

File No. 100962

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: March 9, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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| ☐ | ☐ | Resolution |
| ☒ | ☐ | Ordinance |
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OTHER

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Completed by: Victor Young

Date: March 4, 2011

Completed by: Victor Young

Date: _____

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

[Appropriating \$1,300,000 of General Fund Reserve for the Ethics Commission Public Election Campaign Finance Fund for Fiscal Year 2010-2011.]

Ordinance appropriating \$1,300,000 using General Fund Reserve for the Ethics Commission in the Public Election Campaign Finance Fund for Fiscal Year 2010-2011.

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

Section 1. The uses of funding outlined below are herein de-appropriated to reflect the funding available for Fiscal Year 2010-2011.

USES De-Appropriation

Fund	Index Code	Subobject	Description	Amount
1G AGF AAA – GF- Non-Project- Controlled	*CON1GAGFAAA	098GR	General Fund Reserve	\$1,300,000
Total USES De-Appropriation				\$1,300,000

Section 2. The uses of funding outlined below are herein appropriated in the Subobject 03800, Community Based Organization Services - Budget, and reflects the projected use of funding to support the Ethics Commission for Fiscal Year 2010-2011.

1 **USES Appropriation**

2

Fund	Index/Project	Subobject	Description	Amount
3 1G AGF ACP –	185007	03801 Community	Public Election Campaign	\$1,300,000
4 GF-Continuing-		Based Organization	Fund	
5 Project-	Project: PEC003	Services - Budget		
6 Controlled				
7 Total USES Appropriation				\$1,300,000

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10 **FUNDS AVAILABLE**

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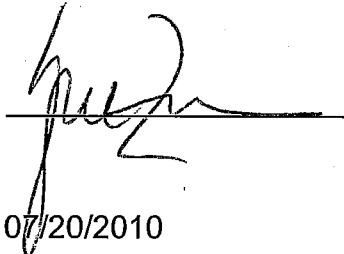
12 **APPROVED AS TO FORM:**

13 **BEN ROSENFELD**

14 **DENNIS J: HERRERA, City Attorney**

15 **Controller**

16 By: 

17 By: 

18 Deputy City Attorney

19 Date: 07/20/2010

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Item 3
File 10-0962

Department:
Ethics Commission

EXECUTIVE SUMMARY

Legislative Objective

- The proposed ordinance would appropriate \$1,300,000 from the City's General Fund Reserve to the Public Election Campaign Finance Fund, administered by the Ethics Commission in order to provide additional public campaign funds to eligible Board of Supervisors and Mayoral candidates.

Key Points

- In accordance with Section 1.138 of the San Francisco Campaign and Governmental Conduct Code, the San Francisco voters approved Proposition O on November 7, 2000, which established a special fund, the Public Election Campaign Finance Fund, to provide campaign funds to all eligible Board of Supervisors and Mayoral candidates. The Public Election Campaign Finance Fund is administered by the Ethics Commission.
- In order to balance the City's annual budget, the Mayor's recommended budget transferred \$5,000,000 from the Public Election Campaign Finance Fund back to the General Fund in FY 2007-2008 and \$2,292,953 from the Public Election Campaign Finance Fund back to the General Fund in FY 2008-2009, or a total of \$7,292,953. Over the past two fiscal years, the Board of Supervisors restored a total of \$1,783,858 to the Public Election Campaign Finance Fund including \$1,283,858 in FY 2009-2010 and \$500,000 in FY 2010-2011.

Fiscal Impact

- The proposed appropriation request of \$1,300,000 would be funded from the City's General Fund Reserve.
- As of the writing of this report, the Public Election Campaign Finance Fund has a balance of \$5,002,915. If the subject ordinance is approved, the balance in the Public Election Campaign Finance Fund would be \$6,302,915 (\$5,002,915 plus \$1,300,000). The Ethics Commission roughly estimates that an additional \$4,700,000 will be paid to Mayoral candidates from the Public Election Campaign Finance Fund during the current fiscal year (FY 2010-2011), leaving a balance of \$1,602,915 (\$6,302,915 less \$4,700,000) as of June 30, 2011, at the end of FY 2010-2011 if the proposed ordinance is approved. If the proposed ordinance is not approved, the balance in the Public Election Campaign Finance Fund as of June 30, 2011 would be \$302,915 (\$5,002,915 less \$4,700,000).
- The Ethics Commission intends to request \$2,009,451 from General Fund revenues in the FY 2011-2012 budget for the Public Election Campaign Finance Fund.

