



ETHICS COMMISSION

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Date: December 17, 2018

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

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

Summary: This memorandum presents Staff's proposed draft of ordinance language to amend the City's public financing program. The draft is 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. This memorandum also responds to Commission research questions posed at the November 16, 2018 meeting.

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

I. Background

At its regularly scheduled meeting on November 16, 2018, Staff presented the Commission with a draft ordinance to make the City's public campaign financing program (the "Program") more accessible, workable, and transparent. The ordinance would make the following changes to City law:

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 with adequate time to state their intention to participate in the public financing program.
2. Switch to a spending limit mechanism whereby a candidate's spending limit is permanently removed, rather than incrementally increased, when certain events occur.
 - The current system of incrementally raising the spending limit, or *Individual Expenditure Ceiling* (IEC), throughout the election has not discouraged candidate spending and therefore has resulted in an additional compliance burden on candidates not matched by a corresponding public policy benefit. 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's proposed ordinance would also modify the periodic threshold reporting by candidates to be more closely tailored to expenditures, as 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 has not measurably reduced the likelihood that candidates will violate the IEC, nor does it enable Staff to more closely monitor compliance with the IEC. It therefore creates an additional compliance burden on participating candidates that is not matched by a corresponding public policy benefit.

At the October 19th meeting, the Commission voted to preliminarily adopt these recommendations and directed Staff to prepare a draft ordinance upon which the Commission could take action at its regularly scheduled November 16th meeting. Staff, working with the City Attorney's office, prepared a draft ordinance, attached here as **Attachment 1**, to carry out the recommendations.

At its November 16th meeting, the Commission continued discussion of the draft ordinance and posed several research questions to Staff.¹ The Commission was interested in learning more about the proposal to change the mechanism for lifting candidate spending limits. The Commission also had questions pertaining to a proposal (attached here as **Attachment 2**) to bar candidates from participation in the Program if they had failed in the past either to provide sufficient documentation of political expenditures or to timely meet filing requirements or pay late fines or penalties. The following section provides further background on these areas of interest.

¹ The Commission also approved a set of regulations at its November 16, 2018 meeting that clarify various aspects of the Program. Those regulations were transmitted to the Board of Supervisors on November 16th for a 60-day review period, as required by Charter § 15.102.

II. Staff Review of Commissioner Inquiries from November 16, 2018 Meeting

A. Proposal to Amend the Individual Expenditure Ceiling by Counting Candidate Expenditures, Rather than Candidate Contributions

Attachment 1, which embodies Staff's recommendations as to how to improve the Program's workability and accessibility, would change the law regarding the individual expenditure ceiling (IEC). Each candidate who participates in the Program must abide by the IEC, limiting campaign expenditures to a limit established by statute.² However, the limit can be raised on a per-candidate basis if three factors indicate that a raise is warranted. The three factors are: the total contributions received by an opponent, the total level of independent spending in support of the opponent, and the total level of independent spending in opposition to the candidate.³ This calculation is performed daily during an election, and the IEC of a candidate can be raised a limitless number of times.

Attachment 1 would change this system in two ways. First, it would cease to raise IECs a limitless number of times and would instead permanently lift a candidate's IEC as soon as the three factors indicate that doing so is warranted.⁴ Secondly, it would change one of the three factors that is considered when performing IEC calculations: instead of using an opponent's total *contributions received*, Staff would take the opponent's total *expenditures made* into account.⁵ As discussed in Staff's findings and recommendations delivered at the Commission's October meeting,⁶ both reforms to the IEC rules will create a less complicated spending limit model without diminishing the effectiveness of the current model. This is likely to lessen the burden placed on candidates who attempt to understand and comply with the current system.

At the November 16th meeting, the Commission expressed concern that amending the IEC mechanism to factor in opponent expenditures, rather than opponent contributions, could expose the City to a legal challenge. Staff reviewed several public financing programs across the country and confirmed that many such programs use opponent expenditures as a basis for releasing candidates from spending limits.

² Campaign & Gov. Conduct Code § 1.140(b)–(c). The initial IEC is \$250,000 for supervisorial candidates and \$1,475,000 for mayoral candidates.

³ *Id.* at § 1.143.

⁴ Attachment 1, § 1.143 (draft).

⁵ *Id.* at § 1.104 (draft). The definition of *Total Supportive Funds* (which would be renamed "Total Supportive Spending") would be changed by deleting "contributions received" and replacing it with "expenditures made or expenses incurred."

