

## LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Campaign Finance Reform Ordinance]

**Ordinance amending the Campaign and Governmental Conduct Code, Campaign Finance Reform Ordinance, Article I, Chapter 1 to: 1) modify and streamline disclaimer and reporting requirements for candidates and third parties raising and spending funds in local elections; 2) require the Ethics Commission to provide public notice when thresholds are met; 3) eliminate the overall contribution limit on contributions to all candidates on the ballot in a single election; and 4) make various reporting and disclaimer requirements parallel to requirements in State law.**

### Existing Law

**1. Third-party "paid for by" disclaimers and disclosure reports:** Under current law, third parties (non-candidates) must file disclosure reports and make "paid for by" disclaimers when they pay for certain communications about local candidates. The law specifies separate rules for four different types of third-party communications about candidates: (a) *mass mailings* with over 200 pieces of mail for or against a candidate (disclosure report and "paid for by" disclaimers required); (b) *electioneering communications* that clearly identify a candidate within 90 days of an election and are distributed to 500 or more people (disclosure report and "paid for by" disclaimers required); and (c) *campaign advertisements* for or against candidates, including TV or radio programming, newspaper ads and billboards ("paid for by" disclaimer required); and (d) *communications costing \$5,000 or more* that refer to candidates in races where there is at least one publicly financed candidate (which is available in Board and Mayor races) or where at least one candidate has accepted a voluntary expenditure ceiling (which is available in races for all other local offices) (expedited disclosure report required). State law also imposes additional filing requirements. For each type of communication, the law requires different disclosures and imposes different filing schedules.

**2. Candidate "paid for by" disclaimers:** Under current law, candidates are also subject to disclaimer and disclosure laws. Candidates must indicate that they paid for communications by making disclaimers on mass mailings and campaign advertisements. Candidates are also subject to public filing obligations, which the proposed legislation would not change.

**3. Filing deadlines:** Disclosure reports filed by candidates and third parties are filed on different schedules depending on the type of report and the race. Many filings are due within 24 hours of a candidate or committee distributing a campaign communication that meets certain spending thresholds.

**4. Spending caps:** Candidates for Mayor and the Board of Supervisors who choose to participate in the City's public financing program must agree to an individual expenditure ceiling ("IEC"). The IEC is a spending cap. The Ethics Commission raises the IECs for publicly-financed candidates in response to spending by third parties and other candidates in the race. The Commission increases the IEC incrementally for each candidate depending on the amount of money spent to support the candidate's opponents and to oppose that candidate. Candidates for City elective offices other than Mayor or Board of Supervisors may accept the applicable voluntary expenditure ceiling ("VEC"). Like the IEC, the VEC is a spending cap. But unlike the IEC, the Commission does not increase the VEC incrementally for each candidate in the race. Rather, the Commission will lift the VEC as to all candidates in a race when candidate spending and fundraising or third party spending exceed certain levels.

**5. \$500 per-candidate contribution limit:** The current limit on contributions to candidates is \$500 per person per candidate.

**6. Cumulative contribution limit:** Under current law, no person may contribute—to all candidates in an election combined—more than \$500 multiplied by the number of City elective offices to be voted on at that election.

**7. Use of campaign funds:** Candidates may use campaign funds only on behalf of their candidacy and for officeholder expenses after their election. Candidates may not use campaign funds to make charitable contributions.

**8. Eligibility for public financing:** Among other requirements, current law requires applicants for public financing to agree (a) not to pay any campaign vendors or contractors in return for a contribution and (ii) not to make more than 50 total payments to a vendor or contractor that has made a contribution to the candidate.

**9. Recorded telephone messages:** Current law requires "paid-for by" disclaimers in all recorded telephone messages distributed to 500 or more households.

#### Amendments to Current Law

This legislation would amend several provisions in the City's campaign finance law. The legislation would effect a number of technical changes and amend the law in the following ways:

**1. Third-party "paid for by" disclaimers and disclosure reports:** The proposed legislation would consolidate third-party reporting requirements by mandating disclosures and disclaimers for third-party communications about candidates in three situations: (a) within 90 days before an election, regardless of the race that the communication addresses; (b) more than 90 days before an election in races where there is at least one publicly financed candidate (which is possible in Board and Mayor races); and (c) more than 90 days before an election in races where at least one candidate has accepted the voluntary expenditure ceiling

and the Commission has not yet lifted that ceiling (which is possible in all other local races). The legislation would impose consistent disclosure and disclaimer requirements whenever a third-party spends \$5,000 or more for any such communications.

