


BOARD of SUPERVISORS



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MEMORANDUM

TO: LeeAnn Pelham, Ethics Commission
John Arntz, Director, Department of Elections

FROM:  Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: June 13, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors Rules Committee has received the following legislation, introduced by Supervisor Peskin on June 7, 2016. This matter is being referred to you in accordance with Campaign and Governmental Conduct Code, Section 1.103.

**File No. 160669 Campaign and Governmental Conduct Code - Prohibiting
Candidate-Controlled General Purpose Committees**

Ordinance amending the Campaign and Governmental Conduct Code to prohibit City elected officials from establishing candidate-controlled general purpose committees.

Please review and submit any reports or comments to be included with the legislative file.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

1 [Campaign and Governmental Conduct Code - Prohibiting Candidate-Controlled General
2 Purpose Committees]

3 **Ordinance amending the Campaign and Governmental Conduct Code to prohibit City
4 elected officials from establishing candidate-controlled general purpose committees.**

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

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

13 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
14 revising Sections 1.104 and 1.122, to read as follows:

15 **SEC. 1.104. DEFINITIONS.**

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

17 * * * *

18 "Candidate" shall be defined as set forth in the California Political Reform Act,
19 California Government Code section 81000, et seq., but shall include only candidates for City
20 elective office.

21 "Candidate committee" shall mean a ~~committee controlled by a candidate, and candidate-~~
22 controlled committee that is primarily formed to support that candidate's election for City elective
23 office.

24 "Candidate-controlled committee" shall mean a controlled committee that is controlled by a
25 candidate.

* * * *

1 "Controlled committee" shall be defined as set forth in the California Political Reform
2 Act, California Government Code section 81000, et seq.

3 * * * *

4 "General purpose committee" shall be defined as set forth in the California Political
5 Reform Act, California Government Code section 81000, et seq.

6 * * * *

7 **SEC. 1.122. SOLICITATION OR ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS**
8 **– LIMITATIONS.**

9 (a) DECLARATION OF INTENT REQUIRED. No candidate or candidate committee
10 shall solicit or accept, or cause to be solicited or accepted, any contribution unless and until
11 the candidate has filed a declaration of intention to become a candidate for a specific City
12 elective office with the Department of Elections on a form prescribed by the Director of
13 Elections.

14 No person shall file a declaration of intention to become a candidate for more than one
15 City elective office.

16 (b) USE OF CAMPAIGN FUNDS.

17 (1) GENERAL. Except as otherwise provided in this Chapter, funds in a
18 candidate committee's campaign account may be used only on behalf of the candidacy for the
19 office specified in the candidate's declaration of intention filed under Subsection (a) or for
20 expenses associated with holding that office, provided that such expenditures are reasonably
21 related to a legislative, governmental, or political purpose. Contributions solicited or accepted
22 under this Section for one candidate shall not be expended for the candidacy of any other
23 candidate for local, state or federal office, in support of or opposition to any measure or in
24 support of or opposition to any state ballot proposition, or for donations to a charitable
25 organization. Nothing in this section shall prohibit a candidate committee for a candidate in a

1 ranked choice election from expending funds to support the ranking of another candidate if the
2 primary purpose of the expenditure is to further the candidate's own campaign.

3 (2) PROHIBITING CANDIDATE-CONTROLLED GENERAL PURPOSE

4 COMMITTEES. No candidate holding City elective office may control a candidate-controlled general
5 purpose committee. Any candidate who controls a candidate-controlled general purpose committee
6 prior to assuming City elective office shall return, use, or dispose of all funds held by the committee
7 using the means specified in subsection (b)(4) within 90 days of the date that the candidate assumes
8 office.

9 (23) WITHDRAWAL FROM CANDIDACY. If a candidate has withdrawn his or
10 her candidacy, campaign funds held by that candidate's committee's Campaign Contribution
11 Trust Account shall be:

- 12 (A) returned on a "last in, first out" basis to those persons who have
13 made said contributions;
- 14 (B) donated to the City and County of San Francisco;
- 15 (C) donated to a charitable organization;
- 16 (D) used to pay outstanding campaign debts or accrued expenses;
- 17 (E) used to pay expenses associated with terminating the committee,
18 such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
- 19 (F) used for other permissible purposes established by the Ethics
20 Commission by regulation.

