

File No. 111082

Committee Item No. 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 3/29/12

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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Completed by: Linda Wong

Date 3/26/12

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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

2
3 **Ordinance amending the Campaign and Governmental Conduct Code and the**
4 **Municipal Elections Code to modify funding of expenditure ceilings for the City's public**
5 **financing program, to increase expenditure ceilings for supervisorial candidates, to**
6 **delay the date on which public funds may be disbursed, to change the qualification**
7 **requirements for participating candidates, and to advance the date by which all local**
8 **candidates must file their nomination papers.**

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

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

14 Section 1. Findings.

15 1. One of the primary purposes of the City's public financing program is to combat
16 corruption and the appearance of corruption in local politics. By decreasing candidates'
17 reliance on private campaign contributions, the City's public financing program reduces the
18 possibility that contributions will allow private, relatively wealthy individuals to receive
19 disproportionate access to City decision-makers or exercise undue influence with City elected
20 officials. Lessening the need for private fund-raising also increases public confidence that
21 City elected officials will act solely in the City's best interests.

22 2. The City's public financing program, by decreasing pressures to fund-raise from
23 private, relatively wealthy sources, also encourages candidates to address the needs and
24 concerns of a socio-economically broader group of San Francisco residents. It also allows
25 candidates, during their election efforts, to engage City residents on local issues instead of
focusing on fund-raising. These effects fulfill the fundamental purposes of democratic

1 government and decrease the public perception of corruption among elected officials. For
2 incumbents, decreasing the need to fund-raise also increases the amount of time that they
3 that can spend on governing instead of fund-raising.

4 3. The independent expenditure ceilings employed by the City's public financing
5 program are the sole means by which the City can attract viable candidates to participate.
6 Viable candidates will only participate in a public financing program if ~~it~~ the program ensures
7 that participating candidates will not be easily outspent by non-participating candidates or
8 third-parties. Without adjustable expenditure ceilings, candidates would not participate in the
9 program, and low participation rates would render the program ineffective.

10 4. Since its inception in November 2000, the City's public financing program has
11 been a success. For the past decade, many candidates seeking election to either the office of
12 Mayor or the Board of Supervisors have participated in the City's public financing program.

13 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby
14 amended by amending Sections 1.138, 1.140, 1.143, 1.144, 1.154, and 1.170 to read as
15 follows:

16 SEC. 1.138. ELECTION CAMPAIGN FUND; ~~APPROPRIATION OF FUNDS;~~
17 APPROPRIATION OF FUNDS.

18 (a) ESTABLISHMENT OF ELECTION CAMPAIGN FUND. There is hereby
19 established a special fund of the City and County of San Francisco called the Election
20 Campaign Fund. All money deposited in the Fund is hereby appropriated for use as specified
21 in this Chapter and the implementing regulations.

22 (b) ~~APPROPRIATION TO ELECTION CAMPAIGN FUND.~~ Except as provided in
23 Subsections (b)(3) and (b)(4), each fiscal year the City and County of San Francisco shall
24 appropriate \$2.75 per resident of the City and County of San Francisco to the Election
25 Campaign Fund to provide funding for election campaigns as authorized by this Chapter for all

1 candidates for Mayor or the Board of Supervisors who may be eligible to receive such funds.
2 At the request of the Ethics Commission, the Controller shall estimate the number of residents
3 of the City and County of San Francisco for purposes of this subsection.

4 (b) APPROPRIATION TO ELECTION CAMPAIGN FUND. Except as provided in
5 Subsections (b)(3) and (b)(4), each fiscal year the City and County of San Francisco shall
6 appropriate \$2.75 per resident of the City and County of San Francisco to the Election
7 Campaign Fund to provide funding for election campaigns as authorized by this Chapter for all
8 candidates for Mayor or the Board of Supervisors who may be eligible to receive such funds.
9 At the request of the Ethics Commission, the Controller shall estimate the number of residents
10 of the City and County of San Francisco for purposes of this subsection.

