

1 [Initiative Ordinance - Campaign & Governmental Conduct, Municipal Elections Codes -
2 Improving Public Financing of Elections]

3 **Motion ordering submitted to the voters an ordinance authorizing the amendment of**
4 **the Campaign and Governmental Conduct Code and Municipal Elections Code to**
5 **adjust expenditure ceilings in the public financing program in response to the U.S.**
6 **Supreme Court ruling in *Arizona Free Enterprise v. Bennett*, adjust public financing**
7 **deadlines and thresholds, and advance candidate filing deadlines, at an election to be**
8 **held on June 5, 2012.**

9

10 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
11 voters of the City and County of San Francisco, at an election to be held on June 5, 2012.

12

13 **Ordinance amending the Campaign and Governmental Conduct Code and Municipal**
14 **Elections Code to adjust expenditure ceilings in the public financing program in**
15 **response to the U.S. Supreme Court ruling in *Arizona Free Enterprise v. Bennett*, adjust**
16 **public financing deadlines and thresholds, and advance candidate filing deadlines.**

17 NOTE: Additions are *single-underline italics Times New Roman*;
18 deletions are ~~*strike-through italics Times New Roman*~~.

19

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

20

21 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
22 amended by amending Sections 1.104, 1.108, 1.140, 1.142, 1.143, 1.144, and 1.170 to read
23 as follows:

24

SEC. 1.104. DEFINITIONS.

25

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

26

1 (a) "Candidate" shall be defined as set forth in the California Political Reform Act,
2 California Government Code section 81000, et seq., but shall include only candidates for City
3 elective office.

4 (b) "Candidate committee" shall mean a committee controlled by a candidate, and
5 primarily formed to support that candidate's election for City elective office.

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

8 (d) "City elective office" shall mean the offices of Mayor, Member of the Board of
9 Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender,
10 Member of the Board of Education of the San Francisco Unified School District and Member
11 of the Governing Board of the San Francisco Community College District. The Board of
12 Supervisors consists of eleven separate City elective offices, the San Francisco Community
13 College District consists of seven separate City elective offices, and the Board of Education of
14 the San Francisco Unified School District consists of seven separate City elective offices.

15 (e) "Code" shall mean the San Francisco Campaign and Governmental Conduct
16 Code.

17 (f) "Committee" shall be defined as set forth in the California Political Reform Act,
18 California Government Code section 81000, et seq.

19 (g) "Contribution" shall be defined as set forth in the California Political Reform Act,
20 California Government Code section 81000, et seq.; provided, however, that "contribution"
21 shall include loans of any kind or nature.

22 (h) "Controlled committee" shall be defined as set forth in the California Political
23 Reform Act, California Government Code section 81000, et seq.

1 (i) "Election" shall mean any general, or special municipal election held in the City
2 and County of San Francisco for City elective office or for a local measure, regardless of
3 whether the election is conducted by district or Citywide.

4 (j) "Enforcement authority" shall mean the District Attorney for criminal
5 enforcement, the City Attorney for civil enforcement, and the Ethics Commission for
6 administrative enforcement. Nothing in this Chapter shall be construed as limiting the
7 authority of any law enforcement agency or prosecuting attorney to enforce the provisions of
8 this Chapter under any circumstances where such law enforcement agency or prosecuting
9 attorney otherwise has lawful authority to do so.

10 (k) "Ethics Commission" shall mean the San Francisco Ethics Commission.

11 (l) "Executive Director" shall mean the Executive Director of the Ethics
12 Commission, or the Executive Director's designee.

13 (m) "General purpose committee" shall be defined as set forth in the California
14 Political Reform Act, California Government Code section 81000 et seq.

15 (n) "Independent expenditure" shall be defined as set forth in the California Political
16 Reform Act, California Government Code section 81000 et seq. An expenditure is not
17 considered independent and shall be treated as a contribution from the person making the
18 expenditure to the candidate on whose behalf or for whose benefit the expenditure is made, if
19 the expenditure is made at the request, suggestion, or direction of, or in cooperation,
20 consultation, concert or coordination with, the candidate on whose behalf, or for whose
21 benefit, the expenditure is made.

22 ~~(o) "Individual Expenditure Ceiling" shall mean the expenditure ceiling established for each~~
23 ~~individual candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified~~
24 ~~as eligible to receive public funds under this Chapter.~~

1 (~~p~~) "Itemized disclosure statement" shall mean a form promulgated by the Ethics
2 Commission that provides a detailed description of the separate costs associated with a
3 communication, including but not limited to photography, design, production, printing,
4 distribution, and postage.

5 (~~q~~) "Mass mailing" shall be defined as set forth in the California Political Reform Act,
6 California Government Code section 81000 et seq., provided that the mass mailing advocates
7 for or against one or more candidates for City elective office.

