

## LEGISLATIVE DIGEST

[Campaign & Governmental Conduct Code – Amending Public Financing Program]

**Ordinance amending the Campaign and Governmental Conduct Code and the Municipal Elections Code to modify funding of the City's public financing program, to increase expenditure ceilings for supervisorial candidates, to delay the date on which public funds may be disbursed, to change the qualification requirements for participating candidates, and to advance the date by which all local candidates must file their nomination papers.**

### Existing Law

The City's public financing program makes public funds available to candidates for the Board of Supervisors and Mayor. The Ethics Commission is primarily responsible for administering the public financing program. The public financing program has the following features:

1. Election Campaign Fund: The City has established an election campaign fund as the source of funds for the City's public financing program. On an annual basis, the Board of Supervisors and the Mayor appropriates \$2.75 per San Francisco resident to the fund. The amount of funds in the Election Campaign Fund may not exceed \$13.5 million. If the amount of funds in the account becomes depleted beyond certain thresholds, the Ethics Commission may request a supplemental appropriation from the Board of Supervisors and the Mayor.
2. Qualification: To qualify for the public financing program, candidates for the Board of Supervisors must collect at least \$5,000 in campaign contributions from at least 75 City residents, and candidates for Mayor must collect at least \$25,000 from at least 250 City residents. S.F. Campaign & Gov'tal Conduct Code §§ 1.140(b)(2), 1.140(c)(2).
3. Availability of public funds: The City may begin disbursement of public funds to qualifying candidates nine months prior to the election, e.g., the February prior to a November general election. *Id.* § 1.144(b).
4. Matching public funds: After qualifying, candidates receive an initial grant of funds - \$10,000 for supervisorial candidates and \$50,000 for mayoral candidates. *Id.* §§ 1.144(c)(3)(A), 1.144(d)(3)(A). Thereafter, campaign contributions raised by candidates are matched with public funds in pre-determined ratios.

For supervisorial candidates, for the first \$10,000 that they raise in private campaign contributions, each dollar is matched with four dollars in public funds (*i.e.*, up to

\$40,000 in public funds). *Id.* § 1.144(d)(3)(B). Thereafter, additional contributions received by supervisorial candidates are matched on a one-to-one basis. *Id.* § 1.144(d)(3)(C). For mayoral candidates, for the first \$100,000 that they raise in private campaign contributions, each dollar is matched with four dollars in public funds (*i.e.*, up to \$400,000 in public funds). *Id.* § 1.144(c)(3)(B). Thereafter, additional contributions received by mayoral candidates are matched on a one-to-one basis. *Id.* § 1.144(c)(3)(C).

5. Individual expenditure ceilings: Candidates who participate in the City's public financing program are subject to an adjustable spending cap, referred to as an individual expenditure ceiling. Once they qualify, supervisorial candidates are subject to an individual expenditure ceiling of \$143,000, and mayoral candidates are subject to an individual expenditure ceiling of \$1,475,000. *Id.* §§ 1.140(b)(4), 1.140(c)(4). As the election progresses, individual expenditure ceilings for publicly financed candidates increase based on the amount of funds spent by competing candidates and third-parties who oppose their candidacies. *Id.* § 1.143.

6. Penalties for violations: In addition to other penalties for violating campaign finance laws, existing law provides that if a candidate is found by a court to have exceeded the applicable individual expenditure ceiling by ten percent or more prior to the election, the candidate would no longer be eligible for election. *Id.* § 1.170(i)(2). It also provides that if those circumstances exist, the candidate may not run for local elective office for five years following the court's determination. *Id.* Section 1.170 also states that the Ethics Commission may recommend to the Board of Supervisors that any such candidate should be removed from office. *Id.*

Existing law also imposes filing deadlines on candidates seeking election to the Board of Supervisors and the office of the Mayor. Candidates for either office must generally file their nomination papers with the Department of Elections no earlier than the 113th day before the election (early or mid-July for a November general election) and no later than the 88th day before the election (early August for a November general election). S.F. Mun. Elec. Code § 200; Cal. Elec. Code § 10220.