11 (1) — For each fiscal year during which the City and County of San Francisco
12 will hold an election for Mayor, the City and County of San Francisco shall appropriate funds
13 to the Election Campaign Fund such that the total amount in the Election Campaign Fund on
14 the first day of the fiscal year is \$5 million. For each fiscal year during which the City and
15 County of San Francisco will hold an election for the Board of Supervisors, the City and
16 County of San Francisco shall appropriate funds to the Election Campaign Fund such that the
17 total amount in the Election Campaign Fund on the first day of the fiscal year is \$4 million.

18 (121) Any funds in the Election Campaign Fund not used in one election shall
19 be carried over for use in the following election, provided that at no time shall the total amount
20 in the Election Campaign Fund exceed \$13.57 million. Any funds in the Election Campaign
21 Fund in excess of \$13.57 million shall be returned to the General Fund.

22 (232) Funds necessary for the Ethics Commission to administer the public
23 financing program for candidates for Mayor or the Board of Supervisors authorized under
24 Section 1.136 of this Chapter shall be taken from the Election Campaign Fund. The
25

1 Commission's administrative expenses for such public financing program for any election shall
2 not exceed 15% of the total amount of funds in the Election Campaign Fund for that election.

3 ~~(3) If the Office of Mayor becomes vacant and an election is held to fill the~~
4 ~~vacancy for the remainder of the term, the City and County of San Francisco shall appropriate~~
5 ~~additional funds to the Election Campaign Fund in an amount that ensures that at least \$8.00~~
6 ~~per resident is available in the Election Campaign Fund for that election and the next regularly~~
7 ~~scheduled Mayoral election.~~

8 ~~(4) If an office of a member of the Board of Supervisors becomes vacant and~~
9 ~~an election is held to fill the vacancy for the remainder of the term, the City and County of San~~
10 ~~Francisco shall appropriate an additional \$0.25 per resident to the Election Campaign Fund~~
11 ~~for that election. These additional funds shall not be subject to the limit in Subsection (b)(1) of~~
12 ~~this Section. Any funds appropriated pursuant to this subsection that are not used for the~~
13 ~~election to fill the vacancy shall be returned to the General Fund.~~

14 (3) If the Office of Mayor becomes vacant and an election is held to fill the
15 vacancy for the remainder of the term, the City and County of San Francisco shall appropriate
16 additional funds to the Election Campaign Fund in an amount that ensures that at least \$8.00
17 per resident is available in the Election Campaign Fund for that election and the next regularly
18 scheduled Mayoral election.

19 (4) If an office of a member of the Board of Supervisors becomes vacant and
20 an election is held to fill the vacancy for the remainder of the term, the City and County of San
21 Francisco shall appropriate an additional \$0.25 per resident to the Election Campaign Fund
22 for that election. These additional funds shall not be subject to the limit in Subsection (b)(1) of
23 this Section. Any funds appropriated pursuant to this subsection that are not used for the
24 election to fill the vacancy shall be returned to the General Fund.

25 (b) — INSUFFICIENT FUNDS.

1 (1) ~~No later than August 1 before an election for Mayor, the Executive~~
2 ~~Director shall notify the Commission and the Board of Supervisors if less than \$5 million exists~~
3 ~~in the Election Campaign Fund. If \$5 million does not exist in the Election Campaign Fund,~~
4 ~~the Commission may, in accordance with the fiscal provisions of the Charter, request a~~
5 ~~supplemental appropriation from the Board of Supervisors and the Mayor to provide additional~~
6 ~~funding to the Election Campaign Fund so that at least \$5 million, but no more than \$7 million,~~
7 ~~exists in the fund for the upcoming election.~~

8 (2) ~~No later than August 1 before an election for the Board of Supervisors,~~
9 ~~the Executive Director shall notify the Commission and the Board of Supervisors if less than~~
10 ~~\$4 million exists in the Election Campaign Fund. If \$4 million does not exist in the Election~~
11 ~~Campaign Fund, the Commission may, in accordance with the fiscal provisions of the Charter,~~
12 ~~request a supplemental appropriation from the Board of Supervisors and the Mayor to provide~~
13 ~~additional funding to the Election Campaign Fund so that at least \$4 million, but no more than~~
14 ~~\$7 million, exists in the fund for the upcoming election.~~

