

## LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

**Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) require committees to file a third pre-election statement prior to an election; 8) remove the prohibition against distribution of campaign advertisements containing false endorsements; 9) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 10) require financial disclosures from certain major donors to local political committees; 11) impose additional disclaimer requirements; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) establish local behested payment reporting requirements for donors and City officers.**

### Existing Law

#### 1. Campaign contributions: general requirements

State law prohibits “earmarking” campaign contributions - making any contribution to a committee with the understanding that it will be further contributed to another identified candidate committee. Cal. Gov. Code § 85704. State law also requires campaign committees to accurately report campaign contributions. See Cal. Gov. Code § 84211.

#### 2. Campaign contributions: disclosure requirements

Neither state nor local law require (a) with respect to contributions made to ballot measure and independent expenditure committees, the disclosure of whether a City elected official solicited those contributions, or (b) the disclosure of bundled campaign contributions.

State law requires campaign committees to itemize each campaign contribution of \$100 or more, and for each such contribution, the contributor’s name, address, occupation, and employer. Cal. Gov. Code § 84211(f).

#### 3. Campaign contributions: prohibitions

Local law prohibits prospective City contractors, seeking certain contracts worth \$50,000 or more, from making campaign contributions to City elective officers who must approve those contracts, from the commencement of negotiations for such contract until either (a) the termination of negotiations for such contract, or (b) six months have elapsed from the date the contract is approved. S.F. Campaign & Gov'tal Conduct Code § 1.126.

4. Campaign statements: pre-election reporting requirements

Certain campaign committees must file two pre-election campaign statements prior to local elections. The first pre-election statement must be filed no later than 40 days before to each election, and must report the committee's fundraising activity and expenditures for the period ending 45 days before the election. The second pre-election statement must be filed no later than 12 days before each election, and must report on the committee's financial activity for the period ending 17 days before the election. S.F. Campaign & Gov'tal Conduct Code § 1.135.

5. False endorsement ordinance

Local law seeks to prohibit the creation and distribution of campaign advertisements that contain false endorsements. Under this provision, a false endorsement is defined as "a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not" take such a position. S.F. Campaign & Gov'tal Conduct Code § 1.163.5.

6. Campaign disclosure: contributions to non-candidate committees

In the last 90 days before an election, state law requires certain local committees that make or receive contributions that total \$1,000 or more to file "late contribution reports" within 24 hours. Cal. Gov. Code § 84203. Committees file these late contribution reports using the Fair Political Practices Commission ("FPPC") Form 497. On the FPPC Form 497, the committee must disclose the contributor's name, address, occupation, and employer.

No provision of state or local law requires contributors to disclose their financial interests, in addition to their contact information and information about their employer or profession.

7. Disclaimers for Election-Related Communications (e.g., "Paid for by ...")

State and local law currently requires persons distributing certain election-related communications to include basic information about their funding. Existing law:

- a. requires 12-point type for all disclaimers on mass mailers and smaller print advertisements;
- b. requires independent expenditure and ballot measure committees to report their two top funders who have contributed at least \$20,000; and

- c. allows disclaimers required for audio and video advertisements to be included at either the beginning or the end of those advertisements.

S.F. Campaign & Gov'tal Conduct Code §§ 1.161, 1.162; 2 C.C.R. § 18450.4(b)(3).

8. Campaign finance: private right of action and debarment

Local law authorizes any “voter” to file a civil action to enjoin violations of or compel compliance with the City’s campaign finance laws. S.F. Campaign & Gov’tal Conduct Code § 1.168(b). Prior to initiating such action, the voter is required to notify the City Attorney’s Office. If the voter prevails in litigation, the court may award reasonable attorney's fees and costs.

Local law does not explicitly provide for the administrative debarment of a contractor for violation of local campaign finance laws. See S.F. Admin. Code, Ch. 28.

9. Conflict of interest laws for elected officials and members of City boards and commissions

City elected officials and members of City boards and commissions are subject to a range of state and local conflict of interest laws, including the Political Reform Act (Cal. Gov. Code Section 87100, et seq.), California Government Code Section 1090, and the provisions of the City’s Government Ethics Ordinance.

Under these laws, City officers are generally required to recuse themselves in the event of a conflict of interest. State law requires certain public officials to offer a specific explanation of the bases for their recusals. See Cal. Gov. Code § 87105; 2 C.C.R. § 18707.

10. Political activity laws for elected officials and members of City boards and commissions

Under state and local law, City elected officials and members of City boards and commissions are restricted from engaging in certain political activities, when such activities would consume City resources. See Cal. Gov. Code § 8314; Cal. Pen. Code § 424; S.F. Campaign & Gov’tal Conduct Code § 3.218(c). State and local law additionally prohibit City officials from accepting bribes. See Cal. Pen. Code § 68; S.F. Campaign & Gov’tal Conduct Code § 3.216(a).

Local law also specifically prohibits City officers from soliciting campaign contributions from other City officers and employees, participating in political activities while in uniform, and engaging in political activities during working hours or on City premises. S.F. Campaign & Gov’tal Conduct Code § 3.230. State law also prohibits appointed City officials, i.e., members of City boards and commissions, from soliciting contributions of more than \$250 from parties appearing before them. See Cal. Gov. Code § 84308.

11. Behested payment reporting

State law requires elected officials – but not members of the City boards and commissions – to file “behested payment” reports when they solicit contributions of \$5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission.

A recently enacted local law (Ord. No. 01-17) would require members of certain City boards and commissions to file behested payment reports for some charitable contributions totaling \$1,000 or more. This ordinance became operative on January 1, 2018.