**2. Candidate "paid for by" disclaimers:** The proposed legislation would consolidate the candidate disclaimer requirements. The legislation would require a "paid for by" disclaimer whenever a candidate distributes: (a) a mass mailing; (b) a paid advertisement on television, radio, newspaper or periodical; (c) an internet advertisement; (d) posters, door hangers, or yard signs produced in quantities of 200 or more; or (e) a billboard.

**3. Filing deadlines:** The proposed legislation would adopt fixed reporting deadlines for all reports required by local law for candidates and third party committees. Under the legislation, the frequency of the required disclosures would increase as Election Day approaches. The filing dates would be each Wednesday more than 21 days before Election Day; each Monday and Wednesday between 21 and seven days before Election Day; the last Wednesday, Thursday, Friday and Monday immediately preceding Election Day; and Election Day. Whenever candidates or third parties reach the spending thresholds mandating a disclosure report, their disclosure reports would be due on the next filing date.

**4. Spending caps:** The proposed legislation would exclude certain "compliance costs" when determining whether to adjust a publicly financed candidate's IEC or to lift the VEC in a race without public financing. "Compliance costs" are costs that candidates incur in order to comply with local and state campaign finance laws, including accounting costs and legal fees. In races with public financing or candidates who have accepted a VEC, funds spent on compliance costs would not count toward spending caps. But the legislation would limit the total amount that any candidate could exclude under the "compliance costs" exception. The total excludable compliance costs could not exceed specified thresholds (\$14,300 in races for Supervisor, \$147,500 in races for Mayor, etc.). Under the proposal, a candidate could choose to spend more than the stated threshold on compliance, but only the amount set in the ordinance would be excluded when the Commission calculates figures for the purposes of monitoring and raising the spending caps.

All campaign expenditures would continue to be reported as under current law, whether or not those expenditures are used for compliance costs or other goals. The legislation would add a new requirement for candidates to report their compliance costs separately as well.

**5. \$500 per-candidate contribution limit:** The proposal would retain the \$500 per-candidate contribution limit but would require the Ethics Commission to adjust the limit according to changes in the Consumer Price Index after February 2012, rounding to the nearest hundred dollars. The Commission would annually report the adjustment calculations on its website.

**6. Cumulative contribution limit:** The proposed legislation would eliminate the cumulative contribution limit. There would be no cap on the total amount of contributions a person could make to all candidates combined in an election.

**7. Use of campaign funds:** The proposed legislation would allow a candidate to use campaign funds to pay for the costs of attending a fundraiser for a charitable organization. The legislation would also clarify that publicly-financed candidates could not use their remaining public funds to cover office expenses after winning election.

**8. Eligibility for public financing:** The proposed legislation would eliminate the requirement that applicants for public financing agree to limit their payments to vendors.

**9. Recorded telephone messages:** The proposed legislation would delete the current disclaimer requirements for recorded telephone messages, because those disclaimers are already required under State law.

#### Background Information

The proposal amends the Article I, Chapter 1 of the Campaign & Governmental Conduct Code (the "Campaign Finance Reform Ordinance" or "CFRO"). The Campaign Finance Reform Ordinance, which was originally approved by the voters, expressly authorizes amendment by the Board of Supervisors only if:

- 1) the amendment furthers the purposes of the CFRO;
- 2) the amendment is submitted to the Ethics Commission and recommended by its members by a four-fifths vote;
- 3) the legislation is made available for public review for 30 days; and
- 4) the Board of Supervisors adopts the legislation by a two-thirds vote.

See S.F. Campaign and Governmental Conduct Code Sec. 1.103.

At its meetings on October 19, 2011 and November 14, 2011, the Ethics Commission adopted all the provisions in the proposed legislation by at least a four-fifths vote.