15 (c) ~~REPORT BY CONTROLLER. At the request of the Ethics Commission, the~~
16 ~~Controller shall provide a statement of the total amount of funds in the Election Campaign~~
17 ~~Fund.~~

18 SEC. 1.140. ELIGIBILITY TO RECEIVE PUBLIC FINANCING.

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

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

23 (2) Agree to the following conditions:

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

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

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

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

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

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

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

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

24 (5) Have no finding by a court or by the Ethics Commission after a hearing
25 on the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally

1 violated any Section of this Code or the campaign finance provisions of this California Political
2 Reform Act (Government Code Sections 84100-85704). For purposes of this Section, a plea
3 of nolo contendere constitutes a finding by a court of a willful violation.

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

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

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

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

17 (4) Agree that his or her candidate committee will not make qualified
18 campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of
19 ~~\$143,000~~250,000, or as adjusted under Section 1.143 of this Chapter.

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

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

1 (2) Have a candidate committee that has received at least ~~\$25,000~~\$50,000 in
2 qualifying contributions from at least ~~250~~500 contributors by the 70th day before the election;
3 *or, if the candidate is the incumbent Mayor, have a candidate committee that has received at least*
4 *\$75,000 in qualifying contributions from at least 750 contributors by the 70th day before the election;*

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

8 (4) Agree that his or her candidate committee will not make qualified
9 campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of
10 ~~\$1,475,000~~\$1,750,000, or as adjusted under Section 1.143 of this Chapter.

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

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

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

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

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

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

4 SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.

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

8 (a) The Executive Director shall adjust the Individual Expenditure Ceiling of a
9 candidate for Mayor to an amount equal to the sum of the Total Opposition Spending against
10 that candidate and the highest level of the Total Supportive Funds of any other candidate for
11 Mayor if such amount is greater than ~~\$1,475,000~~1,750,000~~1,475,000~~, provided that the
12 Executive Director may adjust a candidate's Individual Expenditure Ceilings only in
13 increments of \$100,000.

14 (b) The Executive Director shall adjust the Individual Expenditure Ceiling of a
15 candidate for the Board of Supervisors to an amount equal to the sum of the Total Opposition
16 Spending against that candidate and the highest level of the Total Supportive Funds of any
17 other candidate for the same office on the Board of Supervisors if such amount is greater than
18 ~~\$143,000~~250,000, provided the Executive Director may adjust a candidate's Individual
19 Expenditure Ceiling only in increments of \$10,000.

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

23 Factors the Executive Director shall use to determine whether the communication
24 supports or opposes one or more candidates include the following:

25 (1) whether the communication clearly identifies one or more candidates;

1 (2) the timing of the communication;

2 (3) the voters targeted by the communication;

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

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

9 (6) whether the communication is part of an ongoing series of substantially
10 similar advocacy communications by the organization on the same issue; and

11 (7) any other factors the Executive Director deems relevant.

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

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

23 If within one business day of the Executive Director's notice, two or more members of
24 the Commission inform the Executive Director that they would like to review the determination,
25 the Executive Director shall schedule a meeting of the Commission on a date that occurs

1 within one week of the Commissioners' requests. If three members of the Commission vote to
2 overrule the Executive Director's determination, the Commission shall make a final
3 determination based on the factors set forth above.