8 (~~r~~) "Matching contribution" shall mean a contribution up to \$500, made by an
9 individual, other than the candidate, who is a resident of San Francisco. Matching
10 contributions shall not include loans, contributions received more than 18 months before the
11 date of the election, qualifying contributions or contributions made by the candidate's spouse,
12 registered domestic partner or dependent child. Matching contributions must also comply with
13 all requirements of this Chapter. Matching contributions under \$100 that are not made by
14 written instrument must be accompanied by written documentation sufficient to establish the
15 contributor's name and address. The Ethics Commission shall set forth, by regulation, the
16 types of documents sufficient to establish a contributor's name and address for the purpose of
17 this subsection.

18 (~~s~~) "Measure" shall mean any City, San Francisco Unified School District or San
19 Francisco Community College District referendum, recall or ballot proposition, whether or not
20 it qualifies for the ballot.

21 (~~t~~) "Member communication" shall mean a communication made by an organization
22 or its committee for the publication, dissemination or communication to the organization's
23 members, employees or shareholders, or to the families of the organization's members,
24 employees or shareholders by newsletter, letter, flyer, e-mail or similar written or spoken
25 material, that supports or opposes a candidate or measure.

1 ~~(t)~~ "Person" shall mean any individual, partnership, corporation, association, firm,
2 committee, club or other organization or group of persons, however organized.

3 ~~(u)~~ "Qualified campaign expenditure" for candidates shall mean all of the following:

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

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

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

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

13 (5) Expenses associated with complying with applicable laws, including but
14 not limited to the California Political Reform Act, California Government Code Section 81000,
15 et seq., and the provisions of this Chapter.

16 (6) "Qualified campaign expenditure" shall not include filing fees, expenses
17 incurred in connection with an administrative or judicial proceeding, payments for
18 administrative, civil or criminal fines, including late filing fees, costs incurred after the election
19 that do not directly affect the outcome of the election, including but not limited to utility bills,
20 expenses associated with an audit, and expenses related to preparing post-election campaign
21 finance disclosure reports as required by the California Political Reform Act, California
22 Government Code Section 81000, et seq., and the provisions of this Chapter, or for inaugural
23 activities or officeholder expenses.

24 ~~(v)~~ "Qualifying contribution" shall mean a contribution of not less than \$10 and not
25 more than \$100 that is made by an individual who is a resident of San Francisco and that

1 complies with all requirements of this Chapter. Qualifying contributions shall not include
2 loans, contributions received more than 18 months before the date of the election or
3 contributions made by the candidate or the candidate's spouse, registered domestic partner or
4 dependent child. Qualifying contributions under \$100 that are not made by written instrument
5 must be accompanied by written documentation sufficient to establish the contributor's name
6 and address. The Ethics Commission shall set forth, by regulation, the types of documents
7 sufficient to establish a contributor's name and address for the purpose of this subsection.

8 (xv) "Recorded telephone message" shall mean a recorded audio message that
9 expressly supports or opposes a candidate for City elective office that is distributed by
10 telephone.

11 (x) "Surplus funds" shall mean funds remaining in a candidate's campaign account
12 at the time the candidate leaves City elective office, or at the end of the post-election reporting
13 period following the defeat of the candidate for City elective office, whichever occurs last, and
14 funds remaining in the campaign account of a committee primarily formed to support or
15 oppose a measure at the end of the post-election reporting period following the election at
16 which the measure appeared on the ballot.

17 (z) ~~"Total Opposition Spending" shall mean the sum of any expenditures made or expenses~~
18 ~~incurred by any person or persons for the purpose of making independent expenditures, electioneering~~
19 ~~communications or member communications in opposition to a specific candidate for Mayor or the~~
20 ~~Board of Supervisors.~~

21 (aa) ~~"Total Supportive Funds" shall mean the sum of all contributions received by a~~
22 ~~candidate committee supporting a candidate for Mayor or the Board of Supervisors, other than any~~
23 ~~funds in the candidate's Campaign Contingency Account exceeding the candidate committee's Trust~~
24 ~~Account Limit, plus the expenditures made or expenses incurred by any person or persons for the~~

1 ~~purpose of making independent expenditures, electioneering communications or member~~
2 ~~communications in support of that same candidate.~~

3 ~~(bb) — "Trust Account Limit" shall mean the amount of funds in the Campaign Contribution~~
4 ~~Trust Account of a candidate committee supporting a candidate for Mayor or the Board of Supervisors~~
5 ~~whom the Ethics Commission has certified as eligible to receive public funds under this Chapter such~~
6 ~~that the expenditure of this amount would cause the candidate to reach, but not exceed, the candidate's~~
7 ~~Individual Expenditure Ceiling. The Trust Account Limit shall be reduced as the candidate spends~~
8 ~~money and shall be increased when his or her Individual Expenditure Ceiling increases.~~

9 (eeγ) "Unexpended public funds" shall mean all funds remaining in the candidate
10 committee's account on the 30th day after the candidate controlling the committee is either
11 elected or not elected to office, regardless of the source of the funds, but shall not exceed the
12 amount of public funds provided to the candidate. Funds raised after this date are not
13 unexpended funds.

