supervisors shall file a statement with the
24 Ethics Commission indicating when the committee has received contributions to be deposited
25

1 into its Campaign Contribution Trust Account or made expenditures that equal or exceed
2 ~~\$5,000~~ \$10,000 within 24 hours of reaching or exceeding that amount.

3 (2) In addition to the supplemental report in ~~§~~subsection (a)(1) ~~of this Section~~,
4 each candidate committee supporting a candidate for the Board of Supervisors shall file a
5 statement with the Ethics Commission disclosing when the committee has ~~received~~
6 ~~contributions to be deposited into its Campaign Contribution Trust Account or~~ made expenditures
7 that in the aggregate equal or exceed \$100,000. The candidate committee shall file this
8 report within 24 hours of reaching or exceeding the threshold. Thereafter, the candidate
9 committee shall file an additional supplemental report within 24 hours of every time the
10 candidate committee ~~receives additional contributions to be deposited into its Campaign~~
11 ~~Contribution Trust Account or~~ makes additional expenditures that in the aggregate equal or
12 exceed \$10,000.

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

16 (b) ELECTIONS FOR MAYOR.

17 (1) In addition to the campaign disclosure requirements imposed by the
18 California Political Reform Act and other provisions of this Chapter 1, each candidate
19 committee supporting a candidate for Mayor shall file a statement with the Ethics Commission
20 indicating when the candidate committee has received contributions to be deposited into its
21 Campaign Contribution Trust Account or made expenditures that equal or exceed \$50,000
22 within 24 hours of reaching or exceeding that amount.

23 (2) In addition to the supplemental report in ~~§~~subsection (b)(1) ~~of this Section~~,
24 each candidate committee supporting a candidate for Mayor shall file a statement with the
25 Ethics Commission disclosing when the candidate committee has ~~received contributions to be~~

1 ~~deposited into its Campaign Contribution Trust Account or~~ made expenditures that in the
2 aggregate—equal or exceed \$1,000,000. The candidate committee shall file this report within
3 24 hours of reaching or exceeding the threshold. Thereafter, the candidate committee shall
4 file an additional supplemental report within 24 hours of every time the candidate committee
5 ~~receives additional contributions or~~ makes additional expenditures that in the aggregate equal or
6 exceed \$50,000.

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

10 (c) The supplemental statements required by ~~S~~subsections (a)(2) and (b)(2) are not
11 required until the Ethics Commission has certified that at least one candidate is eligible to
12 receive public funds under this Chapter I, provided that within two business days of the date
13 that the Ethics Commission provides notice under this subsection that it has certified that a
14 candidate is eligible to receive public funds under this Chapter, any report that previously
15 would have been required under subsections (a)(2) and (b)(2) must be filed. Within two
16 business days of certifying that at least one candidate is eligible to receive public financing
17 under this Chapter, the Ethics Commission shall post a notice on its website, send out a press
18 release, and send written notice by regular or electronic mail to all other candidates running
19 for the same City elective office and to any other person who has requested such notice.
20

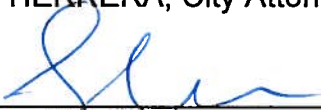
21 Section 2. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.
25

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

7
8 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
9 of this ordinance, or any application thereof to any person or circumstance, is held to be
10 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
11 shall not affect the validity of the remaining portions or applications of the ordinance. The
12 Board of Supervisors hereby declares that it would have passed this ordinance and each and
13 every section, subsection, sentence, clause, phrase, and word not declared invalid or
14 unconstitutional without regard to whether any other portion of this ordinance or application
15 thereof would be subsequently declared invalid or unconstitutional.

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By:


20 ANDREW SHEN
21 Deputy City Attorney

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24
25

ATTACHMENT 3

[Campaign and Governmental Conduct Code - Eligibility for Public Financing]

Ordinance amending the Campaign and Governmental Conduct Code to modify eligibility requirements for candidates to receive public financing.

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

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

Section 1. The Campaign and Governmental Conduct Code is hereby amended by revising Section 1.140, to read as follows:

SEC. 1.140. ELIGIBILITY TO RECEIVE PUBLIC FINANCING.

(a) REQUIREMENTS FOR ALL CANDIDATES. To be eligible to receive public financing of campaign expenses under this Chapter, a candidate must:

(1) Have filed a statement indicating that he or she intends to participate in the public financing program under Section 1.142 of this Chapter.

(2) Agree to the following conditions:

(A) The candidate bears the burden of providing that each contribution the candidate relies upon to establish eligibility is a qualifying contribution;

(B) The candidate bears the burden of proving that expenditures made with public funds provided under this Chapter comply with Section 1.148 of this Chapter;

(C) The candidate will not make any payments to a contractor or vendor in return for the contractor or vendor making a campaign contribution to the candidate or

1 make more than a total of 50 payments, other than the return of a contribution, to contractors
2 or vendor that have made contributions to the candidate;

3 (D) Notwithstanding Sections 1.114 and 1.116, the candidate shall not
4 loan or donate, in total, more than \$5,000 of his or her own money to the campaign;

5 (E) The candidate shall not accept any loans to his or her campaign with
6 the exception of a candidate's loan to his or her own campaign as permitted by this Section;
7 and

8 (F) The candidate shall agree to participate in at least three debates with
9 the candidate's opponents.

10 (3) Have paid any outstanding late fines or penalties, owed to the City by the
11 candidate or any of the candidate's previous campaign committees, which were imposed for
12 violations of this Code or the campaign finance provisions of the California Political Reform
13 Act (Government Code Sections 84100-85704), *provided within two years of the date* that the
14 Ethics Commission had notified the candidate of such fines or penalties ~~by the time of~~
15 ~~certification.~~

16 (4) Have filed any outstanding forms, owed to the City by the candidate or any
17 of the candidate's previous campaign committees, which were required to be filed pursuant to
18 this Code or the campaign finance provisions of the Political Reform Act (Government Code
19 Sections 84100-85704), *provided within two years of the date* that the Ethics Commission had
20 notified the candidate of such outstanding forms ~~by the time of certification.~~

21 (5) Have no finding by a court or by the Ethics Commission after a hearing on
22 the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally
23 violated any Section of this Code or the campaign finance provisions of this California Political
24 Reform Act (Government Code Sections 84100-85704). For purposes of this Section, a plea
25 of nolo contendere constitutes a finding by a court of a willful violation.

1 (6) For a candidate that received public financing in connection with a previous
2 campaign under this Chapter 1, have no Ethics Commission audit finding that the candidate's prior
3 publicly financed campaign failed to maintain complete campaign records for expenditures, in
4 violation of Sections 1.106 and 1.109, and Government Code Section 84104, where the amount of
5 expenditures for which there was incomplete records totaled \$10,000 or more.

6 * * * *

7
8 Section 2. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
21 of this ordinance, or any application thereof to any person or circumstance, is held to be
22 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
23 shall not affect the validity of the remaining portions or applications of the ordinance. The
24 Board of Supervisors hereby declares that it would have passed this ordinance and each and
25 every section, subsection, sentence, clause, phrase, and word not declared invalid or

1 unconstitutional without regard to whether any other portion of this ordinance or application
2 thereof would be subsequently declared invalid or unconstitutional.

3
4 Section 5. Undertaking for the General Welfare. In enacting and implementing this
5 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
6 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
7 is liable in money damages to any person who claims that such breach proximately caused
8 injury.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By:


13 ANDREW SHEN
Deputy City Attorney

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