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

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

14 SEC. 1.144. DISBURSEMENT OF PUBLIC FUNDS.

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

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

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

1 (1) ~~Until the Per Candidate Available Disbursement Limit has been determined,~~
2 ~~e~~Candidates for Mayor whom the Ethics Commission has certified as eligible to receive public
3 financing for their election campaigns will have access to ~~up to \$900,000 in~~ funds from the
4 Election Campaign Fund on a first-come, first-served basis according to the following formula
5 set forth in Subsection (e)(3) of this Section.;

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

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

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

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

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

22 (B2) After the initial payment under Subsection ~~(e)(3)(A)(1)~~, for the first
23 ~~\$100,000~~425,000 in matching contributions raised by the candidate, the candidate shall receive
24 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

1 (~~C~~3) After the payments under Subsection ~~(e)(3)(B)(2)~~, for the next
2 \$~~450,000~~~~162,500~~25,000 in matching contributions raised by the candidate, the candidate shall
3 receive one dollar from the Election Campaign Fund for each dollar raised. *If the candidate is*
4 *the incumbent Mayor, after the payments under Subsection (2), for the next \$*~~150,000~~12,500 *in*
5 *matching contributions raised by the candidate, the candidate shall receive one dollar from the*
6 *Election Campaign Fund for each dollar raised.*

7 (~~D~~4) The maximum amount of public funds a *non-incumbent* mayoral
8 candidate may receive is \$~~900,000~~~~1,112,500~~975,000, ~~unless the candidate's Individual~~
9 ~~Expenditure Ceiling is adjusted according to the rules set forth under Section 1.143.~~ *The maximum*
10 *amount of public funds an incumbent mayoral candidate may receive is \$*~~1,100,000~~962,500.

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

17 (d) PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR THE
18 BOARD OF SUPERVISORS.

19 (1)—*Until the Per Candidate Available Disbursement Limit has been determined,*
20 *e*Candidates for the Board of Supervisors *whom the Ethics Commission has certified as eligible to*
21 *receive public financing for their election campaigns will have access to up to \$89,000 in funds*
22 *from the Election Campaign Fund on a first-come, first-served basis according to the following*
23 *formula set forth in Subsection (d)(3) of this Section.:*

24 (2)—*Once the Per Candidate Available Disbursement Limit has been determined,*
25 *candidates for the Board of Supervisors whom the Ethics Commission has certified as eligible to*

1 receive public financing for their election campaigns shall have access to funds from the Election
2 Campaign Fund as follows:

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

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

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

14 (A1) Upon qualification the candidate shall receive a one-time payment
15 of ~~\$10,000~~20,000 from the Election Campaign Fund.

16 (B2) After the initial payment under Subsection ~~(d)(3)(A)(1)~~, for the first
17 ~~\$10,000~~50,000 in matching contributions raised by the candidate, the candidate shall receive
18 ~~four~~two dollars from the Election Campaign Fund for each dollar raised.

19 (C3) After the payments under Subsection ~~(d)(3)(B)(2)~~, for the next
20 ~~\$39,000~~35,000 in matching contributions raised by the candidate, the candidate shall receive
21 one dollar from the Election Campaign Fund for each dollar raised. If the candidate is an
22 incumbent member of the Board of Supervisors, after the payments under Subsection (2), for the next
23 \$32,500 in matching contributions raised by the candidate, the candidate shall receive one dollar from
24 the Election Campaign Fund for each dollar raised.

1 (D4) The maximum amount of public funds a non-incumbent candidate
2 for the Board of Supervisors may receive is ~~\$89,000~~155,000, ~~unless the candidate's Individual~~
3 ~~Expenditure Ceiling is adjusted according to the rules set forth under Section 1.143.~~ The maximum
4 amount of public funds an incumbent candidate for the Board of Supervisors may receive is \$152,500.

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

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

19 If there are candidates who have submitted a Declaration of Qualification but whose eligibility
20 has not been determined as of the 59th day before the election, the Executive Director shall assume that
21 they are qualified for the purposes of determining the Per Candidate Available Disbursement Limit.
22 The Per Candidate Available Disbursement Limit shall be revised upward according to the formula
23 above if and when it is determined that the candidate or candidates in question did not qualify to
24 receive public financing.
25

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

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

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

23 ~~SEC. 1.154. INSUFFICIENT FUNDS IN ELECTION CAMPAIGN FUND.~~ SEC. 1.154.
24 INSUFFICIENT FUNDS IN ELECTION CAMPAIGN FUND.