14 (~~ddz~~) "Voter" shall mean an individual registered to vote in San Francisco.

15 (~~eeaa~~) "Withdrawal" or "withdraw" shall mean, prior to an election, ending one's
16 candidacy or failing to qualify for an office for which a candidate has solicited or accepted
17 contributions.

18 (~~ffbb~~) "Written instrument" shall mean a check, credit card receipt, or record of
19 electronic transfer of funds.

20 SEC. 1.108. CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST
21 ACCOUNTS ~~AND CAMPAIGN CONTINGENCY ACCOUNTS.~~

22 (~~a~~) — ~~CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST ACCOUNTS.~~

23 (~~1a~~) Establishment of Account. Each treasurer for a candidate committee
24 shall establish a Campaign Contribution Trust Account for the candidate committee at an
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1 office of a bank located in the City and County of San Francisco. All expenditures by the
2 candidate committee for the City elective office sought shall be made from that account.

3 (2b) Prohibition on Multiple Officeholder Accounts. All funds, services or in-
4 kind contributions received by a candidate committee for expenses incurred directly in
5 connection with carrying out the candidate's usual and necessary duties of holding office shall
6 be deposited, credited or otherwise reported to the candidate committee's Campaign
7 Contribution Trust Account. Such contributions shall be subject to the contribution limits in
8 Section 1.114 of this Chapter. An elected officeholder may not establish or control any other
9 committees or accounts for the purpose of making officeholder expenses. Nothing in this
10 Section shall prohibit an officer from spending personal funds on official activities.

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

17 (b) — ~~CAMPAIGN CONTINGENCY ACCOUNTS FOR CANDIDATE COMMITTEES FOR~~
18 ~~MAYOR AND THE BOARD OF SUPERVISORS.~~

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

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

4 (3) — ~~No expenditures shall be made from a Campaign Contingency Account~~
5 ~~established pursuant to this section. Funds may be transferred from the candidate committee's~~
6 ~~Campaign Contingency Account to the candidate committee's Campaign Contribution Trust Account,~~
7 ~~provided that the amount of funds in the Campaign Contribution Trust Account does not exceed the~~
8 ~~candidate committee's Trust Account Limit. All funds that qualify as matching contributions and are~~
9 ~~transferred from the Campaign Contingency Account to the Campaign Contribution Trust Account~~
10 ~~shall be eligible to be matched with public funds in accordance with the procedures set forth in this~~
11 ~~Chapter. Within ten days after the date of the election, the candidate committee shall turn over all~~
12 ~~funds in the Campaign Contingency Account to the Election Campaign Fund.~~

13 SEC. 1.140. ELIGIBILITY TO RECEIVE PUBLIC FINANCING.

14 (a) REQUIREMENTS FOR ALL CANDIDATES. To be eligible to receive public
15 financing of campaign expenses under this Chapter, a candidate must:

16 (1) Have filed a statement indicating that he or she intends to participate in
17 the public financing program under Section 1.142 of this Chapter.

18 (2) Agree to the following conditions:

19 (A) The candidate bears the burden of providing that each contribution
20 the candidate relies upon to establish eligibility is a qualifying contribution;

21 (B) The candidate bears the burden of proving that expenditures made
22 with public funds provided under this Chapter comply with Section 1.148 of this Chapter;

23 (C) The candidate will not make any payments to a contractor or
24 vendor in return for the contractor or vendor making a campaign contribution to the candidate
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1 or make more than a total of 50 payments, other than the return of a contribution, to
2 contractors or vendor that have made contributions to the candidate;

3 (D) Notwithstanding Sections 1.114 and 1.116, the candidate shall not
4 loan or donate, in total, more than \$5,000 of his or her own money to the campaign;

5 (E) The candidate shall not accept any loans to his or her campaign
6 with the exception of a candidate's loan to his or her own campaign as permitted by this
7 Section; and

8 (F) The candidate shall agree to participate in at least three debates
9 with the candidate's opponents.

10 (3) Have paid any outstanding late fines or penalties, owed to the City by the
11 candidate or any of the candidate's previous campaign committees, which were imposed for
12 violations of this Code or the campaign finance provisions of the California Political Reform
13 Act (Government Code Sections 84100-85704), provided that the Ethics Commission had
14 notified the candidate of such fines or penalties by the time of certification.

15 (4) Have filed any outstanding forms, owed to the City by the candidate or
16 any of the candidate's previous campaign committees, which were required to be filed
17 pursuant to this Code or the campaign finance provisions of the Political Reform Act
18 (Government Code Sections 84100-85704), provided that the Ethics Commission had notified
19 the candidate of such outstanding forms by the time of certification.

20 (5) Have no finding by a court or by the Ethics Commission after a hearing
21 on the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally
22 violated any Section of this Code or the campaign finance provisions of this California Political
23 Reform Act (Government Code Sections 84100-85704). For purposes of this Section, a plea
24 of nolo contendere constitutes a finding by a court of a willful violation.

