

1 [Amendments to Electioneering Communications Ordinance.]

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3 **Ordinance amending sections 1.104 and 1.161.5 of the Campaign and Governmental**
4 **Conduct Code to provide that payments for electioneering communications made at**
5 **the behest of a candidate are contributions to that candidate; to impose limits on the**
6 **amount of payments that may be given or received for the purpose of making**
7 **electioneering communications; and to require supplemental reporting by persons who**
8 **make electioneering communications.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

13 Section 1. The San Francisco Campaign and Governmental Code is hereby amended
14 by amending Sections 1.104 and 1.161.5, to read as follows:

15 **SEC. 1.104. DEFINITIONS.**

16 Whenever in this Chapter the following words or phrases are used, they shall
17 mean:

18 (a) "Candidate" shall mean any individual listed on the ballot for election to
19 any City elective office or who otherwise has taken affirmative action to seek nomination or
20 election to such office. The term "candidate" shall also mean the candidate's campaign
21 committee.

22 (b) "Charitable organization" shall mean an entity exempt from taxation
23 pursuant to Title 26, Section 501 of the United State Code.

24 (c) "City elective office" shall mean the offices of Mayor, Member of the
25 Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public

1 Defender, Member of the Board of Education of the San Francisco Unified School District and
2 Member of the Governing Board of the San Francisco Community College District. The Board
3 of Supervisors shall be deemed to consist of eleven separate City elective offices, the San
4 Francisco Community College District shall be deemed to consist of seven separate City
5 elective offices, and the Board of Education of the San Francisco Unified School District shall
6 be deemed to consist of seven separate City elective offices.

7 (d) "Committee" shall be defined as set forth in the Government Code of the
8 State of California (commencing at Section 81000).

9 (e) "Contribution" shall be defined as set forth in Government Code of the
10 State of California (commencing at Section 81000); provided, however, that "contribution"
11 shall include loans of any kind or nature and any payment for an electioneering communication
12 made at the behest of a candidate.

13 (f) "Election" shall mean any primary, general, special or run-off municipal
14 election held in the City and County of San Francisco for City elective office, regardless of
15 whether the election is conducted by district or Citywide. With respect to the offices of Public
16 Defender and Assessor, primary and general elections are separate elections for purposes of
17 this ordinance. The primary election period for these offices shall extend from January 1 of
18 the first year of an election cycle up to and including the date of the primary election, and the
19 general election period for these offices shall extend from the day following the primary
20 election up to and including December 31 of the fourth year of the election cycle. With
21 respect to the offices of Mayor, City Attorney, District Attorney, Sheriff, Treasurer and
22 Supervisor, general and run-off elections are separate elections for the purposes of this
23 ordinance. The general election period shall extend from January 1 of the first year of an
24 election cycle up to and including the date of the general election, and the run-off election
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1 period shall extend from the date of the general election up to and including December 31 of
2 the fourth year of the election cycle.

3 (g) "Election cycle" shall mean a four-year period preceding a term of office
4 as defined by the San Francisco Charter, beginning on January 1, and ending on December
5 31 of the fourth year thereafter.

6 (h) "Enforcement authority" shall mean the District Attorney of the City and
7 County of San Francisco for criminal enforcement and the City Attorney for civil enforcement.
8 Nothing in this Chapter shall be construed as limiting the authority of any law enforcement
9 agency or prosecuting attorney to enforce the provisions of this Chapter under any
10 circumstances where such law enforcement agency or prosecuting attorney otherwise has
11 lawful authority to do so.

12 (i) "Ethics Commission" shall mean the San Francisco Ethics Commission.

13 (j) "Executive Director" shall mean the Executive Director of the Ethics
14 Commission, or the Executive Director's designee.

15 (k) "Matching contribution" shall mean a contribution, that is made by an
16 individual, other than the candidate, who is a resident of San Francisco. Matching
17 contributions shall not include loans or qualifying contributions, and must comply with all
18 requirements of this Chapter. Matching contributions under \$100 that are not made by written
19 instrument must be accompanied by written documentation of the contributor's name and
20 address.

21 (l) "Measure" shall mean any City referendum, recall or ballot proposition,
22 whether or not it qualifies for the ballot.

23 (m) "Person" shall mean any individual, partnership, corporation, association,
24 firm, committee, club or other organization or group of persons, however organized.