21 (34) SURPLUS FUNDS. Surplus funds held by a candidate or committee shall
22 be:

- 23 (A) returned on a "last in, first out" basis to those persons who have
24 made said contributions;
- 25 (B) donated to a charitable organization;

1 (C) donated to the City and County of San Francisco;
2 (D) used to pay outstanding campaign debts or accrued expenses;
3 (E) used to pay expenses associated with terminating the committee,
4 such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
5 (F) used for other permissible purposes established by the Ethics
6 Commission by regulation.

7 (c) TRANSFER OF FUNDS. Subject to the restrictions set forth in Subsection (b), at
8 any time, funds held in a candidate committee's Campaign Contribution Trust Account may be
9 transferred to any legally constituted committee established by the candidate under the
10 California Political Reform Act, California Government Code section 81000 et seq.
11 Contributions transferred under this subsection shall be attributed to specific contributors
12 using a "first in, first out" or "last in, first out" accounting method.

13
14 Section 2. Effective Date. This ordinance shall become effective 30 days after
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
16 ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board
17 of Supervisors overrides the Mayor's veto of the ordinance.

18
19 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
20 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
21 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
22 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
23 additions, and Board amendment deletions in accordance with the "Note" that appears under
24 the official title of the ordinance.

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

3 By:


4 ANDREW SHEN
5 Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Prohibiting Candidate-Controlled General Purpose Committees]

Ordinance amending the Campaign and Governmental Conduct Code to prohibit City elected officials from establishing candidate-controlled general purpose committees.

Existing Law

1. Local Law

San Francisco Campaign and Governmental Conduct Code Section 1.122 restricts how local candidates may use their campaign funds, i.e., campaign contributions. Section 1.122(b)(1) provides that campaign funds may be used only to further a candidate's election to office, or for expenses associated with holding that office, so long as those expenditures are reasonably related to a legislative, governmental, or political purpose.

Section 1.122(b)(3) provides that "surplus funds," e.g., funds remaining in a candidate's campaign account after the candidate leaves City elective office, must be:

- returned on a "last in, first out" basis to contributors;
- donated to a charitable organization;
- donated to the City;
- used to pay outstanding campaign debts; or
- used to pay expenses associated with terminating the committee.

2. State Law

A "controlled committee" is a committee that is controlled directly or indirectly by a candidate. Cal. Gov. Code § 82016. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. A candidate may exercise significant influence over a committee in various ways, including being involved with decision-making or developing or implementing campaign strategy for the committee. See Pirayou Adv. Ltr., FPPC Adv. I-10-159, 2010 WL 5481367 (Dec. 13, 2010).

Under state law, a candidate typically cannot control more than one committee, except for committees formed to support or oppose ballot measures. See Bagatelos Adv. Ltr., CA FPPC Adv. I-89-240, 1989 WL 572585 (May 31, 1989).

A “general purpose committee” is a committee that supports or opposes more than one candidate or ballot measure. Cal. Gov. Code § 82027.5. (In contrast, a “primarily formed committee” is a committee that supports or opposes a single candidate or measure. *Id.* § 82047.5.) Thus, a candidate-controlled general purpose committee may spend campaign funds to support or oppose multiple ballot measures.

Local elected officeholders are subject to both state and local law restrictions. So under existing law, a local officeholder could control a general purpose committee, but that committee could spend funds only on ballot measures, not to support or oppose other candidates.

Amendments to Current Law

The proposed amendments would amend Section 1.122 to prohibit local officeholders from controlling a general purpose committee. The amendments would also provide that if a local candidate controlled a general purpose committee prior to assuming office, the candidate would have 90 days to dispose of any campaign funds as surplus funds.

Background Information

The City’s campaign finance laws are found in the Article I, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code, also referred to as the Campaign Finance Reform Ordinance (“CFRO”). Most of CFRO’s provisions were initially adopted by the voters and if the voters do not approve any amendments themselves, any other changes are subject to special approval requirements. The City may only amend the CFRO if:

- the amendment furthers the purposes of this CFRO;
- the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- the proposed amendment is 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
- the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

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