Recommendation

- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT/BACKGROUND**Mandate Statement**

In accordance with Section 1.138 of the San Francisco Campaign and Governmental Conduct Code, the San Francisco voters approved Proposition O on November 7, 2000, which established a special fund, the Public Election Campaign Finance Fund, to provide public elections campaign finance funding for all eligible Board of Supervisors candidates and Mayoral candidates. The Public Election Campaign Finance Fund is administered by the Ethics Commission.

In accordance with Section 1.138(b) of the Campaign and Governmental Conduct Code, the Controller's Office determines how much funding is required to be appropriated to the Public Election Campaign Finance Fund at the beginning of each fiscal year by (a) estimating the number of City residents and (b) multiplying the total number of City residents by \$2.75. At the end of the fiscal year, unused funds in the Public Election Campaign Finance Fund can be carried forward, provided that the total amount in the Public Election Campaign Finance Fund does not exceed \$13,500,000. Any funds in the Public Election Campaign Finance Fund in excess of \$13,500,000 must be returned to the City's General Fund.

As stated in Section 1.144 (c) and (d) of the Campaign and Governmental Conduct Code, each eligible Board of Supervisors candidate may receive a maximum of \$89,000 and each eligible Mayoral candidate may receive a maximum of \$900,000. As stated in Section 1.140 (a), (b) and (c) of the Campaign and Governmental Conduct Code, to be eligible to receive public financing, both Board of Supervisors and Mayoral candidates must:

- (a) file a Statement of Participation with the Ethics Commission indicating that he or she intends to participate in the public financing program;
- (b) agree to the following conditions: (i) prove that each contribution is a qualifying contribution¹; (ii) prove that expenditures made with the funds received from the Public Election Campaign Finance Fund comply with Section 1.148(a)² of the Campaign and Governmental Conduct Code; (iii) not make any payments to a contractor or vendor in exchange for a campaign contribution or if the contractor or vendor has already made a contribution and the candidate chooses to hire that contractor or vendor for campaign services, the candidate cannot make more than 50 payments; (iv) not loan or donate more

¹ As stated in Section 1.105 (w) of the Campaign and Governmental Conduct Code, a qualifying contribution is a contribution between \$10 and \$100 that is made by a resident of San Francisco. Qualifying contributions do not include (a) loans, (b) contributions received more than 18 months before the date of the election, (c) contributions made by the candidate, the candidate's spouse, a registered domestic partner or dependent child and (d) contributions made from non-residents of San Francisco. Qualifying contributions under \$100 that are not made by a check, credit card receipt, or a record of electronic transfer of funds must be accompanied by written documentation sufficient to establish the contributor's name and address. As stated in Section 1.114 (a) of the Campaign and Governmental Conduct Code, a contribution cannot exceed \$500. If a contribution is between \$101 and \$500, only \$100 of such a contribution would be considered a qualifying contribution.

² Public funds may only be used to pay for qualified campaign expenditures and to repay loans used to pay for qualified campaign expenditures (i.e. utility bills), expenses associated with an audit, and expenses related to preparing post-election campaign finance disclosure reports as required by the State's Government Code Sections 84100-85704 (California Political Reform Act) and the City's Campaign and Governmental Conduct Code.

than \$15,000 of his or her own money to the campaign; (v) not accept any loans to his or her campaign with the exception of a candidate's loan to his or her own campaign; and (vi) participate in at least three debates with his or her opponents;

(c) pay any outstanding late fines or penalties owed to the City by the candidate or any of the candidate's previous campaign committees, which were imposed for violations of the City's Campaign and Governmental Conduct Code or the campaign finance provisions of the State's Government Code Sections 84100-85704 (California Political Reform Act), provided that the Ethics Commission notified the candidate of such fines or penalties by the time of certification;

(d) file any outstanding forms required to be filed with the City by the candidate or any of the candidate's previous campaign committees, which were required to be filed pursuant to the City's Campaign and Governmental Conduct Code or the finance provisions of the California Political Reform Act, provided that the Ethics Commission had notified the candidate of such outstanding forms by the time of certification to receive funds from the Public Election Campaign Finance Fund; and

(e) not have any findings by the Ethics Commission or the court after a hearing on the merits, within the prior five years, that the candidate knowingly, willfully, or intentionally violated any Section of the City's Campaign and Governmental Conduct Code or the finance provisions of the California Political Reform Act.