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1 (n) "Qualified campaign expenditure" for candidates shall mean includes all
2 of the following:

3 (1) Any expenditure made by a candidate, or by a committee controlled by
4 the candidate, for the purpose of influencing or attempting to influence the actions of the
5 voters for the election of the candidate to City elective office.

6 (2) A nonmonetary contribution provided to the candidate, officeholder or
7 committee controlled by the candidate.

8 (3) The total cost actually paid or incurred by the candidate or controlled
9 committee of the candidate for a slate mailing or other campaign literature produced or
10 authorized by more than one candidate.

11 (4) Expenses incurred, but for which payment has not yet been made.

12 (5) Expenses associated with complying with applicable laws, including but
13 not limited to the California Political Reform Act, Government Code section 81000, et seq.,
14 Chapter 3 of this Article governing electronic filing of campaign statements, and the provisions
15 of this Chapter.

16 (6) "Qualified campaign expenditure" shall not include expenses incurred in
17 connection with an administrative or judicial proceeding, payments for administrative, civil or
18 criminal fines, including late filing fines, or for inaugural activities or officeholder expenses.

19 (o) "Qualifying contribution" shall mean a contribution of not less than \$10
20 and not more than \$100 that is made by an individual who is a resident of San Francisco and
21 that complies with all requirements of this Chapter. Qualifying contributions shall not include
22 loans. Qualifying contributions under \$100 that are not made by written instrument must be
23 accompanied by written documentation of the contributor's name and address.

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1 (p) "Recorded telephone message" shall mean a recorded audio message
2 that expressly supports or opposes a candidate for City elective office that is distributed by
3 telephone.

4 (q) "Surplus funds" shall mean funds remaining in a candidate's campaign
5 account at the time the candidate leaves City elective office, or at the end of the post-election
6 reporting period following the defeat of the candidate for City elective office, whichever occurs
7 last, and funds remaining in the campaign account of a committee primarily formed to support
8 or oppose a measure at the end of the post-election reporting period following the election at
9 which the measure appeared on the ballot.

10 (r) "Written instrument" means a check, credit card receipt, or record of
11 electronic transfer of funds.

12 **SEC. 1.161.5. ~~DISCLOSURE AND FILING REQUIREMENTS FOR~~ REGULATION OF**
13 **ELECTIONEERING COMMUNICATIONS.**

14 (a) DISCLOSURE STATEMENTS.

15 (1) Every electioneering communication shall include a disclosure statement
16 identifying the person who paid for the communication. Such disclosure statement shall, at a
17 minimum, contain the following words, "paid for by _____ (insert the name of the person
18 who paid for the communication)."

19 (2) Any disclosure statement required by this section to be in printed form shall be
20 printed in a type and color so as to be easily legible to the intended public. In no situation
21 shall such disclosure statement be printed in less than 14 point type or in a color or print that
22 does not contrast with the background so as to be easily legible to the intended public.

23 (3) Any disclosure statement required by this section to be in spoken form shall be
24 spoken at the same volume and speed as the rest of the communication so as to be clearly
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1 audible and understood by the intended public and otherwise appropriately conveyed for the
2 hearing impaired.

3 (b) REPORTING OBLIGATIONS.

4 (1) Every person who makes payments for electioneering communications ~~in an~~
5 ~~aggregate amount of \$1,000 during any calendar year~~ shall, within 48 hours of each disclosure
6 date, file an itemized statement with the San Francisco Ethics Commission.

7 (2) Each itemized statement required to be filed under this section shall be filed on a
8 form promulgated by the San Francisco Ethics Commission and shall contain the following
9 information:

10 (A) the full name, street address, city, state and zip code of the person making
11 payments for electioneering communications;

12 (B) the name of any individual sharing or exercising direction and control over the
13 person making payments for electioneering communications;

14 (C) the total amount of payments made by the person for electioneering
15 communications during the calendar year;

16 (D) a detailed description of each payment made by the person for electioneering
17 communications during the calendar year, provided that the person has not already reported
18 such payments on an itemized statement filed under this section; such detailed description
19 shall include the date the payment was made, the full name and address of the person to
20 whom the payment was made; the amount of the payment, and a brief description of the
21 consideration for which each payment was made;