⁶ PAT FORD, SAN FRANCISCO ETHICS COMMISSION, October 19, 2018 Regular Meeting, *Agenda Item 4 – Public Financing Project – Findings and Recommendations*, available at <https://sfethics.org/wp-content/uploads/2018/10/2018.10.19-Agenda-Item-4-Public-Financing-Review-Project-FINAL-1.pdf>.

Several notable examples are Los Angeles,⁷ New York City,⁸ Seattle,⁹ Oakland,¹⁰ and Minnesota.¹¹ Additionally, Los Angeles, Seattle and Oakland also take third party expenditures into account for purposes of lifting spending limits, as San Francisco already does.¹²

Staff could only find one instance in which a public financing program was subjected to a legal challenge because it lifted spending limits in response to candidate (or third party) spending. This challenge was not successful, and the provision in question is still in effect. In 2013, prospective candidates filed suit against New York City's Campaign Finance Board, "challeng[ing] provisions of the New York City

⁷ Los Angeles Municipal Code § 49.7.25 (2017). "The applicable expenditure ceiling is no longer binding on a participating candidate in either of the following scenarios: (A.) **A non-participating candidate in the same race makes or incurs campaign expenditures** in excess of the expenditure ceiling; or (B.) **Independent expenditure communications** under Section 49.7.31(A)(1) in support of or opposition to any candidate in the same race **exceed, in the aggregate, the following amounts**: (1.) \$77,000 in a City Council election; (2.) \$155,000 in a City Attorney or Controller election; (3.) \$309,000 in a Mayoral election." *Id.* [formatting and emphasis added].

⁸ New York City Administrative Code § 3-706(3)(b) (2018). "If any candidate in any covered election chooses not to file a certification as a participating or limited participating candidate pursuant to this chapter, and where the campaign finance board has determined that such **candidate and his or her authorized committees have spent or contracted or have obligated to spend**, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds three times the applicable expenditure limit for such office fixed by subdivision one of this section, then ... such expenditure limit shall no longer apply to participating candidates and limited participating candidates in such election for such office" *Id.* [formatting and emphasis added].

⁹ Seattle Municipal Code § 2.04.630(f) (2015). "If a qualified candidate demonstrates to SEEC that he or she has an **opponent (whether or not participating in the Program) whose campaign spending has exceeded the Campaign Spending Limit for the position sought** as indicated above, where SEEC deems the excess material it shall allow such candidate to choose to be released from the Campaign Spending Limit SEEC shall also release a qualifying candidate from the Campaign Spending Limit to the extent that it is shown (on application of a Seattle candidate or citizen) that said qualified candidate faces **independent expenditures** ... adverse to the candidate or in favor of an opponent and the sum of such independent expenditures plus said candidate's opponent's campaign spending materially exceeds the Campaign Spending Limit for that office." *Id.* [formatting and emphasis added].

¹⁰ Oakland Municipal Code § 3.12.220 (2018). "If a candidate declines to accept expenditure ceilings and receives contributions or **make [sic] qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling**, or if an **independent expenditure committee in the aggregate spends** more than fifteen thousand dollars (\$15,000.00) on a District City Council or School Board election or seventy thousand dollars (\$70,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office" *Id.* [formatting and emphasis added].

¹¹ Minnesota Statutes § 10A.25, subd. 10 (2018). "After the deadline for filing a spending limit agreement under section 10A.322, a candidate who has agreed to be bound by the expenditure limits imposed by this section as a condition of receiving a public subsidy for the candidate's campaign may choose to be released from the expenditure limits but remain eligible to receive a public subsidy if the candidate has an **opponent who has not agreed to be bound by the limits and has received contributions or made or become obligated to make expenditures during that election cycle in excess of the following limits**: (1) up to the close of the reporting period before the primary election, receipts or expenditures equal to 20 percent of the election segment expenditure limit for that office as set forth in subdivision 2; or (2) after the close of the reporting period before the primary election, cumulative receipts or expenditures during that election cycle equal to 50 percent of the election cycle expenditure limit for that office as set forth in subdivision 2. *Id.* [formatting and emphasis added].

¹² See Campaign & Gov. Conduct Code § 1.104 (definitions of "Total Supportive Funds" and "Total Opposition Spending"), 1.143(a)–(b).

