

BOARD of SUPERVISORS



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MEMORANDUM

TO: Kanishka Karunaratne Cheng, Mayor's Office
LeeAnn Pelham, Executive Director, Ethics Commission
John Arntz, Director, Department of Elections
Ben Rosenfield, City Controller, Office of the Controller

FROM: Victor Young, Assistant Clerk
Rules Committee

DATE: March 26, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced on March 12, 2019:

File No. 190287

Ordinance amending the Campaign and Governmental Conduct Code to modify the deadline for participation in the City's public financing program and the operation of individual expenditure ceilings for participating candidates.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Mawuli Tugbenyoh, Mayor's Office
Rebecca Peacock, Mayor's Office
Andres Power, Mayor's Office
Patrick Ford, Ethics Commission
Todd Rydstrom, Office of the Controller
Natasha Mihal, Office of the Controller

1 [Campaign and Governmental Conduct Code - Public Campaign Financing]

2
3 **Ordinance amending the Campaign and Governmental Conduct Code to modify the**
4 **deadline for participation in the City's public financing program and the operation of**
5 **individual expenditure ceilings for participating candidates.**

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

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

14 Section 1. Chapter 1 of the Campaign and Governmental Conduct Code is hereby
15 amended by revising Sections 1.104, 1.108, 1.142, and 1.143, to read as follows:

16 **SEC. 1.104. DEFINITIONS.**

17 Whenever in this Chapter 1 the following words or phrases are used, they shall mean:

18 * * * *

19 "Total Supportive Funds" shall mean the sum of all contributions received by a
20 candidate committee supporting a candidate for Mayor or the Board of Supervisors, other than
21 any funds that exceed the candidate's Individual Expenditure Ceiling in the candidate's Campaign
22 Contingency Account exceeding the candidate committee's Trust Account Limit, plus the
23 expenditures made or expenses incurred by any person or persons for the purpose of making
24 independent expenditures, electioneering communications or member communications in
25 support of that same candidate.

1 ~~"Trust Account Limit" shall mean the amount of funds in the Campaign Contribution Trust~~
2 ~~Account of a candidate committee supporting a candidate for Mayor or the Board of Supervisors whom~~
3 ~~the Ethics Commission has certified as eligible to receive public funds under this Chapter such that the~~
4 ~~expenditure of this amount would cause the candidate to reach, but not exceed, the candidate's~~
5 ~~Individual Expenditure Ceiling. The Trust Account Limit shall be reduced as the candidate spends~~
6 ~~money and shall be increased when his or her Individual Expenditure Ceiling increases.~~

7 * * * *

8
9 **SEC. 1.108. CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST**
10 **~~ACCOUNTS AND CAMPAIGN CONTINGENCY ACCOUNTS.~~**

11 ~~(a) CANDIDATE COMMITTEE CAMPAIGN CONTRIBUTION TRUST ACCOUNTS.~~

12 ~~(1) (a)~~ Establishment of Account. Each treasurer for a candidate committee shall
13 establish a Campaign Contribution Trust Account for the candidate committee at an office of a
14 bank located in the City and County of San Francisco. All expenditures by the candidate
15 committee for the City elective office sought shall be made from that account.

16 ~~(2) (b)~~ Prohibition on Multiple Officeholder Accounts. All funds, services, or in-kind
17 contributions received by a candidate committee for expenses incurred directly in connection
18 with carrying out the candidate's usual and necessary duties of holding office shall be
19 deposited, credited, or otherwise reported to the candidate committee's Campaign
20 Contribution Trust Account. Such contributions shall be subject to the contribution limits in
21 Section 1.114 of this Chapter 1. An elected officeholder may not establish or control any other
22 committees or accounts for the purpose of making officeholder expenses. Nothing in this
23 Section 1.108 shall prohibit an officer from spending personal funds on official activities.