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1 (b) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR THE BOARD OF
2 SUPERVISORS. To be eligible to receive public financing of campaign expenses under this
3 Chapter, a candidate for the Board of Supervisors must:

4 (1) Be seeking election to the Board of Supervisors and be eligible to hold
5 the office sought;

6 (2) Have a candidate committee that has received at least ~~\$5,000~~10,000 in
7 qualifying contributions from at least ~~75~~100 contributors before the 70th day before the
8 election; *or, if the candidate is an incumbent member of the Board of Supervisors, have a candidate*
9 *committee that has received at least \$15,000 in qualifying contributions from at least 150 contributors*
10 *before the 70th day before the election;*

11 (3) Be opposed by another candidate who has either established eligibility to
12 receive public financing, or whose candidate committee has received contributions or made
13 expenditures which in the aggregate equal or exceed ~~\$5,000~~10,000; and

14 (4) Agree that his or her candidate committee will not make qualified
15 campaign expenditures that total more than ~~the candidate's Individual Expenditure Ceiling of~~
16 ~~\$143,000, or as adjusted under Section 1.143 of this Chapter~~\$250,000.

17 (c) ADDITIONAL REQUIREMENTS FOR CANDIDATES FOR MAYOR. To be
18 eligible to receive public financing of campaign expenses under this Chapter, a candidate for
19 Mayor must:

20 (1) Be seeking election to the office of Mayor and be eligible to hold the office
21 sought;

22 (2) Have a candidate committee that has received at least ~~\$25,000~~50,000 in
23 qualifying contributions from at least ~~250~~500 contributors by the 70th day before the election;
24 *or, if the candidate is the incumbent Mayor, have a candidate committee that has received at least*
25 *\$75,000 in qualifying contributions from at least 750 contributors by the 70th day before the election;*

1 (3) Be opposed by another candidate who has either established eligibility to
2 receive public financing, or whose candidate committee has received contributions or made
3 expenditures that in the aggregate equal or exceed \$50,000; and

4 (4) Agree that his or her candidate committee will not make qualified
5 campaign expenditures that total more than ~~the candidate's Individual Expenditure Ceiling of~~
6 ~~\$1,475,000, or as adjusted under Section 1.143 of this Chapter~~ \$1,975,000.

7 (d) ADJUSTMENT OF EXPENDITURE LIMITS AND THRESHOLDS. The Ethics
8 Commission is authorized to adjust:

9 (1) The figures in Subsections (b)(4) and (c)(4) to reflect changes in the
10 California Consumer Price Index, provided that such adjustments shall be rounded off to the
11 nearest \$1,000 for candidates for the Board of Supervisors and the nearest \$5,000 for
12 candidates for Mayor;

13 (2) The figure in Subsection (a)(2)(D) of this Section to reflect changes in the
14 California Consumer Price Index, provided that such adjustments shall be rounded off to the
15 nearest \$1,000;

16 (3) The figures in Subsections (b)(2) and (b)(3) of this Section to reflect
17 changes in the California Consumer Price Index, provided that such adjustments shall be
18 rounded off to the nearest \$500;

19 (4) The figures in Subsections (c)(2) and (c)(3) of this Section to reflect
20 changes in the California Consumer Price Index, provided that such adjustments shall be
21 rounded off to the nearest \$5,000; and

22 (5) The maximum amount of a contribution that constitutes a qualifying
23 contribution pursuant to Section 1.104 to reflect changes in the California Consumer Price
24 Index, provided that such adjustments shall be rounded off to the nearest \$10.

25

1 SEC. 1.142. PROCESS FOR ESTABLISHING ELIGIBILITY; CERTIFICATION BY
2 THE ETHICS COMMISSION.

3 (a) STATEMENT OF PARTICIPATION OR NON-PARTICIPATION. Each
4 candidate for the Board of Supervisors or Mayor must sign and file a Statement of
5 Participation or Non-Participation in the public financing program. The statement must be
6 filed by the candidate with the Ethics Commission no later than the deadline for filing
7 nomination papers. On the statement, each candidate shall indicate whether he or she
8 intends to participate in the public financing program. *A statement of participation or non-*
9 *participation may not be amended after the deadline for filing nomination papers.*

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

19 If any deadline imposed by this Subsection falls on a Saturday, Sunday, or legal
20 holiday, the deadline shall be the next business day.

21 (c) DETERMINATION OF ELIGIBILITY. The Executive Director of the Ethics
22 Commission shall review the candidate's declaration and supporting material to determine
23 whether the candidate is eligible to receive public funds under this Chapter. The Executive
24 Director may audit the candidate's records, interview contributors and take whatever steps the
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1 Executive Director deems necessary to determine eligibility. At the request of the Executive
2 Director, the Controller shall assist in this review process.

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

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

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

24 If, after viewing resubmitted material, the Executive Director declines to certify that a
25 candidate is eligible to receive public financing under this Chapter, the Executive Director

1 shall notify the candidate of this fact. Additional resubmissions may be permitted in the
2 Executive Director's discretion. If the candidate fails to resubmit in the time specified by the
3 Executive Director, or if no further resubmissions are permitted, the Executive Director's
4 determination is final.