Administrative Code ... which raise expenditure limits ... for candidates participating in public financing when their opponents' spending and contribution receipts cross certain thresholds¹³ In *Ognibene v. Parkes*, the U.S. District Court for the Southern District of New York upheld the use of opponent spending as a basis for lifting the spending limit of a publicly financed candidate, reasoning that:

the Expenditure Relief provisions at issue here merely put publicly funded candidates in the same position as non-publicly funded candidates—they have the opportunity to spend competitively, provided that they can raise the funds with which to do so. This opportunity gives them no advantage over privately funded candidates, and certainly imposes no substantial burden on the privately funded candidates' decision to exercise their First Amendment rights.¹⁴

The court in *Parkes* distinguished New York's spending limit mechanism from the public financing law struck down by the U.S. Supreme Court in *Arizona Free Enterprise Club v. Bennett* in that "the Expenditure Limit Relief provisions do not put non-participating candidates to the choice of refraining from speech or causing their participating opponents to receive direct infusions of public money."¹⁵ The court emphasized that, "[c]rucially, the amount of public funding a participating candidate may receive is not affected by an increase in the expenditure limit. Even where a participating candidate's expenditure limit is removed *entirely*, the participating candidate's public maximum funding limit remains set...."¹⁶ Although this decision would not bind courts in San Francisco were the Program to be challenged, it indicates that a meaningful distinction has already been made between the IEC mechanism proposed by Staff and the public financing provisions that were struck down in *Arizona Free Enterprise* and related cases.

In light of federal court treatment of expenditure-based spending limit mechanisms, as well as the widespread adoption of this model in other jurisdictions, Staff still recommends that the Commission amend the IEC in the ways set forth in Attachment 1.

B. Proposal to Bar Certain Candidates from Receiving Public Financing

The draft ordinance attached here as Attachment 2 would bar a candidate from ever receiving public financing if the candidate had previously been found, through an audit by Commission Staff, to have failed to provide sufficient documentation for \$10,000 or more of expenditures in a prior election. This rule, originally proposed to the Commission by Supervisor Safai, would apply if the candidate had received money through the Program during the election in which the expenditures occurred.¹⁷

Additionally, Attachment 2 would bar a candidate from receiving public financing if the candidate had ever failed to pay a late fine or penalty, or to file a form, owed to the City under the Campaign and Governmental Conduct Code (the "Code") or the Political Reform Act (PRA) within two years of the

¹³ *Ognibene v. Parkes*, No. 08 Civ. 1335, 2013 U.S. Dist. LEXIS 49083, *1–2 (S.D.N.Y. April 4, 2013).

¹⁴ *Id.* at *20.

¹⁵ *Id.* at *21.

¹⁶ *Id.* at *22.

¹⁷ Attachment 2, § 1.140(a)(6) (draft).

Commission notifying the candidate that the fine, penalty, or form was outstanding.¹⁸ For example, if a candidate paid a late fine more than two years after being told by the Commission that the fine was outstanding, that person would be ineligible to participate in the Program.

Under current law, candidates are ineligible for the Program if they have late fines, penalties, or forms outstanding.¹⁹ However, a candidate can remedy the problem, and potentially become eligible for the Program, by paying the fine or penalty or filing the form. Attachment 2 would foreclose this option if more than two years had passed. Current law also excludes candidates from the Program who have, within the last five years, been found by the Commission or a court to have “knowingly, willfully, or intentionally violated any [s]ection of this Code or the campaign finance provisions” of the PRA.²⁰ Attachment 2 would broaden this rule to exclude any publicly financed candidate who had previously failed to provide adequate documentation for expenditures, regardless of whether such violation was knowing, willful, or intentional.

For the reasons discussed below, Staff recommends that the Commission not approve Attachment 2.

1. This rule has not been adopted in other major jurisdictions.

Staff are not aware of another jurisdiction that has implemented either of the rules contained in Attachment 2. Staff reviewed the laws governing the public financing programs in New York City, Los Angeles, Seattle, and Oakland and did not find such provisions. This indicates that other jurisdictions have not elected to enact the kind of limitation on public financing contained in Attachment 2 and that San Francisco would be an outlier for adopting this approach. Staff do not believe that events in San Francisco warrant this unique approach to limiting access to the Program.

The most similar provisions that Staff found are listed below. San Francisco already has analogous provisions in effect.

- The requirement in Los Angeles that “[t]he candidate or the candidate’s controlled committee has filed all previously due campaign statements required by the Political Reform Act, the Charter, this Code, or the Administrative Code.”²¹ San Francisco has such a requirement, found in Code section 1.140(a)(4).
- The requirement in New York that publicly financed candidates file any outstanding financial disclosures and pay any outstanding penalties owed to the Campaign Finance Board for any past violations.²² Again, San Francisco already has such a requirement, set forth in Code section 1.140(a)(3)–(4).

¹⁸ *Id.* at § 1.140(a)(3)–(4) (draft).

¹⁹ Campaign & Gov. Conduct Code § 1.140(a)(3)–(4).