24 ~~(3) Account Limits. A candidate committee controlled by a candidate for Mayor or the~~
25 ~~Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds~~

1 ~~under this Chapter shall not, at any time before the date of the election for which the candidate has~~
2 ~~been certified, have an amount of funds greater than the candidate committee's Trust Account Limit in~~
3 ~~its Campaign Contribution Trust Account, unless those contributions are immediately transferred into~~
4 ~~the candidate committee's Campaign Contingency Account.~~

5 ~~(b) CAMPAIGN CONTINGENCY ACCOUNTS FOR CANDIDATE COMMITTEES FOR~~
6 ~~MAYOR AND THE BOARD OF SUPERVISORS.~~

7 ~~(1) Notwithstanding any other section of this Code, including Subsection (a)(2), a~~
8 ~~candidate committee controlled by a candidate for Mayor or the Board of Supervisors whom the Ethics~~
9 ~~Commission has certified as eligible to receive public funds under this Chapter may maintain a~~
10 ~~Campaign Contingency Account separate from its Campaign Contribution Trust Account into which it~~
11 ~~may deposit money contributions in anticipation that the Ethics Commission will raise the candidate's~~
12 ~~Individual Expenditure Ceiling. All money contributions deposited into this account shall be reported~~
13 ~~as if it were deposited into the candidate committee's Campaign Contribution Trust Account.~~

14 ~~(2) No candidate committee may deposit any funds into its Campaign Contingency~~
15 ~~Account if the amount of funds in the candidate committee's Campaign Contribution Trust Account is~~
16 ~~less than the candidate committee's Trust Account Limit.~~

17 ~~(3) No expenditures shall be made from a Campaign Contingency Account established~~
18 ~~pursuant to this section. Funds may be transferred from the candidate committee's Campaign~~
19 ~~Contingency Account to the candidate committee's Campaign Contribution Trust Account, provided~~
20 ~~that the amount of funds in the Campaign Contribution Trust Account does not exceed the candidate~~
21 ~~committee's Trust Account Limit. All funds that qualify as matching contributions and are transferred~~
22 ~~from the Campaign Contingency Account to the Campaign Contribution Trust Account shall be eligible~~
23 ~~to be matched with public funds in accordance with the procedures set forth in this Chapter. Within ten~~
24 ~~days after the date of the election, the candidate committee shall turn over all funds in the Campaign~~
25 ~~Contingency Account to the Election Campaign Fund.~~

1
2 **SEC. 1.142. PROCESS FOR ESTABLISHING ELIGIBILITY; CERTIFICATION BY**
3 **THE ETHICS COMMISSION.**

4 (a) STATEMENT OF PARTICIPATION OR NON-PARTICIPATION. Each candidate
5 for the Board of Supervisors or Mayor must sign and file a Statement of Participation or Non-
6 Participation in the public financing program. The statement must be filed by the candidate
7 with the Ethics Commission no later than the third day following the deadline for filing
8 nomination papers. On the statement, each candidate shall indicate whether ~~he or she~~ the
9 candidate intends to participate in the public financing program. A statement of participation or
10 non-participation may not be amended after the deadline ~~for filing nomination papers set forth in~~
11 this subsection (a).

12 If any deadline imposed by this subsection (a) falls on a Saturday, Sunday, or legal holiday, the
13 deadline shall be the next business day.

14 (b) DECLARATION BY CANDIDATE. To become eligible to receive public financing
15 of campaign expenses under this Chapter 1, a candidate shall declare, under penalty of
16 perjury, that the candidate satisfies the requirements specified in Section 1.140. Candidates
17 shall be permitted to submit the declaration and any supporting material required by the Ethics
18 Commission to the Ethics Commission no earlier than nine months before the date of the
19 election, but no later than the 70th day before the election. Once the declaration and
20 supporting material are submitted, they may not be amended. The declaration and supporting
21 material may be withdrawn and refiled, provided that the refiling is made no later than the 70th
22 day before the election.

23 If any deadline imposed by this ~~S~~ subsection (b) falls on a Saturday, Sunday, or legal
24 holiday, the deadline shall be the next business day.