Amendments to Current Law

1. Campaign contributions: general requirements

The proposed ordinance would clarify that no person may make a campaign contribution to a committee with the understanding that it will be subsequently contributed to another candidate or committee in order to circumvent local campaign contribution limits. See Proposed Section 1.114(c). The proposed ordinance would also explicitly prohibit “assumed name contributions” – that is, campaign contributions made using the name of a person other than the contributor’s own name. See Proposed Section 1.114.5(c).

2. Campaign contributions: disclosure requirements

Proposed Section 1.114.5(b) would require any person making contributions that total \$5,000 or more a single calendar year to a ballot measure or independent expenditure committee, at the behest of a City elected official, to disclose the name of that elected official.

In addition to existing state law requirements, Proposed Section 1.124 would require campaign committees to disclose additional information regarding contributions from business entities that contribute \$10,000 or more in a single election cycle. For such contributions, committees would be required to disclose the names of the entities’ principal officers and whether they have received funds through a City contract or grant within the last 24 months.

Proposed Section 1.125 would require committees controlled by a City elected official or a candidate for such office that disclose certain information regarding “bundlers” who have delivered or transmitted contributions totaling \$5,000 or more to those officials and candidates.

3. Campaign contributions: prohibitions

The proposed ordinance would expand the scope of contracts subject to Section 1.126’s ban on campaign contributions to include development agreements. The proposal would increase the threshold for the value of contracts that trigger this prohibition from \$50,000 to \$100,000,

and would expand the length of the prohibition from six months to 12 months. The proposal would also add notification requirements regarding this campaign contribution ban.

4. Campaign statements: pre-election reporting requirements

The proposed ordinance would require certain committees to file a third pre-election statement prior to local elections. The third pre-election statement must be filed no later than four days before each election, and must report on the committee's financial activity for the period ending six days before the election.

5. False endorsement ordinance

The proposal would delete the City's false endorsement ordinance in its entirety.

6. Campaign disclosure: contributions to non-candidate committees

The Proposed Section 1.158 would require any person or entity that contributes \$10,000 or more to a single local political committee in a calendar year to disclose the following financial interests, within 24 hours of reaching this threshold:

- all investments worth \$10,000 or more in any business entity located in or doing business in San Francisco held by the contributor or a member of the contributor's immediate family; and
- all business entities located in or doing business in San Francisco in which the contributor holds the position of and receives compensation as director, officer, partner, trustee, employee, or any position of management.

The disclosure of these financial interests would largely follow guidelines that govern the similar disclosure of these interests on the FPPC Form 700 Statement of Economic Interests.

7. Disclaimers for Election-Related Communications (e.g., "Paid for by ...")

The proposed ordinance would amend Sections 1.161 and 1.162 to require:

- a. 14-point type for disclaimers on mass mailers and smaller print advertisements;
- b. independent expenditure and ballot measure committees to report their three top funders who have contributed at least \$10,000;
- c. disclaimers to be included at the beginning of audio advertisements; and
- d. disclaimers to be spoken at the beginning of video advertisements and appear in writing included during the entirety of such advertisements.

8. Campaign finance: private right of action and debarment

The proposed ordinance would authorize any “resident” – instead of any “voter” – to file a civil action to enjoin violations of or compel compliance with the City’s campaign finance laws. The proposal would also explicitly authorize the Ethics Commission to, after a hearing on the merits or settlement of an enforcement action, to recommend the debarment of a contractor from future City contracting opportunities.

9. Conflict of interest laws for elected officials and members of City boards and commissions

In addition to existing state and local conflict of interest laws, the Proposed Section 3.207 would prohibit City elected officials and members of City boards or commissions from:

- using their public position or office to seek or obtain anything of value for the private or professional benefit of themselves, their immediate families, or organizations with which they are associated;
- directly or indirectly, giving, offering, promising to give, withholding, or offering or promising to withhold their votes or influence on any proposed or pending matter in exchange for campaign contributions; and
- soliciting or accepting, directly or indirectly, anything of value if it could reasonably be expected to influence the officer’s vote, actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the officer.

Proposed Section 3.209 would require all members of City boards and commissions to follow prescribed procedures in the event of a recusal, including notification of the Ethics Commission. This proposed section would also explicitly authorize the Ethics Commission to make recommendations to these City officers’ appointing authorities if there are repeated recusals.

10. Political activity laws for elected officials and members of City boards and commissions

In addition to existing state and local political activity laws, the Proposed Section 3.231 would prohibit:

- City elected officials and members of City boards or commissions from soliciting uncompensated volunteer services from any subordinate employee for political campaigns; and
- members of City boards or commissions from soliciting campaign contributions for the benefit of their appointing authorities.

11. Behested payment reporting

The proposed ordinance would supplant and expand Ordinance No. 01-17. It would require City elected officials and members of City boards and commissions to file behested payment

reports with respect to certain charitable contributions of \$1,000 or more. It would also require the donors and recipients of such contributions to file additional disclosures in specified circumstances.

Background Information

The Board of Supervisors may enact amendments to the City's Campaign Finance Reform Ordinance and Government Ethics Ordinances (Article I, Chapter 1 and Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code) if:

- (a) the amendments further the purposes of these Chapters;
- (b) the Ethics Commission approves the proposed amendments in advance by at least a four-fifths vote of all its members;
- (c) the proposed amendments are available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and
- (d) the Board of Supervisors approves the proposed amendments by at least a two-thirds vote of all its members.

San Francisco Charter Section 15.102 also authorizes the Ethics Commission to submit these amendments directly to the voters as a ballot measure, if the Ethics Commission chooses to do so by a four-fifths vote.

This legislation is identical to the campaign finance and conflict of interest legislation before the Ethics Commission, as of the conclusion of its February 16, 2018 meeting. The Ethics Commission has not yet approved that legislation by a four-fifths vote.

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