²⁰ *Id.* at § 1.140(a)(5).

²¹ Los Angeles Municipal Code § 49.7.23 (2017).

²² New York City Administrative Code § 3-703(1)(m)–(n) (2018).

- The requirement in Oakland that candidates file all pre-election statements that are owed at the time that funds are to be distributed under the public financing program.²³ Code section 1.140(a)(4) already imposes this same requirement in San Francisco.

2. *The type of conduct that would trigger the rule can already result in exclusion from the Program if the candidate's conduct is knowing, willful, or intentional.*

As drafted, Attachment 2 would bar a candidate from receiving public financing if the candidate fails to provide adequate documentation for \$10,000 or more of expenditures in a prior election or fails to timely file forms or pay late fines or penalties. At its November 16th meeting, the Commission briefly discussed whether additional conduct should also trigger a bar to future public financing; specifically, whether the trigger should be broadened to also include other violations, for example those related to contribution recordkeeping, false endorsements, illegal coordination with other committees, advertisement disclaimers, Form 700 filings, illegal use of public resources, or accepting contributions from prohibited sources.

Insofar as any of the conduct listed above violates the Code or the Political Reform Act, any such violation by a candidate will already prevent the candidate from qualifying for the program for five years if the violation was found to be knowing, willful, or intentional.²⁴ This existing provision of the Code shows a clear intent to only exclude individuals from the Program if their prior violations of the Code or the Political Reform Act were committed with an identified, heightened degree of culpability. If a prior violation was not committed in this manner, the Code will still impose penalties pursuant to Code section 1.170. However, such violations will not result in ineligibility for the Program (unless the respondent fails to pay any late fine or penalty that is assessed, in which case the individual will be barred from the Program until the fine or penalty is paid).

Staff supports the current balance that is struck by Code in only barring candidates from the Program in cases of knowing, willful, or intentional violations. Violations that are committed knowingly, willfully, or intentionally evidence a conscious disregard for the Code and/or the Political Reform Act. To promote accountability by candidates while also supporting the goal of broad candidate participation, only such violations should warrant a candidate's automatic ineligibility for the Program. Lowering the rule's culpability requirement to a strict liability standard (especially if it applies to a broad list of violations) has the potential to exclude candidates from the program whose violations did not exhibit heightened culpability and who have since complied with any penalties that were imposed on them.

3. *Although the rules in Attachment 2 would not constitute a true double penalty or implicate retroactivity issues that would prevent the rules from being enacted, these issues are still important policy concerns.*

The approach embodied in Attachment 2 would not technically constitute a penalty because it only pertains to Program eligibility requirements and would not necessarily be imposed on all individuals who violate the Code (some may never apply for public financing and would therefore never be affected). Thus, it cannot be said to be a double penalty imposed on respondents aside from those

²³ Oakland Municipal Code § 3.13.080(g) (2018).

²⁴ Campaign & Gov. Conduct Code § 1.140(a)(5).

described in Code section 1.170. Likewise, since this proposal would be a tightening of eligibility requirements, as opposed to a true penalty, it would be permissible for the Commission to apply this new rule to conduct that occurred prior to the rule's enactment without implicating retroactivity problems.

However, the impact on affected candidates would nonetheless be significant, as public financing is an integral part of City elections for Mayor and Supervisor. Whether candidates should be excluded from the Program for conduct that was not knowing, willful, or intentional is a policy determination that will affect how accessible the Program is to future candidates. In the spirit of the current review project, which is to increase accessibility and boost participation while still maintaining a high level of administrative integrity in the Program, Staff advises against the bar proposed in Attachment 2.

4. *Although basing an exclusion from the Program on a violation established through an enforcement proceeding would be superior to basing it merely on an audit finding, this would not cure the problems with the proposal.*

As drafted, Attachment 2 would bar candidates from the Program based on an audit finding of failure to provide documentation of expenditures. The Commission has discussed whether a violation that has been established through an enforcement proceeding, rather than as a finding in a final audit report, should be the trigger for the bar. As noted above, Staff recommends against adoption of Attachment 2. If, however, the Commission were to approve Attachment 2, a violation established through an enforcement proceeding would be a better triggering event. Following the release of audit reports, the candidates who are the subjects of the reports are often able to provide documentation that shows that the conduct identified in an audit report was not a violation. If an audit finding alone were sufficient to trigger a bar to public financing, such candidates would become ineligible, regardless of whether they were subsequently able to demonstrate, during the course of enforcement review, that no violation had occurred. However, Staff believes that, even with this amendment, Attachment 2 would not constitute a net improvement to the Program.