22 (E) a detailed accounting of any payments of \$100 or more that the person has
23 received from another person, which were used for making electioneering communications,
24 provided that the person has not already reported such payments received on an itemized
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1 statement filed under this section; such detailed accounting shall include the dollar amount or
2 value of each payment, the date of the payment's receipt, the name, street address, city,
3 state, and zip code of the person who made such payment, the occupation and employer of
4 the person who made such payment, if any, or, if the person is self-employed, the name of the
5 person's business, and the cumulative amount of payments received for the purpose of
6 making electioneering communications from that person during the calendar year;

7 (F) the total amount of all payments reported under subsection (E) during the calendar
8 year;

9 (G) a legible copy of the electioneering communication if in printed form, or a transcript
10 of the electioneering communication if in spoken form; and

11 (H) any other information required by the Ethics Commission consistent with the
12 purposes of this section.

13 (3) The filer shall verify, under penalty of perjury, the accuracy and completeness of
14 the information provided in the itemized statement, and shall retain for a period of five years
15 all books, papers and documents necessary to substantiate the itemized statements required
16 by this section.

17 (4) The Ethics Commission may require any itemized statement to be filed
18 electronically and may permit any required statement to be filed by facsimile. The Ethics
19 Commission shall promulgate regulations to implement this subsection before any person
20 shall be required to file an itemized statement electronically or permitted to file a statement by
21 facsimile.

22 (5) If any person files an itemized statement after any deadline imposed by this
23 section, the Ethics Commission shall, in addition to any other penalties or remedies
24 established in this Chapter, fine the person \$10 per day after the deadline until the statement
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1 is received by the Ethics Commission. The Ethics Commission may reduce or waive a fine if
2 the Commission determines that the late filing was not willful and that enforcement will not
3 further the purposes of this Chapter. The Ethics Commission shall deposit funds collected
4 under this section in the General Fund of the City and County of San Francisco.

5 (c) LIMITS ON PAYMENTS GIVEN OR RECEIVED FOR ELECTIONEERING
6 COMMUNICATIONS.

7 (1) Limits.

8 (A) No person shall solicit or accept any payment from another person for the purpose of
9 making electioneering communications, which will cause the total amount received from that person
10 for the purpose of making electioneering communications to exceed \$500 per calendar year.

11 (B) No person shall solicit or accept any payment from another person for the purpose of
12 making electioneering communications, which will cause the total amount given by the donor to all
13 persons for the purpose of making electioneering communications to exceed \$3000 per calendar year.

14 (C) No person shall give any payment to another person in excess of the limits set forth in
15 subsections (c)(1)(A) and (c)(1)(B).

16 (2) Aggregation of Affiliated Entity Payments.

17 (A) General rule. For purposes of the limits imposed by this section, the payments of an entity
18 whose payments are directed and controlled by any individual shall be aggregated with payments made
19 by that individual and any other entity whose payments are directed and controlled by the same
20 individual.

21 (B) Multiple entity payments controlled by the same persons. If two or more entities make
22 payments that are directed and controlled by a majority of the same persons, the payments of those
23 entities shall be aggregated.

1 (C) Majority-owned entities. Payments made by entities that are majority-owned by any person
2 shall be aggregated with the payments of the majority owner and all other entities majority-owned by
3 that person, unless those entities act independently in their decisions to make payments.

4 (D) Definition. For purposes of this section, the term "entity" means any person other than
5 an individual and "majority-owned" means a direct or indirect ownership of more than 50 percent,
6 except that an entity owned equally by two individuals shall be deemed majority-owned by each of the
7 individuals.

8 (3) Information Required.

9 A person receiving payments for the purpose of making electioneering communications shall
10 not deposit any payment that causes the total amount given by another person to equal or exceed \$100
11 unless the person has the following information: the full name; street address; occupation; and the
12 name of the employer of the person making the payment or, if the person making the payment is self-
13 employed, the name of the person's business. A person will be deemed not to have had the required
14 information at the time the payment was deposited if the required information is not reported on the
15 first itemized statement on which the payment is required to be reported.

16 (4) Forfeiture Of Unlawful Payments.

17 In addition to any other penalty, each person that receives a payment which exceeds the limits
18 imposed by this section or which does not comply with the requirements of this section shall pay
19 promptly the amount received or deposited in excess of the amount permitted by this section to the City
20 and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the
21 General Fund of the City and County; provided that the Commission may provide for the waiver or
22 reduction of the forfeiture.

