

BOARD of SUPERVISORS



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MEMORANDUM

TO: LeeAnn Pelham, Executive Director, Ethics Commission
FROM: *el* Alisa Somera, Legislative Deputy Director, Rules Committee
bs Board of Supervisors
DATE: May 7, 2018
SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following substitute legislation, introduced by Supervisor Kim on May 1, 2018. This matter has been referred to the Ethics Commission for comment and recommendation.

Pursuant to Campaign and Governmental Conduct Code, Section 1.103, the Board of Supervisors may amend Chapter 1 of that code if the Ethics Commission approves the proposed amendment in advance by at least a 4/5 vote of all its members.

File No. 170868-3

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

Please submit the Commission's response, which will be included with the legislation, with this cover sheet.

RESPONSE FROM ETHICS COMMISSION

___ Approved (by ___ vote)

___ Rejected (by ___ vote)

___ Recommendation Attached

Chairperson, Ethics Commission

Date

c: Kyle Kundert, Ethics Commission

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

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

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

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

15 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
16 adding Section 1.165, and revising Sections 1.115, 1.128, 1.152, and 1.156, to read as
17 follows:

18 **SEC. 1.115. COORDINATION OF EXPENDITURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (7) The expenditure is made at the request or suggestion of the candidate for
23 the benefit of another candidate or committee.
24
25

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (a) ELECTIONS FOR THE BOARD OF SUPERVISORS.

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

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

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

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

6 * * * *

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

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

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

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

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

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

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

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

22 By:


23 _____
24 ANDREW SHEN
25 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST
(Substituted, 5/1/2018)

[Campaign and Governmental Conduct Code - Campaign Finance Amendments]

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

Existing Law

1. Independent Expenditures; Coordination

Consistent with state law, local law specifies that if an expenditure is made at the behest of a candidate, the expenditure constitutes a contribution to the candidate it benefits. S.F. Campaign & Gov'tal Conduct Code § 1.115. Local law does not require candidates to make any explicit representations or statements regarding this potential "coordination" with committees making expenditures on their behalf.

2. Voluntary Expenditure Ceilings

Candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the San Francisco Unified School District ("School Board") or the Board of Trustees for the San Francisco Community College District ("City College Board") may accept voluntary spending limits, referred to as "voluntary expenditure ceilings." *Id.* § 1.128(a). The voluntary expenditure ceiling for candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, and Treasurer is \$243,000. *Id.* § 1.130(a). The voluntary expenditure ceiling for School Board and City College Board candidates is \$104,000. *Id.* § 1.130(b). The Ethics Commission may "lift" these voluntary expenditures ceilings in specified circumstances. *See id.* § 1.134.

Candidates for the Board of Supervisors and Mayor cannot accept these voluntary spending limits. But these candidates may participate in the City's separate public financing program.

Amendments to Current Law

1. Independent Expenditures; Coordination

The proposed ordinance would require candidates to file statements with the Ethics Commission attesting, under penalty of perjury, that they have not engaged in any "coordination" with committees making independent expenditures.

2. Voluntary Expenditure Ceilings

The proposed ordinance would require the Director of Elections to include a notation in the Voter Information Pamphlet for each candidate for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, School Board, and City College Board indicating whether the candidate has accepted the applicable voluntary expenditure ceiling. The proposal would also require the Director of Elections, in consultation with the Executive Director of the Ethics Commission, to also include a notation in the Voter Information Pamphlet explaining that candidates for the Board of Supervisors and Mayor are not eligible to accept voluntary expenditure ceilings.

Background Information

Under Campaign and Governmental Conduct Code section 1.103, the Board of Supervisors may amend the campaign finance provisions of the Code if:

- (a) The amendment furthers the purposes of this Chapter;
- (b) The Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- (c) The proposed amendment is available for public review at least 30 days before the amendment 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.

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