1 (a) ~~REPORT BY CONTROLLER.~~ At the request of the Ethics Commission, the
2 Controller shall provide a statement of the total amount of funds in the Election Campaign
3 Fund.

4 (b) ~~INSUFFICIENT FUNDS.~~

5 (1) ~~Elections for Mayor.~~ No later than August 1 before an election for Mayor, the
6 Executive Director shall notify the Commission and the Board of Supervisors whether \$8.00
7 per resident, after subtracting 15% for the administrative expenses provided under section
8 1.138(b)(2), exists in the Election Campaign Fund. If \$8.00 per resident, plus 15% for
9 administrative expenses, does not exist in the Election Campaign Fund, the Commission may,
10 in accordance with the fiscal provisions of the Charter, request a supplemental appropriation
11 from the Board of Supervisors and the Mayor to provide additional funding to the Election
12 Campaign Fund so that \$8.00 per resident, plus 15% for administrative expenses, exists in
13 the fund for the upcoming election. This requirement shall not apply to any election held to fill
14 the vacancy for the remainder of a term.

15 (2) ~~Elections for the Board of Supervisors.~~ No later than August 1 before an
16 election for the Board of Supervisors, the Executive Director shall notify the Commission and
17 the Board of Supervisors whether \$1.50 per resident, after subtracting 15% for the
18 administrative expenses provided under section 1.138(b)(2), exists in the Election Campaign
19 Fund. If \$1.50 per resident, plus 15% for administrative expenses, does not exist in the
20 Election Campaign Fund, the Commission may, in accordance with the fiscal provisions of the
21 Charter, request a supplemental appropriation from the Board of Supervisors and the Mayor
22 to provide additional funding to the Election Campaign Fund so that \$1.50 per resident, plus
23 15% for administrative expenses, exists in the fund for the upcoming election. This
24 requirement shall not apply to any election held to fill the vacancy for the remainder of a term.
25

1 (a) REPORT BY CONTROLLER. At the request of the Ethics Commission, the
2 Controller shall provide a statement of the total amount of funds in the Election Campaign
3 Fund.

4 (b) INSUFFICIENT FUNDS.

5 (1) Elections for Mayor. No later than August 1 before an election for Mayor,
6 the Executive Director shall notify the Commission and the Board of Supervisors whether
7 \$7.50 per resident, after subtracting 15% for the administrative expenses provided under
8 section 1.138(b)(2), exists in the Election Campaign Fund. If \$7.50 per resident, plus 15% for
9 administrative expenses, does not exist in the Election Campaign Fund, the Commission may,
10 in accordance with the fiscal provisions of the Charter, request a supplemental appropriation
11 from the Board of Supervisors and the Mayor to provide additional funding to the Election
12 Campaign Fund so that \$7.50 per resident, plus 15% for administrative expenses, exists in
13 the fund for the upcoming election. This requirement shall not apply to any election held to fill
14 the vacancy for the remainder of a term.

15 (2) Elections for the Board of Supervisors. No later than August 1 before an
16 election for the Board of Supervisors, the Executive Director shall notify the Commission and
17 the Board of Supervisors whether \$1.50 per resident, after subtracting 15% for the
18 administrative expenses provided under section 1.138(b)(2), exists in the Election Campaign
19 Fund. If \$1.50 per resident, plus 15% for administrative expenses, does not exist in the
20 Election Campaign Fund, the Commission may, in accordance with the fiscal provisions of the
21 Charter, request a supplemental appropriation from the Board of Supervisors and the Mayor
22 to provide additional funding to the Election Campaign Fund so that \$1.50 per resident, plus
23 15% for administrative expenses, exists in the fund for the upcoming election. This
24 requirement shall not apply to any election held to fill the vacancy for the remainder of a term.

