



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU
CHAIR

May 16, 2018

QUENTIN L. KOPP
VICE-CHAIR

Honorable Members

PAUL A. RENNE
COMMISSIONER

San Francisco Board of Supervisors
Attention: Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

YVONNE LEE
COMMISSIONER

Re: Proposed Ordinance amending the Campaign and Governmental Conduct Code (File No. 170868)

NOREEN AMBROSE
COMMISSIONER

Honorable Members:

LEEANN PELHAM
EXECUTIVE DIRECTOR

At its May 7, 2018 Regular Meeting, the Ethics Commission voted unanimously to support File 170868, an ordinance sponsored by Supervisor Kim that would amend the Campaign and Governmental Conduct Code (the "Code"). A copy of the legislation considered and acted on by the Ethics Commission appears in the Attachment.

For the reasons detailed below, the Ethics Commission supports this legislation to further promote accountability in City campaigns and assist voters in making informed electoral decisions.

Non-Coordination Attestation by Candidates

The Ordinance would add subsection (e) to section 1.115 of the Code, requiring all candidates who file campaign statements with the Commission to "attest, under penalty of perjury, that their candidate committees have not failed to report any expenditure made by another committee that would constitute a contribution to their candidate committees." Under the California Government Code, a payment for a communication that is made in coordination with a candidate constitutes a contribution to that candidate. By requiring candidates to attest that they have not failed to report any contributions from other committees, this legislation would effectively require candidates to attest did they have not surreptitiously coordinated with an outside committee. This attestation requirement would help to remind candidates about rules regarding independent expenditures, coordination, and reporting of "nonmonetary" contributions (contributions that do not take the form of a cash payment, loan, or debt).

Noting Acceptance of the Voluntary Expenditure Ceiling in the Voter Information Pamphlet

The Ordinance would amend section 1.128 to require that the voter information pamphlet note which candidates have accepted the Voluntary Expenditure Ceiling (VEC) and which have not. The VEC is a limit on campaign expenditures that candidates in applicable races may voluntarily chose to abide by in their campaigns. Under City law, the VEC applies only to

candidates seeking election to the offices of Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the San Francisco Unified School District or the Governing Board of the San Francisco Community College District.¹ A candidate who has accepted the applicable voluntary expenditure ceiling and makes qualified campaign expenditures in excess of those ceiling when the Ethics Commission has not lifted the applicable ceiling when required to under the law is subject to penalties. Current law requires the Ethics Commission to maintain on its website a list of the candidates who have accepted the voluntary expenditure ceiling. Indicating directly in the Voter Information Pamphlet whether a candidate who may abide by a VEC has opted to do so will equip voters with information about that candidate's choice at the time they are considering their vote.

Clarifying Contents of the Public Financing Report

Current law requires the Ethics Commission to report to the Mayor and Board of Supervisors on the City's public financing program following each election at which on or more candidates to those offices is elected. The proposed Ordinance would add language to existing law at Section 1.156 specifying that the report must additionally analyze "the administration, efficacy, and operation of the City's public financing program." The Ethics Commission supports this statutory change, which is consistent with its current practices.

Information Regarding Third-Party Spending

The Ordinance would create a new statutory requirement in Section 1.165 that the Commission provide data on its website regarding independent expenditures supporting or opposing candidates in City elections. The data would have to reflect the most current information disclosed on committee statements and reports. The Ethics Commission supports this statutory change, which is consistent with its current practices.

The Commission supports the proposed Ordinance and encourages its enactment when it comes before the Board for its consideration.

If you have any questions for the Ethics Commission or would like any additional information from our office, please feel free to contact me at (415) 252-3100.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham
Executive Director

Attachment

¹ Candidates for the Board of Supervisors or Mayor may not accept a VEC and instead have the option to participate in a public financing system that enables them to receive limited public funds in exchange for agreeing to voluntarily limit their campaign spending, among other things.

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

2

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

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

11

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

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (7) The expenditure is made at the request or suggestion of the candidate for
23 the benefit of another candidate or committee.
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 **SEC. 1.156. REPORT TO THE MAYOR AND BOARD OF SUPERVISORS - PUBLIC**
8 **FINANCING.**

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

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

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

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

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

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

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

22 By: _____
23 ANDREW SHEN
24 Deputy City Attorney

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