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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 7, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Possible Amendments to the Campaign Finance Reform Ordinance

On June 27, 2011, the U.S. Supreme Court issued a 5-4 decision in *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett*, holding that Arizona's matching public funds program "substantially burdens protected political speech without serving a compelling state interest and therefore violates the First Amendment." The Court, however, did not question the viability of public financing of political campaigns.

The provisions of the Arizona Citizens Clean Elections Act and the San Francisco public financing program for Mayoral and supervisorial candidates are not identical. However, both programs provide additional public funds when certain events occur. In Arizona, which provides a full public financing program, when certain spending (independent expenditures and/or expenditures by a privately financed candidate) occurs, a publicly financed candidate will automatically receive additional grants of funds on a dollar-for-dollar basis up to two or three times the initial authorized grant of public funds. Also in Arizona, a publicly financed candidate may not raise private funds and must limit the expenditure of personal funds to \$500.

In San Francisco, which provides a partial public financing program, when certain spending occurs, a publicly financed candidate's Individual Expenditure Ceiling may be adjusted upwards, allowing that candidate to receive additional public funds, on a dollar-for-dollar basis, if he or she raises additional qualifying private funds. The amount of funds a candidate could receive may never exceed the candidate's Individual Expenditure Ceiling, and the Per Candidate Available Distribution Limit must have been determined to be higher than \$900,000 for Mayoral candidates or \$89,000 for Supervisorial candidates before such additional public funding can kick in. See section IX of the Commission's "Supplement for Candidates for Mayor Seeking Public Funding," which discusses the disbursement of public funds and the Per Candidate Available Disbursement Limit, and which is attached at the end of this memorandum.

As you know, for the November 8, 2011 election, eight candidates for Mayor have been certified as eligible to receive, and have been receiving public funds. In order not to disturb the process that now is in place, the Commission may decide to take no action

as a response to the ruling by the Supreme Court. Alternatively, the Commission may decide to amend the Campaign Finance Reform Ordinance (“CFRO”), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., in order to address the disbursement of public funds that may be available due to third party spending.

Decision Point 1:

Shall the Commission take action to amend the CFRO in response to the June 27, 2011 Supreme Court decision?

If the Commission decides that no action is necessary at this time, it is not necessary to consider the following decision point.

If the Commission decides to amend the CFRO, staff has identified changes in the CFRO that would cap the amount of public funds that may be disbursed to each candidate for Mayor at \$900,000 and each candidate for Supervisor at \$89,000. These are the amounts that are currently available to certified candidates without regard to third party spending; in other words, they are provided to certified candidates based simply on amounts of qualifying contributions that the candidates raise from private sources.

Under the proposal, individual expenditure ceilings¹ will remain in place and may be adjusted as they are now, based on spending by third parties plus supportive funding for opponents. Historically, before the concept of individual expenditure ceilings was adopted in CFRO, when the expenditure ceiling was lifted in a race, it was lifted for all candidates in a race. When the expenditure ceiling was lifted, it was no longer binding even on publicly financed candidates, who were then free to spend whatever amount they needed. However, one of the reasons to have a public funding system is to “create an incentive to limit overall expenditures in campaigns.” CFRO § 1.100(a)(3). In keeping with that goal, staff recommends that the individual expenditure ceilings remain in place and be adjusted as they are now. Because of the overall caps, any adjustments in the individual expenditure ceilings will not set the stage for additional public funding beyond the amounts candidates may receive based on private funding alone. Publicly financed candidates will be able to continue to raise private funds and spend up to their respective individual expenditure ceilings.

Staff’s proposed changes are to section 1.144, which governs the disbursement of public funds.

¹ An “individual expenditure ceiling” (“IEC”) is the expenditure ceiling established for each individual candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds. CFRO § 1.104(p). The IEC for Mayoral candidates starts at \$1,475,000 and for Supervisorial candidates at \$143,000. The Executive Director may adjust the IEC of a candidate for Mayor to an amount equal to the sum of the Total Opposition Spending against that candidate and the highest level of Total Supportive Funds of any other candidate for Mayor if such amount is greater than \$1,475,000, provided that the Executive Director may adjust a candidate’s IEC only in increments of \$100,000. CFRO § 1.143(a). The Executive Director may adjust the IEC of a candidate for the Board of Supervisors to an amount equal to the sum of the Total Opposition Spending against that candidate and the highest level of the Total Supportive Funds of any other candidate for the same office on the Board, provided that the Executive Director may adjust a candidate’s IEC only in increments of \$10,000. CFRO § 1.143(b).