25 SEC. 1.170. PENALTIES.

1 (a) CRIMINAL. Any person who knowingly or willfully violates any provision of this
2 Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a
3 fine of not more than \$5,000 for each violation or by imprisonment in the County jail for a
4 period of not more than six months or by both such fine and imprisonment; provided, however,
5 that any willful or knowing failure to report contributions or expenditures done with intent to
6 mislead or deceive or any willful or knowing violation of the provisions of Section 1.114 of this
7 Chapter shall be punishable by a fine of not less than \$5,000 for each violation or three times
8 the amount not reported or the amount received in excess of the amount allowable pursuant
9 to Section 1.114 of this Chapter, or three times the amount expended in excess of the amount
10 allowable pursuant to Section 1.130 or 1.140.5, whichever is greater.

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

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

20 (d) LATE FILING FEES

21 (1) Fees for Late Paper Filings. In addition to any other penalty, any person
22 who files a paper copy of any statement or report after the deadline imposed by this Chapter
23 shall be liable in the amount of ten dollars (\$10) per day after the deadline until the statement
24 is filed.
25

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

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

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

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

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

23 (g) PERSONAL LIABILITY. Candidates and treasurers are responsible for
24 complying with this Chapter and may be held personally liable for violations by their
25 committees. Nothing in this Chapter shall operate to limit the candidate's liability for, nor the

1 candidate's ability to pay, any fines or other payments imposed pursuant to administrative or
2 judicial proceedings.

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

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

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

14 (2) If a candidate for ~~Mayor or~~ the Board of Supervisors certified as eligible for
15 public financing is found by a court to have exceeded the Individual Expenditure Ceiling in this
16 Chapter by ten percent or more at any time prior to his or her election, such violation shall
17 constitute official misconduct. ~~he or she is ineligible for election, unless the court specifically~~
18 ~~determines that this provision shall not be applicable. If feasible, the candidate's name shall be~~
19 ~~removed from the ballot. No candidate for Mayor or the Board of Supervisors who is found by a court~~
20 ~~to have exceeded the Individual Expenditure Ceiling in this Chapter by ten percent or more after his or~~
21 ~~her election shall be a candidate for any City elective office for a period of five years following the~~
22 ~~court's determination unless the court specifically determines that this provision shall not be~~
23 ~~applicable.~~ The Mayor may suspend any member of the Board of Supervisors for such a violation, and
24 seek the removal of Ethics Commission may make a recommendation to the Board of Supervisors that
25 a candidate found by a court to have exceeded the Individual Expenditure Ceiling in this Chapter by

1 *ten percent or more should be removed from office following the procedures set forth in Charter*
2 *section 15.105(a).*

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

5 Section 3. The San Francisco Municipal Elections Code is hereby amended by
6 amending Section 200 and adding Section 205, to read as follows:

7 SEC. 200. NOMINATION AND RECALL OF ELECTIVE OFFICERS;
8 INCORPORATION OF STATE LAW.

9 Except as otherwise provided by the Charter or this Municipal Elections Code,
10 nomination of elective officers shall be made pursuant to California Elections Code Section
11 ~~8000~~10220 et seq., and the recall of elective officers shall be made pursuant to California
12 Elections Code Section 11000 et seq. If the official proposed to be removed at a recall
13 election is recalled, the vacancy shall be filled pursuant to Charter Sections 3.100~~7~~(1415) and
14 13.101.5.

15 SEC. 205. NOMINATION DEADLINES.

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

18 Section 4. Effective Date. This ordinance shall become effective 30 days from the
19 date of passage.

20 Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to
21 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
22 punctuation, charts, diagrams, or any other constituent part of the Campaign & Governmental
23 Conduct Code or Municipal Elections Code that are explicitly shown in this legislation as
24 additions, deletions, Board amendment additions, and Board amendment deletions in
25 accordance with the "Note" that appears under the official title of the legislation.