#### Amendments to Current Law

The proposal would make the following changes to the City's public financing program for supervisorial and mayoral candidates:

1. Election Campaign Fund: In years in which the City will hold a mayoral election, the City would appropriate funds to the Election Campaign Fund so that there is \$5 million available. In years in which the City will hold a supervisorial election, the City would appropriate funds so that there is \$4 million available. But in no instance may the amount in the Election Campaign Fund exceed \$7 million.

2. Qualification: To qualify for the public financing program, candidates for the Board of Supervisors would be required to collect at least \$10,000 in campaign contributions from at least 100 City residents, and candidates for Mayor would be required to collect at least \$50,000 from at least 500 City residents. The proposal would also impose higher qualification thresholds for incumbents. Incumbent members of the Board of Supervisors would be required to collect at least \$15,000 from at least 150 City residents, and the Mayor would be required to collect at least \$75,000 from at least 750 City residents.
3. Availability of public funds: The City could disburse public funds to qualifying candidates no earlier than the 142nd day prior to the election. For a November general election, the 142nd day would fall in approximately early to mid-June.
4. Matching public funds: After qualifying, candidates would receive an initial grant of funds - \$20,000 for supervisorial candidates and \$100,000 for mayoral candidates. Thereafter, campaign contributions raised by candidates would be matched with public funds in pre-determined ratios up to each candidate's individual expenditure ceiling.

For supervisorial candidates, for the first \$50,000 that they raise in private campaign contributions, each dollar would be matched with two dollars in public funds (*i.e.*, up to \$100,000 in public funds). Thereafter, additional contributions received by supervisorial candidates would be matched on a one-to-one basis. For mayoral candidates, for the first \$425,000 that they raise in private campaign contributions, each dollar would be matched with two dollars in public funds (*i.e.*, up to \$850,000 in public funds). Thereafter, additional contributions received by mayoral candidates would be matched on a one-to-one basis.

For the one-to-one tiers of matching public funds, non-incumbent and incumbent candidates would have slightly different amounts of public funds available to them. Incumbent supervisorial candidates could match up \$32,500 in private contributions, while non-incumbent supervisorial candidates could receive up to \$35,000. Incumbent mayoral candidates could match up to \$12,500 in private contributions, and non-incumbent mayoral candidates could receive up to \$25,000.

5. Individual expenditure ceilings: For supervisorial candidates the initial individual expenditure ceiling would be increased to \$250,000 from \$143,000. The initial individual expenditure ceiling for mayoral candidates would remain at \$1,475,000.

But for both types of candidates, if they fund-raise beyond their initial individual expenditure ceilings, their private contributions will no longer be matched with public funds.

6. Penalties for violations: Under the proposal, if a successful candidate for the Board of Supervisors exceeded the applicable expenditure ceiling by more than ten percent, such a violation would constitute official misconduct. If the Mayor chose to pursue official misconduct charges, the suspension and possible removal of the candidate would be subject to the procedures set forth in Charter section 15.105(a).

Candidates for local elective offices, including the Board of Supervisors and Mayor, would be required to file their nomination documents by no later than the 146th day before the election.

The proposed legislation also includes uncodified findings that explain the governmental purposes served by the City's public financing program, and the need for the individual expenditure ceiling mechanism.

#### Background Information

One purpose of this proposal is to respond to the United States Supreme Court's ruling in *Arizona Free Enterprise v. Bennett*, 131 S.Ct. 2806 (2011), a decision that found that Arizona's public financing program violated the Constitution by providing additional public funds to participating candidates in response to spending by non-participating candidates and third-parties.

At its January 23, 2012 meeting, the Ethics Commission unanimously approved the portions of this proposal that amend the Campaign and Governmental Conduct Code.

On February 28, 2012, the Board of Supervisors made further amendments to the proposal and re-referred the legislation to the Ethics Commission.