In addition to the eligibility criteria above, a Board of Supervisors candidate must:

- (a) seek election to the Board of Supervisors and be eligible to hold the position;
- (b) have a candidate committee that has received at least \$5,000 in qualifying contributions from at least 75 contributors before the 70th day before the election;
- (c) be opposed by another candidate who has either established eligibility to receive public financing, or whose candidate committee has received contributions or made expenditures which equal or exceed \$5,000; and
- (d) agree that his or her candidate committee will not make qualified campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of \$143,000, or as adjusted by the Ethics Committee.

In addition to the eligibility criteria above, a Mayoral candidate must:

- (a) seek election to the office of Mayor and be eligible to hold the position;
- (b) have a candidate committee that has received at least \$25,000 in qualifying contributions from at least 250 contributors by the 70th day before the election;
- (c) be opposed by another candidate who has either established eligibility to receive public financing, or whose candidate committee has received contributions or made expenditures which equal or exceed \$50,000; and
- (d) agree that his or her candidate committee will not make qualified campaign expenditures that total more than the candidate's Individual Expenditure Ceiling of \$1,475,000, or as adjusted by the Ethics Committee.

As stated in Section 1.142 (b), (c), (d), and (e) of the Campaign and Governmental Conduct Code, both Board of Supervisors and Mayoral candidates must be certified by the Executive Director of the Ethics Commission in order to be eligible to receive public funds. In addition to the previously stated requirements of eligibility, candidates must also submit a formal declaration which declares, under penalty of perjury, that the candidate satisfies the requirements specified above in Section 1.140 (a), (b) and (c) of the Campaign and Governmental Conduct Code in order to have their eligibility reviewed and, if deemed eligible, certified by the Executive Director of the Ethics Commission. Candidates shall be permitted to submit the declaration and any supporting material required by the Ethics Commission to the Ethics Commission no earlier than nine months before the date of the election, but no later than the 70th day before the election.

In order to determine a candidate's eligibility, the Executive Director of the Ethics Commission shall:

- (a) review the candidate's declaration and supporting material to determine whether the candidate is eligible to receive public funds and, if the Executive Director deems it necessary, (a) audit candidate's records, (b) interview contributors and (c) take whatever steps necessary to determine eligibility; and
- (b) determine whether a candidate for the Board of Supervisors is opposed by at least one other candidate as required under Section 1.140 (b) or a candidate for Mayor is opposed by at least one other candidate as required under Section 1.140 (c).

If the Executive Director deems that a candidate for Mayor or the Board of Supervisors has satisfied the requirements under Section 1.140, the Executive Director shall notify the candidate and certify to the Controller that the candidate is eligible to receive public financing. The Executive Director shall determine whether to certify a candidate no later than 30 days after the date the candidate submits his or her declaration and supporting material, provided that the Executive Director shall make all determinations regarding whether to certify a candidate no later than the 55th day before the election.

Background

In accordance with the Campaign and Governmental Conduct Code, the Public Election Campaign Finance Fund is appropriated a specific amount of monies each fiscal year, which is dependent on the total number of City residents, to allow the Ethics Committee to provide public funding to eligible Board of Supervisors and Mayoral candidates for upcoming elections.

However, as shown in Table 1 below, in order to balance the City's annual budget, the Mayor's recommended budget transferred \$5,000,000 from the Public Election Campaign Finance Fund back to the City's General Fund in FY 2008-2009 and \$2,292,953 from the Public Election Campaign Finance Fund back to the City's General Fund in FY 2009-2010, or a total of \$7,292,953.

The appropriations, expenditures and reductions to the Public Election Campaign Finance Fund for four years from FY 2007-2008 through FY 2010-2011 are detailed in Table 1 below.

Table 1: Appropriations, Expenditures and Reductions to the Public Election Campaign Finance Fund from FY 2007-2008 to FY 2010-2011

	FY 2007-2008	FY 2008-2009	FY 2009-2010	FY 2010-2011
Beginning balance	\$7,160,168	\$2,160,168	\$757,233	\$3,514,340
Appropriation	0	1,823,250	1,928,198	1,976,494
Board of Supervisors restorations	0	0	1,283,858*	500,000*
Payments to candidates	0	(933,232)	(454,949)	(987,919)**
Transfer from the Public Election Campaign Finance Fund Back to the City's General Fund	(5,000,000)***	(2,292,953)***	0	0
Ending balance in the Public Election Campaign Finance Fund	\$2,160,168	\$757,233	\$3,514,340	\$5,002,915****

* Total of \$1,783,858 (\$1,283,858 plus \$500,000)

** As of March 1, 2011

*** Total of \$7,292,953 (\$5,000,000 plus \$2,292,953)

**** As of March 1, 2011

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would appropriate a total of \$1,300,000 from the General Fund Reserve to the Public Election Campaign Finance Fund, administered by the Ethics Commission, in order to provide additional public campaign funds for eligible Board of Supervisors candidates and Mayoral candidates.