23 (5) Return Of Payments.
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1 A payment shall not be considered to be received if it is not cashed, negotiated, or deposited
2 and is returned to the donor before the date on which the payment would otherwise be required to be
3 reported on an itemized statement.

4 (d€) DEFINITIONS.

5 Whenever in this section the following words or phrases are used, they shall mean:

6 (1) "Disclosure Date" shall mean: (A) the first date during any calendar year when an
7 electioneering communication is distributed after a person has made payments aggregating
8 \$1,000 for electioneering communications; ~~and~~ (B) after a person has met the threshold under
9 subsection (A), any date during that same calendar year when an electioneering
10 communication is distributed, if that same person made any payments for such electioneering
11 communication; and (C) any date on which a person has received payments from other persons in an
12 aggregate amount of \$1,000 for the purposes of paying for an electioneering communication disclosed
13 on a previously filed itemized statement.

14 (2) "Distributed" shall mean any act that permits an electioneering communication to
15 be viewed, read or heard.

16 (3) "Electioneering Communication" shall mean any communication, including but not
17 limited to any broadcast, cable, satellite, radio, internet, or telephone communication, and any
18 mailing, flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed
19 advertisement, that:

20 (A) refers to a clearly identified candidate for City elective office or a City elective
21 officer who is the subject of a recall election; and

22 (B) is distributed within 90 days prior to an election for the City elective office sought
23 by the candidate or a recall election regarding the City elective officer to 500 or more
24 individuals who are registered to vote or eligible to register to vote in the election or recall
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1 election. There shall be a rebuttable presumption that any broadcast, cable, satellite, or radio
2 communication and any sign, billboard or printed advertisement is distributed to 500 or more
3 individuals who are eligible to vote in or eligible to register to vote in an election for the City
4 elective office sought by the candidate or a recall election regarding the City elective officer.

5 (C) The term "Electioneering Communication" shall not include:

6 (i) communications that constitute expenditures or independent expenditures under
7 this Chapter;

8 (ii) communications made by a slate mailer organization if such communications are
9 required to be disclosed under California Government Code section 81000, et. seq.;

10 (iii) communications paid for by the City or any other local, state or federal government
11 agency;

12 (iv) spoken communications between two or more individuals in direct conversation
13 unless such communications are made by telephone and at least one of the individuals is
14 compensated for the purposes of making the telephone communication;

15 (v) communications that appear on bumper stickers, pins, stickers, hat bands, badges,
16 ribbons and other similar memorabilia;

17 (vi) news stories, commentaries or editorials distributed through any newspaper, radio
18 station, television station, or other recognized news medium unless such news medium is
19 owned or controlled by any political party, political committee or candidate;

20 (vii) communications to all members, employees and shareholders of an organization,
21 other than a political party, provided that such communications do not constitute general
22 public advertising such as, but not limited to, broadcasting, billboards, and newspaper
23 advertisements;

24 (viii) communications that occur during a candidate debate or forum; and
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1 (ix) communications made solely to promote a candidate debate or forum made by or
2 on behalf of the person sponsoring the debate or forum, provided that such communications
3 do not otherwise discuss the positions or experience of a candidate for City elective office or a
4 City elective officer who is the subject of a recall election.

5 (4) "Internet Communication" shall include paid internet advertisements such as
6 "banner" and "pop up" advertisements, paid emails or emails sent to addresses purchased
7 from another person, and similar types of internet communications as defined by the Ethics
8 Commission by regulation, but shall not include web blogs, listserves sent to persons who
9 have contacted the sender, discussion forums, or general postings on web pages.

10 (5) "Payment" shall be defined as set forth in Government Code of the State of
11 California (commencing at Section 81000); provided, however, that "payment" shall also
12 include any enforceable promise to make a payment.

13 (6) "Refers to a clearly identified candidate for City elective office or a City elective
14 officer who is the subject of a recall election" shall mean any communication that contains the
15 candidate's or officer's name, nickname or image or makes any other unambiguous reference
16 to the candidate or officer such as "your Supervisor" or "the incumbent."

17 (~~et~~) Regulations.

18 The Ethics Commission shall issue regulations implementing this section, including
19 regulations defining all members, employees and shareholders of an organization.

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

22 By: _____
23 CHAD A. JACOBS
24 Deputy City Attorney

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