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

10 ~~SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.~~

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

13 (a) ~~—The Executive Director shall adjust the Individual Expenditure Ceiling of a candidate~~
14 ~~for Mayor to an amount equal to the sum of the Total Opposition Spending against that candidate and~~
15 ~~the highest level of the Total Supportive Funds of any other candidate for Mayor if such amount is~~
16 ~~greater than \$1,475,000, provided that the Executive Director may adjust a candidate's Individual~~
17 ~~Expenditure Ceilings only in increments of \$100,000.~~

18 (b) ~~—The Executive Director shall adjust the Individual Expenditure Ceiling of a candidate~~
19 ~~for the Board of Supervisors to an amount equal to the sum of the Total Opposition Spending against~~
20 ~~that candidate and the highest level of the Total Supportive Funds of any other candidate for the same~~
21 ~~office on the Board of Supervisors if such amount is greater than \$143,000, provided the Executive~~
22 ~~Director may adjust a candidate's Individual Expenditure Ceiling only in increments of \$10,000.~~

23 (c) ~~—No later than the second business day after a statement is filed pursuant to Section 1.152~~
24 ~~(a)(3) or (b)(3) of this Chapter, the Executive Director shall determine whether the communication~~
25 ~~supports or opposes one or more candidates.~~

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

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

4 ~~(2) — the timing of the communication;~~

5 ~~(3) — the voters targeted by the communication;~~

6 ~~(4) — whether the communication identifies any candidate's position on a public policy~~
7 ~~issue and urges the reader or viewer to take action, including calling the candidate to support or~~
8 ~~oppose the candidate's position;~~

9 ~~(5) — whether the position of one or more candidates on a public policy issue has been~~
10 ~~raised as distinguishing these candidates from others in the campaign, either in the communication~~
11 ~~itself or in other public communications;~~

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

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

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

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

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

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

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

16 SEC. 1.143. EXPENDITURE CEILINGS FOR PUBLICLY FINANCED CANDIDATES.

17 Candidate committees for supervisorial candidates who have received public funds under this
18 Chapter may not make qualified campaign expenditures exceeding \$250,000. Candidate committees
19 for mayoral candidates who have received public funds under this Chapter may not make qualified
20 campaign expenditures exceeding \$1,975,000.

21 SEC. 1.144. DISBURSEMENT OF PUBLIC FUNDS.

22 (a) PAYMENT BY CONTROLLER. Upon certifying that a candidate is eligible to
23 receive public financing under this Chapter, the Executive Director shall forward the
24 certification to the Controller, and the Controller shall disburse payments to the candidate from
25 the Election Campaign Fund in accordance with the certification and this Section.

1 (b) TIME OF PAYMENTS. The Controller shall not make any payments under this
2 Chapter to any candidate more than ~~nine months~~ 142 days before date of the election.
3 Payments from the Controller shall be disbursed to eligible candidates within two business
4 days of the Controller receiving notification from the Ethics Commission regarding the amount
5 of the disbursement, except that within fifteen calendar days before the election, such
6 payments shall be made within one business day.

7 (c) PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR MAYOR.

8 (1) ~~Until the Per Candidate Available Disbursement Limit has been determined,~~
9 ~~e~~Candidates for Mayor ~~whom the Ethics Commission has~~ certified as eligible to receive public
10 financing for their election campaigns will have access to up to \$~~900,000~~ 1,225,000 in funds
11 from the Election Campaign Fund on a first_come, first_served basis according to the following
12 formula ~~set forth in Subsection (c)(3) of this Section.:~~

13 (2) ~~Once the Per Candidate Available Disbursement Limit has been determined,~~
14 ~~e~~candidates for Mayor ~~whom the Ethics Commission has certified as eligible to receive public financing~~
15 ~~for their election campaigns shall have access to funds from the Election Campaign Fund as follows:~~

16 (A) ~~If the Executive Director determines that the Per Candidate Available~~
17 ~~Disbursement Limit is greater than \$900,000, each participating candidate shall have access to the~~
18 ~~amount of the Per Candidate Available Disbursement Limit, subject to the limitations set forth under~~
19 ~~Subsection (c)(3)(D) and (c)(3)(E) of this Section.~~

20 (B) ~~If the Executive Director determines the Per Candidate Available~~
21 ~~Disbursement Limit is less than or equal to \$900,000, participating candidates shall have access to~~
22 ~~funds from the Election Campaign Fund on a first come, first served basis up to a maximum per~~
23 ~~candidate of \$900,000.~~

1 (3) — ~~A candidate for Mayor who is certified as eligible to receive public financing~~
2 ~~under this Chapter shall receive payments for eligible matching contributions according to the~~
3 ~~following formula:~~

4 (A1) Upon qualification the candidate shall receive a one-time payment
5 of ~~\$50,000~~100,000 from the Election Campaign Fund.