1 (c) DETERMINATION OF ELIGIBILITY. The Executive Director of the Ethics
2 Commission shall review the candidate's declaration and supporting material to determine
3 whether the candidate is eligible to receive public funds under this Chapter 1. The Executive
4 Director may audit the candidate's records, interview contributors, and take whatever steps
5 the Executive Director deems necessary to determine eligibility. At the request of the
6 Executive Director, the Controller shall assist in this review process.

7 (d) DETERMINATION OF OPPOSITION. To determine whether a candidate for the
8 Board of Supervisors is opposed as required under Section 1.140(b)(3) of this Chapter 1 or a
9 candidate for Mayor is opposed as required under Section 1.140(c)(3) of this Chapter, the
10 Executive Director shall review the material filed pursuant to Section 1.152 of this Chapter,
11 and may review any other material.

12 (e) CERTIFICATION. If the Executive Director determines that a candidate for Mayor
13 or the Board of Supervisors has satisfied the requirements of Section 1.140, the Executive
14 Director shall notify the candidate and certify to the Controller that the candidate is eligible to
15 receive public financing under this Chapter 1. The Executive Director shall not certify that a
16 candidate is eligible to receive public financing if the candidate's declaration or supporting
17 material is incomplete or otherwise inadequate to establish eligibility. ~~Except as provided in~~
18 ~~subsection (h), the~~ The Executive Director shall determine whether to certify a candidate no later
19 than 30 days after the date the candidate submits his or her declaration and supporting
20 material, provided that the Executive Director shall make all determinations regarding whether
21 to certify a candidate no later than the 55th day before the election.

22 (f) RESUBMISSION. If the Executive Director declines to certify that a candidate is
23 eligible to receive public financing under this Chapter 1, the Executive Director shall notify the
24 candidate. Notwithstanding Section 1.142(b) of this Chapter, the candidate may, within five
25

1 business days of the date of notification, resubmit the declaration and supporting material. If
2 the candidate does not timely resubmit, the Executive Director's determination is final.

3 If, after viewing resubmitted material, the Executive Director declines to certify that a
4 candidate is eligible to receive public financing under this Chapter, the Executive Director
5 shall notify the candidate of this fact. Additional resubmissions may be permitted in the
6 Executive Director's discretion. If the candidate fails to resubmit in the time specified by the
7 Executive Director, or if no further resubmissions are permitted, the Executive Director's
8 determination is final.

9 (g) APPEAL TO THE ETHICS COMMISSION. If the Executive Director declines to
10 certify that a candidate is eligible to receive public financing under this Chapter 1, the
11 candidate may appeal the Executive Director's final determination to the Ethics Commission.
12 The candidate must deliver the written appeal to the Ethics Commission within five days of the
13 date of notification of the Executive Director's determination.

14
15 **SEC. 1.143. ADJUSTING INDIVIDUAL EXPENDITURE CEILINGS.**

16 This Section 1.143 shall apply only if the Ethics Commission has certified that at least
17 one candidate for Mayor or the Board of Supervisors is eligible to receive public funds under
18 this Chapter 1.

19 (a) The Executive Director shall adjust the Individual Expenditure Ceiling of a
20 candidate for Mayor ~~to an amount equal to~~ by \$250,000 when the sum of the Total Opposition
21 Spending against that candidate and the highest level of the Total Supportive Funds of any
22 other candidate for Mayor ~~if such amount~~ is greater than \$1,475,000 ~~by any amount, provided that~~
23 ~~the Executive Director may adjust a candidate's Individual Expenditure Ceilings only in increments of~~
24 \$100,000. Thereafter, the Executive Director shall further adjust a candidate's Individual Expenditure
25 Ceiling in increments of \$250,000, whenever the sum of the Total Opposition Spending against that

1 candidate and the highest level of the Total Supportive Funds of any other candidate for Mayor is
2 greater than the candidate's current Individual Expenditure Ceiling by any amount.

