Ordinance amending the Campaign and Governmental Conduct Code to modify the deadline for participation in the City's public financing program and the operation of individual expenditure ceilings for participating candidates.

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, 1.142, and 1.143, 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" shall mean the sum of all contributions received by a candidate committee supporting a candidate for Mayor or the Board of Supervisors, other than any funds that exceed the candidate's Individual Expenditure Ceiling 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.
"Trust Account Limit" shall mean the amount of funds in the Campaign Contribution Trust Account of a candidate committee supporting a candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds under this Chapter such that the expenditure of this amount would cause the candidate to reach, but not exceed, the candidate's Individual Expenditure Ceiling. The Trust Account Limit shall be reduced as the candidate spends money and shall be increased when his or her Individual Expenditure Ceiling increases.

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SEC. 1.108. CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST ACCOUNTS AND CAMPAIGN CONTINGENCY ACCOUNTS.

(a) CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST ACCOUNTS.

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

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

(3) Account Limits. A candidate committee controlled by a candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds
under this Chapter shall not, at any time before the date of the election for which the candidate has
been certified, have an amount of funds greater than the candidate committee's Trust Account Limit in
its Campaign Contribution Trust Account, unless those contributions are immediately transferred into
the candidate committee's Campaign Contingency Account.

(b) CAMPAIGN CONTINGENCY ACCOUNTS FOR CANDIDATE COMMITTEES FOR
MAYOR AND THE BOARD OF SUPERVISORS:

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

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

(3) No expenditures shall be made from a Campaign Contingency Account established
pursuant to this section. Funds may be transferred from the candidate committee's Campaign
Contingency Account to the candidate committee's Campaign Contribution Trust Account, provided
that the amount of funds in the Campaign Contribution Trust Account does not exceed the candidate
committee's Trust Account Limit. All funds that qualify as matching contributions and are transferred
from the Campaign Contingency Account to the Campaign Contribution Trust Account shall be eligible
to be matched with public funds in accordance with the procedures set forth in this Chapter. Within ten
days after the date of the election, the candidate committee shall turn over all funds in the Campaign
Contingency Account to the Election Campaign Fund.
SEC. 1.142. PROCESS FOR ESTABLISHING ELIGIBILITY; CERTIFICATION BY
THE ETHICS COMMISSION.

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

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

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

If any deadline imposed by this subsection (b) falls on a Saturday, Sunday, or legal
holiday, the deadline shall be the next business day.
(c) DETERMINATION OF ELIGIBILITY. The Executive Director of the Ethics Commission shall review the candidate's declaration and supporting material to determine whether the candidate is eligible to receive public funds under this Chapter I. The Executive Director may audit the candidate's records, interview contributors, and take whatever steps the Executive Director deems necessary to determine eligibility. At the request of the Executive Director, the Controller shall assist in this review process.

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

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

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

If, after viewing resubmitted material, the Executive Director declines to certify that a
candidate is eligible to receive public financing under this Chapter, the Executive Director
shall notify the candidate of this fact. Additional resubmissions may be permitted in the
Executive Director's discretion. 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.

(g) APPEAL TO THE ETHICS COMMISSION. If the Executive Director declines to
certify that a candidate is eligible to receive public financing under this Chapter, the
candidate may appeal the Executive Director's final determination to the Ethics Commission.
The candidate must deliver the written appeal to the Ethics Commission within five days of the
date of notification of the Executive Director's determination.

SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.

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

(a) The Executive Director shall adjust the Individual Expenditure Ceiling of a
candidate for Mayor to an amount equal to $250,000 when the sum of the Total Opposition
Spending against that candidate and the highest level of the Total Supportive Funds of any
other candidate for Mayor is greater than $1,475,000. Provided that the Executive Director may adjust a candidate's Individual Expenditure Ceilings only in increments of
$100,000. Thereafter, the Executive Director shall further adjust a candidate's Individual Expenditure Ceiling in increments of $250,000, whenever the sum of the Total Opposition Spending against that
candidate and the highest level of the Total Supportive Funds of any other candidate for Mayor is
greater than the candidate’s current Individual Expenditure Ceiling by any amount.

(b) The Executive Director shall adjust the Individual Expenditure Ceiling of a
candidate for the Board of Supervisors to an amount equal to by $50,000 when the sum of the
Total Opposition Spending against that candidate and the highest level of the Total Supportive
Funds of any other candidate for the same office on the Board of Supervisors if such amount is
greater than $250,000 by any amount, provided the Executive Director may adjust a candidate's
Individual Expenditure Ceiling only in increments of $10,000. Thereafter, the Executive Director shall
further adjust a candidate's Individual Expenditure Ceiling in increments of $50,000, whenever the sum
of the Total Opposition Spending against that candidate and the highest level of the Total Supportive
Funds of any other candidate for the same office is greater than the candidate’s current Individual
Expenditure Ceiling by any amount.

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

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

(1) whether the communication clearly identifies one or more candidates;

(2) the timing of the communication;

(3) the voters targeted by the communication;

(4) whether the communication identifies any candidate’s position on a public
policy issue and urges the reader or viewer to take action, including calling the candidate to
support or oppose the candidate’s position;
(5) whether the position of one or more candidates on a public policy issue has been raised as distinguishing these candidates from others in the campaign, either in the communication itself or in other public communications;

(6) whether the communication is part of an ongoing series of substantially similar advocacy communications by the organization on the same issue; and

(7) any other factors the Executive Director deems relevant.

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

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

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

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

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

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

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

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

Section 5. Under Campaign and Governmental Conduct Code Section 1.103, the City
may enact this ordinance without voter approval only if (a) the ordinance furthers the purposes
of Campaign and Governmental Conduct Code Article I, Chapter 1; (b) the Ethics
Commission approves the ordinance in advance by at least a four-fifths vote of all its
members; (c) the ordinance has been available for public review at least 30 days before the
ordinance is considered by the Board of Supervisors or any committee of the Board of
Supervisors; and (d) the Board of Supervisors approves the proposed amendment by at least
a two-thirds vote of all its members.

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

By:
ANDREW SHEN
Deputy City Attorney