6 (B2) After the initial payment under Subsection ~~(e)(3)(A)(1)~~, for the first
7 ~~\$100,000~~425,000 in matching contributions raised by the candidate, the candidate shall receive
8 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

9 (C3) After the payments under Subsection ~~(e)(3)(B)(2)~~, for the next
10 ~~\$450,000~~275,000 in matching contributions raised by the candidate, the candidate shall receive
11 one dollar from the Election Campaign Fund for each dollar raised.

12 (D) — ~~The maximum amount of public funds a mayoral candidate may receive is~~
13 ~~\$900,000, unless the candidate's Individual Expenditure Ceiling is adjusted according to the rules set~~
14 ~~forth under Section 1.143.~~

15 (E) — ~~If the Per Candidate Available Disbursement Limit has been determined~~
16 ~~to be an amount greater than \$900,000, a candidate who has already received at least \$900,000 in~~
17 ~~disbursements from the City shall continue to be eligible to receive public funds from the City at the~~
18 ~~rate of one dollar for each dollar of a matching contribution raised up to the Per Candidate Available~~
19 ~~Disbursement Limit, provided that no funds shall be disbursed if disbursement of the funds would result~~
20 ~~in the candidate exceeding his or her Trust Account Limit.~~

21 (d) PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR THE
22 BOARD OF SUPERVISORS.

23 (1) — ~~Until the Per Candidate Available Disbursement Limit has been determined,~~
24 ~~e~~Candidates for the Board of Supervisors ~~whom the Ethics Commission has~~ certified as eligible to
25 receive public financing for their election campaigns will have access to up to ~~\$89,000~~155,000

1 in funds from the Election Campaign Fund on a first_come, first_served basis according to the
2 following formula ~~set forth in Subsection (d)(3) of this Section.:~~

3 (2) — ~~Once the Per Candidate Available Disbursement Limit has been determined,~~
4 ~~candidates for the Board of Supervisors whom the Ethics Commission has certified as eligible to~~
5 ~~receive public financing for their election campaigns shall have access to funds from the Election~~
6 ~~Campaign Fund as follows:~~

7 (A) — ~~If the Executive Director determines that the Per Candidate Available~~
8 ~~Disbursement Limit is greater than \$89,000, each participating candidate shall have access to the~~
9 ~~amount of the Per Candidate Available Disbursement Limit, subject to the limitations set forth under~~
10 ~~Subsection (d)(3)(D) and (d)(3)(E) of this Section.~~

11 (B) — ~~If the Executive Director determines the Per Candidate Available~~
12 ~~Disbursement Limit is less than or equal to \$89,000, participating candidates shall have access to~~
13 ~~funds from the Election Campaign Fund on a first come, first served basis up to a maximum per~~
14 ~~candidate of \$89,000.~~

15 (3) — ~~A candidate for the Board of Supervisors who is certified as eligible to receive~~
16 ~~public financing under this Chapter shall receive payments for eligible matching contributions~~
17 ~~according to the following formula:~~

18 (A~~1~~) Upon qualification the candidate shall receive a one-time payment
19 of ~~\$10,000~~20,000 from the Election Campaign Fund.

20 (B~~2~~) After the initial payment under Subsection ~~(d)(3)(A)(1)~~, for the first
21 ~~\$10,000~~50,000 in matching contributions raised by the candidate, the candidate shall receive
22 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

23 (C~~3~~) After the payments under Subsection ~~(d)(3)(B)(2)~~, for the next
24 ~~\$39,000~~35,000 in matching contributions raised by the candidate, the candidate shall receive
25 one dollar from the Election Campaign Fund for each dollar raised.

1 (D) — ~~The maximum amount of public funds a candidate for the Board of~~
2 ~~Supervisors may receive is \$89,000, unless the candidate's Individual Expenditure Ceiling is adjusted~~
3 ~~according to the rules set forth under Section 1.143.~~

4 (E) — ~~If the Per Candidate Available Disbursement Limit has been determined~~
5 ~~to be an amount greater than \$89,000, a candidate who has already received at least \$89,000 in~~
6 ~~disbursements from the City shall continue to be eligible to receive public funds from the City at the~~
7 ~~rate of one dollar for each dollar of a matching contribution raised up to the Per Candidate~~
8 ~~Disbursement Limit, provided that no funds shall be disbursed if disbursement of the funds would result~~
9 ~~in the candidate exceeding his or her Trust Account Limit.~~

10 (e) — ~~PER CANDIDATE AVAILABLE DISBURSEMENT LIMIT. On the 59th day before the~~
11 ~~election, the Executive Director shall divide the total amount of non-administrative funds in the~~
12 ~~Election Campaign Fund by the number of qualified candidates. This number shall be deemed the Per~~
13 ~~Candidate Available Disbursement Limit. For the purposes of this section, the total amount of non-~~
14 ~~administrative funds in the Election Campaign Fund shall be the total amount of funds that existed in~~
15 ~~the Fund nine months before the date of election plus any funds deposited into the Fund between that~~
16 ~~date and the 59th day before the election minus any funds necessary to cover the administrative costs~~
17 ~~associated with implementing the public financing program for the next election.~~