On July 20, 2010, the Controller's Office certified the availability of such funds from the City's General Fund Reserve. According to Ms. Cindy Czerwin, Budget and Revenue Analyst for the Controller's Office, the current balance of the FY 2010-11 General Fund Reserve is \$25,000,000. However, there is currently a supplemental appropriation request for the Fourth Street Bridge Project pending Board of Supervisors approval which would provide for an allocation of \$2,809,000 from the General Fund Reserve to the Department of Public Works (DPW) for litigation expenses related to Mitchell Engineering/Obayashi Corporation v. City and County of San Francisco. If approved, that supplemental appropriation request of \$2,809,000 would reduce the City's General Fund Reserve, from the original FY 2010-2011 funding level of \$25,000,000 previously appropriated by the Board of Supervisors to \$22,191,000. If the subject proposed \$1,300,000 supplemental appropriation request is also approved, as previously appropriated by the Board of Supervisors, the City's General Fund Reserve would be further reduced from \$22,191,000 to \$20,891,000 (\$22,191,000 less \$1,300,000).

FISCAL ANALYSIS

As shown in Table 1 above, as of March 1, 2011, the balance in the Public Election Campaign Finance Fund was \$5,002,915. As shown in Table 2 below, if the Board of Supervisors approves the proposed ordinance to appropriate \$1,300,000 to the Public Election Campaign Finance Fund, the balance in the Public Election Campaign Finance Fund would be \$6,302,915 (\$5,002,915 plus \$1,300,000).

The Mayoral Election on November 8, 2011

According to Ms. Ng, all required public campaign funds to Board of Supervisors candidates for the November 2010 election have been paid to Board of Supervisors candidates. The current balance in the Public Election Campaign Finance Fund of \$5,002,915 (See Table 1 above) as of March 1, 2011 would be used to fund Mayoral candidates for the Mayoral election on November 8, 2011. Such payments would be made only to Mayoral candidates who the Executive Director of the Ethics Commission certifies as being eligible to receive such funding. Mayoral candidates are eligible to apply for public funding between February 8, 2011 and August 30, 2011. Ms. Mabel Ng, Deputy Executive Director of the Ethics Commission advises that as of March 1, 2011, two Mayoral candidates have applied for public funding and the Ethics Commission anticipates that the first certification will occur before the March 13, 2011 deadline, which is 30 days from the date of the first February 11, 2011 submission. The deadline for the second certification is March 18, 2011.

According to Ms. Ng, the Ethics Commission estimates that total campaign payments needed for Mayoral candidates in the November, 2011 election is a minimum of \$5,400,000³. According to Ms. Ng, and as shown in Table 2 below, the Ethics Commission currently estimates that \$4,700,000 will be paid out to Mayoral candidates from the Public Election Campaign Finance Fund during FY 2010-2011 based on (a) the number of candidates who have already raised the minimum amount required to be certified as eligible to receive public financing and (b) estimates of the level of campaign contributions each candidate will raise by the end of the fiscal year. However, Ms. Ng cautions that this is a very rough estimate and will vary depending on (a) the number of Mayoral candidates who raise the minimum required \$25,000, (b) the amount needed to be eligible to receive Public Election Campaign Finance Fund monies and (c) the actual level of campaign contributions that each candidate raises. If the Public Election Campaign Finance Fund has an unexpended balance at the end of FY 2010-2011, such funds would be carried forward into FY 2011-2012.

As shown in Table 2 below, if the proposed ordinance to appropriate \$1,300,000 is not approved, the balance in the Public Election Campaign Finance Fund as of June 30, 2011 at the end of FY 2010-2011 would be approximately \$302,915.

³ The Ethics Commission estimates that candidate payments for the November 8, 2011 Mayoral election would be a minimum of \$5,400,000, which would allow six Mayoral candidates to receive the maximum amount of \$900,000.

As shown in Table 2 below, if the proposed ordinance to appropriate \$1,300,000 is approved, the balance in the Public Election Campaign Finance Fund as of June 30, 2011, at the end of FY 2010-2011 would be approximately \$1,602,915.