III. Conclusion

Staff recommends that the Commission approve Attachment 1.

Staff recommends that the Commission not approve Attachment 2.

ATTACHMENT 1

[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 ~~S~~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 ~~S~~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 ~~S~~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

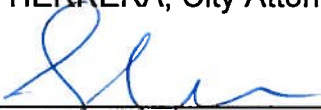
21 Section 2. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the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

[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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November 15, 2018

Pat Ford
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 301
San Francisco, CA 94102

RE: Response to Draft Regulations and Ordinance to Public Financing Program

Dear Pat,

As members of the California Political Treasurers Association (“CPTA”) and firms who actively provide professional political treasury services to San Francisco candidates who seek public financing, we are responding to the proposed amendments to the regulations and ordinance in relation to the public financing program (the “Program”). Our response is as follows in accordance to the Agenda released on November 9th, 2018:

(1) SFEC Proposed Amendment: Addition of “Address Verification Service (AVS)” in the regulation as a form proof for San Francisco residency.

Response: We propose that San Francisco Ethics Commission (“SFEC”) re-evaluate its current requirement of only accepting AVS codes when data is directly being sent from the credit card merchant. With the importance of privacy, many credit card merchants are becoming more reluctant (if not refusing altogether) in sending credit card data directly to third parties (i.e. SFEC) due to potentially breaching their privacy policy with accountholders. As such, it is becoming more difficult for candidate committees to submit matching requests for credit card contributions since San Francisco residency is verified by the AVS code. As SFEC may have noticed, more contributions are being made online via credit card versus checks. Due to this, we recommend SFEC to update its requirements to accept exported credit card data being sent directly from the candidate committee or its authorized representative. If there are questions about the validity of the AVS codes for individual contributions, SFEC may request additional information in relation to the validity of the sent data.

(2) SFEC Proposed Amendment: Clarification of Qualifying Request submission.

Response: As SFEC is recommending additional clarification of Qualifying Request submissions, we are highly recommending SFEC to permit candidate committees, who choose to do so, to submit both its Qualifying Request and its 1st Matching Request simultaneously as doing so will significantly reduce the additional compliance burden on both the candidate committees and SFEC. Many times (if not most), the Qualifying Request and 1st Matching Request list the same contributors. By allowing candidate committees to simultaneously submit both requests, it will reduce the need for SFEC staffers to review the same contributions twice if it was already approved through the Qualifying Request.

(3) SFEC Proposed Amendment: Removal of incremental increase of candidate's IEC and amend to permanent removal of IEC when certain events occur.

Response: SFEC is recommending the removal of incremental increase of the IEC as recognition that is only creates an additional compliance burden for candidate committees. We recommend SFEC to revise its current requirement of filing threshold reports in increments of \$10,000 for supervisorial and \$50,000 for mayoral committees who have raised \$100,000/\$1,000,000 to when expenditures made and accrued is \$10,000 (Supervisorial)/\$50,000 (Mayoral), then \$125,000 (Supervisorial)/\$750,000 (Mayoral) and then \$250,000 (Supervisorial)/\$1,475,000 (Mayoral). Preparing and filing threshold reports with the current small increments of \$10,000/\$50,000 is an expensive compliance burden with no added value to the IEC. Since SFEC is proposing to permanently remove the IEC when certain events occur, SFEC should also reduce the number of threshold reports triggered before the IEC is permanently removed, whether it be increasing the incremental amount from the current \$10,000/\$50,000 or with our above stated threshold recommendations.

(4) Clarification of supporting documentation for contributions submitted for public financing.

Response: Currently, we have received advice to include an added "note" entry on backup documentation uploaded into Netfile if there is a variation in occupation/employer information in the submission versus the remit or credit card contribution data. We are recommending SFEC to accept the occupation/employer information listed on the Qualifying and/or Matching Requests as sufficient proof that clarification and/or confirmation was made with the contributor without the need to add a manual "note" entry in the uploaded backup. By needing to add a manual "note" entry into the backup and having the same information in the submission, it creates an unnecessary compliance burden to the candidate committees since all candidate committees who accept public financing are subject to audit and occupation/employer is reviewed during the audit process.

We sincerely hope SFEC considers our above recommendations as professional political treasury firms who are actively involved in the public financing program on behalf of many candidate committees during each election cycle. If there are any questions or further discussion regarding our recommendations is needed, please feel free to contact us.

Sincerely,



Stacy Owens, Principal
S.E. Owens & Company
sowens@seowenscompany.com
(510) 910-2022



Patricia Mar, Principal
View Avenue Group, LLC
pmar@viewavegrp.com
(628) 333-9198