18 ~~If there are candidates who have submitted a Declaration of Qualification but whose eligibility~~
19 ~~has not been determined as of the 59th day before the election, the Executive Director shall assume that~~
20 ~~they are qualified for the purposes of determining the Per Candidate Available Disbursement Limit.~~
21 ~~The Per Candidate Available Disbursement Limit shall be revised upward according to the formula~~
22 ~~above if and when it is determined that the candidate or candidates in question did not qualify to~~
23 ~~receive public financing.~~

24 ~~Immediately upon calculating the Per Candidate Available Disbursement Limit, the Executive~~
25 ~~Director shall inform the Controller of the initial determination of the Per Candidate Available~~

1 ~~Disbursement Limit. Thereafter, the Executive Director shall immediately inform the Controller of any~~
2 ~~subsequent changes in the Per Candidate Available Disbursement Limit due to a determination that a~~
3 ~~candidate has not qualified to receive public financing.~~

4 (fe) SUBMISSION OF CLAIMS FOR PUBLIC FUNDS. The Ethics Commission shall
5 determine the information needed to submit a claim for payment of public funds. The
6 Executive Director shall certify each request for payment of public funds within four business
7 days of the request, except that within 14 calendar days before the election, when the
8 certification of a request for public funds shall be made within two business days of the
9 request. No candidate may submit a claim for public funds if the candidate has any such
10 claims pending with the Ethics Commission. For candidates for Mayor, any submission of a
11 claim for public funds must include a minimum of \$5,000 of matching contributions; provided
12 that in the 14 calendar days preceding an election, a claim must include a minimum of \$1,000
13 of matching contributions. For candidates for the Board of Supervisors, any submission of a
14 claim for public funds must include a minimum of \$1,000 of matching contributions; provided
15 that in the 14 calendar days preceding an election, a claim must include a minimum of \$200 of
16 matching contributions. All claims for public funds must be submitted no later than 5:00 p.m.
17 on the 30th day following the date of the election.

18 (gf) DEPOSIT IN CAMPAIGN CONTRIBUTION TRUST ACCOUNT. A candidate
19 must deposit all payments received from the Election Campaign Fund in his or her candidate
20 committee's Campaign Contribution Trust Account.

21 SEC. 1.170. PENALTIES.

22 (a) CRIMINAL. Any person who knowingly or willfully violates any provision of this
23 Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a
24 fine of not more than \$5,000 for each violation or by imprisonment in the County jail for a
25 period of not more than six months or by both such fine and imprisonment; provided, however,

1 that any willful or knowing failure to report contributions or expenditures done with intent to
2 mislead or deceive or any willful or knowing violation of the provisions of Section 1.114 of this
3 Chapter shall be punishable by a fine of not less than \$5,000 for each violation or three times
4 the amount not reported or the amount received in excess of the amount allowable pursuant
5 to Section 1.114 of this Chapter, or three times the amount expended in excess of the amount
6 allowable pursuant to Section 1.130 or 1.140.5, whichever is greater.

7 (b) CIVIL. Any person who intentionally or negligently violates any of the provisions
8 of this Chapter shall be liable in a civil action brought by the civil prosecutor for an amount up
9 to \$5,000 for each violation or three times the amount not reported or the amount received in
10 excess of the amount allowable pursuant to Section 1.114 or three times the amount
11 expended in excess of the amount allowable pursuant to Section 1.130 or 1.140.5, whichever
12 is greater.

13 (c) ADMINISTRATIVE. Any person who intentionally or negligently violates any of
14 the provisions of this Chapter shall be liable in an administrative proceeding before the Ethics
15 Commission held pursuant to the Charter for any penalties authorized therein.

16 (d) LATE FILING FEES

17 (1) Fees for Late Paper Filings. In addition to any other penalty, any person
18 who files a paper copy of any statement or report after the deadline imposed by this Chapter
19 shall be liable in the amount of ten dollars (\$10) per day after the deadline until the statement
20 is filed.

21 (2) In addition to any other penalty, any person who files an electronic copy
22 of a statement or report after the deadline imposed by this Chapter shall be liable in the
23 amount of twenty-five dollars (\$25) per day after the deadline until the electronic copy or
24 report is filed.

1 (3) Limitation on Liability. Liability imposed by Subsection (d)(1) shall not
2 exceed the cumulative amount stated in the late statement or report, or one hundred dollars
3 (\$100), whichever is greater. Liability imposed by Subsection (d)(2) shall not exceed the
4 cumulative amount stated in the late statement or report, or two hundred fifty dollars (\$250),
5 whichever is greater.

6 (4) Reduction or Waiver. The Ethics Commission may reduce or waive a fee
7 imposed by this subsection if the Commission determines that the late filing was not willful
8 and that enforcement will not further the purposes of this Chapter.