3 (b) The Executive Director shall adjust the Individual Expenditure Ceiling of a
4 candidate for the Board of Supervisors ~~to an amount equal to~~ by \$50,000 when the sum of the
5 Total Opposition Spending against that candidate and the highest level of the Total Supportive
6 Funds of any other candidate for the same office on the Board of Supervisors ~~if such amount~~ is
7 greater than \$250,000 ~~by any amount, provided the Executive Director may adjust a candidate's~~
8 ~~Individual Expenditure Ceiling only in increments of \$10,000.~~ Thereafter, the Executive Director shall
9 further adjust a candidate's Individual Expenditure Ceiling in increments of \$50,000, whenever the sum
10 of the Total Opposition Spending against that candidate and the highest level of the Total Supportive
11 Funds of any other candidate for the same office is greater than the candidate's current Individual
12 Expenditure Ceiling by any amount.

13 (c) The Executive Director shall promptly review statements filed pursuant to state and
14 local law, including Government Code section 84204 and Sections 1.161, 1.162, and 1.163 of
15 this Chapter 1, to determine whether a communication supports or opposes one or more
16 candidates.

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

- 19 (1) whether the communication clearly identifies one or more candidates;
- 20 (2) the timing of the communication;
- 21 (3) the voters targeted by the communication;
- 22 (4) whether the communication identifies any candidate's position on a public
23 policy issue and urges the reader or viewer to take action, including calling the candidate to
24 support or oppose the candidate's position;
- 25

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

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

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

7 (d) Within one business day of the date that the Executive Director makes a
8 determination under ~~§~~ subsection (c), either the candidate(s) identified in the communication or
9 any candidate seeking the same City elective office as the candidate identified in the
10 communication may object to the Executive Director's determination. The Executive Director
11 shall respond to any objection within one business day of receiving the objection.

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

18 If within one business day of the Executive Director's notice, two or more members of
19 the Commission inform the Executive Director that they would like to review the determination,
20 the Executive Director shall schedule a meeting of the Commission on a date that occurs
21 within one week of the Commissioners' requests. If three members of the Commission vote to
22 overrule the Executive Director's determination, the Commission shall make a final
23 determination based on the factors set forth above.

24 (f) If no candidate objects to the Executive Director's determination, if no candidate
25 requests review by the Commission of the Executive Director's determination, if a request is

1 made and two or more members of the Commission do not request to review the
2 determination, or within one week of two members of the Commission requesting to review
3 the Executive Director's determination, at least three members of the Commission do not vote
4 to overrule the Executive Director's determination, the Executive Director's determination shall
5 become final.

6 The Executive Director shall determine whether to adjust the Individual Expenditure
7 Ceilings of each candidate for Mayor or the Board of Supervisors pursuant to either
8 ~~§~~subsection (a) or (b) ~~of this Section~~ within one business day of a final determination.

9
10 Section 2. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14
15 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

21
22 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
23 of this ordinance, or any application thereof to any person or circumstance, is held to be
24 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
25 shall not affect the validity of the remaining portions or applications of the ordinance. The

1 Board of Supervisors hereby declares that it would have passed this ordinance and each and
2 every section, subsection, sentence, clause, phrase, and word not declared invalid or
3 unconstitutional without regard to whether any other portion of this ordinance or application
4 thereof would be subsequently declared invalid or unconstitutional.

5
6 Section 5. Under Campaign and Governmental Conduct Code Section 1.103, the City
7 may enact this ordinance without voter approval only if (a) the ordinance furthers the purposes
8 of Campaign and Governmental Conduct Code Article I, Chapter 1; (b) the Ethics
9 Commission approves the ordinance in advance by at least a four-fifths vote of all its
10 members; (c) the ordinance has been available for public review at least 30 days before the
11 ordinance is considered by the Board of Supervisors or any committee of the Board of
12 Supervisors; and (d) the Board of Supervisors approves the proposed amendment by at least
13 a two-thirds vote of all its members.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:



18 ANDREW SHEN
19 Deputy City Attorney

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