Table 2: Summary of Public Election Campaign Finance Fund Expenditures and Proposed Appropriations for FY 2010-2011 and 2011-2012 With/Without Funds in the Proposed Ordinance Request		
	Public Campaign Finance Fund Expenditures and Proposed Appropriations if Proposed Ordinance is Approved	Public Campaign Finance Fund Expenditures and Proposed Appropriations if Proposed Ordinance is Not Approved
Balance as of March 1, 2011	\$5,002,915	\$5,002,915
Proposed Ordinance Request	+1,300,000	0
Balance in Public Election Campaign Finance Fund	\$6,302,915	\$5,002,915
Ethics Commission's Estimate of FY 2010-2011 Payments to Mayoral Candidates after March 1, 2011	-4,700,000	-4,700,000
Balance in Public Election Campaign Finance Fund as of June 30, 2011 (end of FY 2010-2011)	\$1,602,915	\$302,915
Amount To Be Requested in FY 2011 -2012 Budget	+2,009,451	+2,009,451
Balance in Public Election Campaign Finance Fund as of July 1, 2011 (start of FY 2011-2012) if Board of Supervisors Appropriates \$2,009,451 in FY 2011-2012	\$3,612,366	\$2,312,366

According to Ms. Ng, and as shown in Table 2 above, the Ethics Commission intends to request \$2,009,451 of General Fund monies in the FY 2011-2012 budget for the Public Election Campaign Finance Fund, based on an estimated 859,658 population in San Francisco times \$2.75

per resident less a 15 percent set aside for administrative costs in accordance with Section 1.138(b) of the Campaign and Governmental Conduct Code⁴. As shown in Table 2 above, if (a) this \$2,009,451 to be requested in the FY 2011-2012 budget and (b) the proposed subject \$1,300,000 supplemental appropriation request are approved by the Board of Supervisors, then, as of July 1, 2011, the balance in the Public Election Campaign Finance Fund would be \$3,612,366. As shown in Table 2 above, if the \$2,009,451 to be requested in the FY 2011-2012 budget is approved by the Board of Supervisors, but if the proposed subject supplemental appropriation request of \$1,300,000 is not approved by the Board of Supervisors, then, as of July 1, 2011, the balance in the Public Election Campaign Finance Fund would be \$2,312,366.

Board of Supervisors November 2012 Election

As noted above, the Public Election Campaign Finance Fund will also be used to fund Board of Supervisors candidates for the Board of Supervisors election on November 6, 2012 who the Executive Director of the Ethics Commission certifies as eligible during FY 2011-2012. Board of Supervisors candidates will be eligible to apply for funding between February 6, 2012 and August 28, 2012. If the Public Election Campaign Finance Fund has a balance at the end of FY 2011-2012, such funds would be carried forward into FY 2012-2013.

According to Ms. Ng, the Ethics Commission estimates that campaign payments needed for candidates for the Board of Supervisors election on November 6, 2012 will range from approximately \$1,360,000 to \$1,780,000⁵.

Balance of the Public Election Campaign Finance Fund Amount Owed

As noted in Table 1 above, in order to balance the City's annual budgets, the Mayor's recommended budgets transferred a total of \$7,292,953 from the Public Election Campaign Finance Fund back to the City's General Fund, including \$5,000,000 in FY 2007-2008 and \$2,292,953 in FY 2008-2009. As noted in Table 1 above, the Board of Supervisors restored to the Public Campaign Finance Fund \$1,283,858 in FY 2008-2009 and \$500,000 in FY 2009-2010, or a total of \$1,783,858. Therefore, in order to fully restore the \$7,292,953 previously transferred out of the Public Election Campaign Finance Fund, an additional \$5,509,095 (\$7,292,953 transferred out less \$1,783,858 restored) would have to be restored to the Public Election Campaign Finance Fund. The proposed ordinance would restore \$1,300,000 of that \$5,509,095 amount.

⁴ 859,658 population x \$2.75 per resident = \$2,364,060 less 15 percent, or \$354,609 for Ethics Commission administrative expense = \$2,009,451.

⁵ The Ethics Commission estimates that Board of Supervisors candidate payments for the November 6, 2012 election would be \$1,360,000 to \$1,780,000 based on assumptions that (a) 45 percent of the candidates running for the Board will qualify for funding and (b) six candidates from each of the two open races and two candidates from each of the four races with incumbents will qualify for public financing, equal to approximately 45 percent of the candidates or 20 candidates out of the 45 candidates running for Board of Supervisors. If 20 candidates in the November 6, 2012 election qualify for public financing and each receives the maximum \$89,000 from the Election Campaign Fund, the amount that will be disbursed is \$1,780,000. The average Board of Supervisors candidate 2008 received a payment of \$69,000 and for 2010 received a payment of \$67,000, or an average of \$68,000. If 20 candidates qualify for funding and the average disbursement in 2012 is \$68,000, the amount of public funds that will be disbursed is \$1,360,000.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.