1 Section 6. Operative Dates. Section 2 of this Ordinance shall become operative 30
2 days from the date of passage. Section 3 of this Ordinance shall become operative on
3 January 1, 2013.
4

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By:



8 ANDREW SHEN
9 Deputy City Attorney.
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LEGISLATIVE DIGEST

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

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

Existing Law

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

1. **Election Campaign Fund**: The City has established an election campaign fund as the source of funds for the City's public financing program. S.F. Campaign & Gov'tal Conduct Code § 1.138. On an annual basis, the Board of Supervisors and the Mayor appropriates \$2.75 per San Francisco resident to the fund. *Id.* § 1.138(b). The amount of funds in the Election Campaign Fund may not exceed \$13.5 million. *Id.* § 1.138(c). If the amount of funds in the account becomes depleted beyond certain thresholds, the Executive Director must notify the Ethics Commission and Board of Supervisors, and may request a supplemental appropriation from the Board of Supervisors and the Mayor. *Id.* § 1.154(b).
2. **Qualification**: To qualify for the public financing program, candidates for the Board of Supervisors must collect at least \$5,000 in campaign contributions from at least 75 City residents, and candidates for Mayor must collect at least \$25,000 from at least 250 City residents. *Id.* §§ 1.140(b)(2); 1.140(c)(2).
3. **Availability of public funds**: The City may begin disbursement of public funds to qualifying candidates nine months prior to the election, e.g., the February prior to a November general election. *Id.* § 1.144(b).
4. **Matching public funds**: After qualifying, candidates receive an initial grant of funds - \$10,000 for supervisorial candidates and \$50,000 for mayoral candidates. *Id.* §§ 1.144(c)(3)(A), 1.144(d)(3)(A). Thereafter, campaign contributions raised by candidates are matched with public funds in pre-determined ratios.

For supervisorial candidates, for the first \$10,000 that they raise in private campaign contributions, each dollar is matched with four dollars in public funds (*i.e.*, up to \$40,000 in public funds). *Id.* § 1.144(d)(3)(B). Thereafter, additional contributions received by supervisorial candidates are matched on a one-to-one basis. *Id.* § 1.144(d)(3)(C). For mayoral candidates, for the first \$100,000 that they raise in private campaign contributions, each dollar is matched with four dollars in public funds (*i.e.*, up to \$400,000 in public funds). *Id.* § 1.144(c)(3)(B). Thereafter, additional contributions received by mayoral candidates are matched on a one-to-one basis. *Id.* § 1.144(c)(3)(C).

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

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

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

Amendments to Current Law

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

1. Election Campaign Fund: The amount of public funds in the Election Campaign Fund could no longer exceed \$7 million. To accommodate this change, the proposal also lowers the threshold, for mayoral elections, at which the Executive Director must

notify the Ethics Commission and Board of Supervisors about the level of public funds, and may request a supplemental appropriation from the Board of Supervisors and the Mayor.

2. Qualification: To qualify for the public financing program, candidates for the Board of Supervisors would be required to collect at least \$10,000 in campaign contributions from at least 100 City residents, and candidates for Mayor would be required to collect at least \$50,000 from at least 500 City residents. The proposal would also impose higher qualification thresholds for incumbents. Incumbent members of the Board of Supervisors would be required to collect at least \$15,000 from at least 150 City residents, and the Mayor would be required to collect at least \$75,000 from at least 750 City residents.

3. Availability of public funds: The City could disburse public funds to qualifying candidates no earlier than the 142nd day prior to the election. For a November general election, the 142nd day would fall in approximately early to mid-June.

4. Matching public funds: After qualifying, candidates would receive an initial grant of funds - \$20,000 for supervisory candidates and \$100,000 for mayoral candidates. Thereafter, campaign contributions raised by candidates would be matched with public funds in pre-determined ratios up to each candidate's individual expenditure ceiling.

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

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

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

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

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

Candidates for local elective offices, including the Board of Supervisors and Mayor, would be required to file their nomination documents by no later than the 146th day before the election. The new nomination deadline would not become operative until January 1, 2013.

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

Background Information

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

At its January 23, 2012 meeting, the Ethics Commission unanimously approved the portions of this proposal that amend the Campaign and Governmental Conduct Code. On February 28, 2012, the Board of Supervisors subsequently made further amendments to the proposal and re-referred the legislation to the Ethics Commission.

The Ethics Commission approved the current version of these amendments at a special meeting, held on March 9, 2012.