9 (e) MISUSE OF PUBLIC FUNDS. Any person who willfully or knowingly uses
10 public funds, paid pursuant to this Chapter, for any purpose other than the purposes
11 authorized by this Chapter shall be subject to the penalties provided in this Section.

12 (f) PROVISION OF FALSE OR MISLEADING INFORMATION TO THE ETHICS
13 COMMISSION; WITHHOLDING OF INFORMATION. Any person who knowingly or willfully
14 furnishes false or fraudulent evidence, documents, or information to the Ethics Commission
15 under this Chapter, or misrepresents any material fact, or conceals any evidence, documents,
16 or information, or fails to furnish to the Ethics Commission any records, documents, or other
17 information required to be provided under this Chapter shall be subject to the penalties
18 provided in this Section.

19 (g) PERSONAL LIABILITY. Candidates and treasurers are responsible for
20 complying with this Chapter and may be held personally liable for violations by their
21 committees. Nothing in this Chapter shall operate to limit the candidate's liability for, nor the
22 candidate's ability to pay, any fines or other payments imposed pursuant to administrative or
23 judicial proceedings.

24 (h) JOINT AND SEVERAL LIABILITY. If two or more persons are responsible for
25 any violation of this Chapter, they shall be jointly and severally liable.

1 (i) EFFECT OF VIOLATION ON ~~OUTCOME OF ELECTION~~CANDIDACY.

2 (1) If a candidate is convicted, in a court of law, of a violation of this Chapter
3 at any time prior to his or her election, his or her candidacy shall be terminated immediately
4 and he or she shall be no longer eligible for election, unless the court at the time of sentencing
5 specifically determines that this provision shall not be applicable. No person convicted of a
6 misdemeanor under this Chapter after his or her election shall be a candidate for any other
7 City elective office for a period of five years following the date of the conviction unless the
8 court shall at the time of sentencing specifically determine that this provision shall not be
9 applicable.

10 (2) If a candidate for ~~Mayor or~~ the Board of Supervisors certified as eligible for
11 public financing violates section 1.143, is found by a court to have exceeded the Individual Expenditure
12 Ceiling in this Chapter by ten percent or more at any time prior to his or her election, he or she is
13 ineligible for election, unless the court specifically determines that this provision shall not be
14 applicable. If feasible, the candidate's name shall be removed from the ballot. No candidate for Mayor
15 or the Board of Supervisors who is found by a court to have exceeded the Individual Expenditure
16 Ceiling in this Chapter by ten percent or more after his or her election shall be a candidate for any City
17 elective office for a period of five years following the court's determination unless the court specifically
18 determines that this provision shall not be applicable. ~~The~~ Ethics Commission may make a
19 recommendation to the Board of Supervisors and the Mayor that ~~at~~the candidate found by a court
20 to have exceeded the Individual Expenditure Ceiling in this Chapter by ten percent or more should be
21 removed from office following the procedures set forth in Charter section 15.105(a).

22 (3) A plea of nolo contendere, in a court of law, shall be deemed a conviction
23 for purposes of this Section.

24 Section 2. The San Francisco Municipal Elections Code is hereby amended by
25 amending Section 200 and adding Section 205, to read as follows:

1 SEC. 200. NOMINATION AND RECALL OF ELECTIVE OFFICERS;
2 INCORPORATION OF STATE LAW.

3 Except as otherwise provided by the Charter or this Municipal Elections Code,
4 nomination of elective officers shall be made pursuant to California Elections Code Section
5 ~~8000~~10220 et seq., and the recall of elective officers shall be made pursuant to California
6 Elections Code Section 11000 et seq. If the official proposed to be removed at a recall
7 election is recalled, the vacancy shall be filled pursuant to Charter Sections 3.100~~(+15)~~ and
8 13.101.5.

9 *The Board of Supervisors may amend or repeal Section 200 of this Article only if it approves the*
10 *proposed amendment by at least a two-thirds vote of all its members.*

11 *SEC. 205. NOMINATION DEADLINES.*

12 *Candidates must file nomination papers no later than the 146th day before a municipal election*
13 *during normal office hours, as posted.*

14 *The Board of Supervisors may amend or repeal Section 205 of this Article only if it approves the*
15 *proposed amendment by at least a two-thirds vote of all its members.*

16 Section 3. Amendment or Repeal.

17 The voters may amend or repeal the provisions amended in Sections 1 and 2. The
18 Board of Supervisors may amend or repeal the provisions amended in Section 1 according to
19 the process set forth in San Francisco Campaign and Governmental Conduct Code section
20 1.103.

21 Section 4. Operative Date.

22 Sections 1 and 3 shall be operative ten days after the Board of Supervisors certifies the
23 results of the June 5, 2012 election, as provided by Municipal Elections Code section 380.

24 Section 2 shall be operative on January 1, 2013.

25 //

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

3 By: _____
4 ANDREW SHEN
5 Deputy City Attorney
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