The proposed changes to subsections (c) and (d), payments for election expenses to candidates for Mayor and the Board of Supervisors, respectively, are almost identical but for a grammatical correction to (c)(2)(C). The changes provide that a candidate for Mayor is eligible to receive a maximum of \$900,000 from the Election Campaign Fund; and a candidate for the Board is eligible to receive a maximum of \$89,000. Funds will be disbursed on a first-come, first-served basis, as it is now. The proposal strikes language in subsections (c)(2)(D) and (d)(2)(D) to clarify that an adjustment of a candidate's individual expenditure ceiling will not affect the maximum amount of public funds that a candidate may receive.

The proposal also strikes reference to the "Per Candidate Available Disbursement Limit" ("PCADL") in subsection (c)(1), and former subsections (c)(2) and (c)(3)(E); and in subsection (d)(1), and former subsections (d)(2) and (d)(3)(E). Former subsection 1.144(e), which sets forth how the PCADL is determined, is also stricken under the proposal. If public funding is capped at the levels proposed, staff does not see a need to determine the PCADL – each certified candidate will be able to receive, on a first-come, first-served basis, a maximum of \$900,000 if running for Mayor, or \$89,000 if running for the Board of Supervisors. If the PCADL is retained, should a candidate receive the maximum funding prior to the date that the amount of the PCADL must be determined, that candidate would be required to return funds to the Election Campaign Fund if the PCADL is determined to be less than \$900,000 for a Mayoral candidate or less than \$89,000 for a Supervisorial candidate. Staff does not believe that such a result serves the purposes of the public financing program.

Decision Point 2:

Shall the Commission approve the changes set forth in section 1.144 regarding the disbursement of public funds, as set forth on page 1, line 11, to page 6, line 12 of the draft amendments?

Excerpt from Ethics Commission's Supplement for Candidates for Mayor Seeking Public Funding

IX. Disbursement of Public Funds

When will you receive public funds if you are certified?

You may begin receiving payments once you are certified. Until the per candidate available disbursement limit has been determined, Mayoral candidates who have been certified as eligible to receive public financing for their election campaigns have access to funds from the Election Campaign Fund on a first-come, first-served basis based on the date and time that each claim is received by the Ethics Commission.

How much public funding will you receive initially?

Once you are certified as eligible to receive public funds, the Controller will pay you an initial amount of \$50,000 from the Election Campaign Fund. After the initial payment, you may submit the required forms and documentation to demonstrate matching contributions.

See S.F. C&GC Code § 1.144(c)(3)

How can you obtain public funds?

Daily Electronic Payments

The Controller's office can make daily electronic payments to your committee through Paymode-X, a service that replaces paper check payments. In order to receive quick disbursements from the City, candidates must enroll in Paymode-X (there is no charge to enroll). To enroll you must provide your: committee name; telephone number; physical and remittance address; U.S. federal employer identification number (EIN); and bank account information, including ACH routing and account numbers. You can enroll online through the Controller's website at www.sfcontroller.org. It may take up to two or three weeks from the time you enroll before your account is ready to receive electronic payments (the bank must check the validity of your campaign account before approving it to receive payments from the City). You will be notified by email when you are ready to receive electronic payments.

Weekly Paper Checks

The Controller no longer distributes daily paper checks. Paper checks are prepared only once per week (requests from Ethics Commission must be delivered by 1 p.m. on Wednesdays in order for the Controller to mail paper checks by the following Friday). In order to avoid delays in receiving public funds, candidates are encouraged to register for electronic payments.

Can you receive more funds after the initial payment?

After the initial payment of \$50,000, for each dollar of matching contributions that you raise up to \$100,000, you will receive four dollars from the Election Campaign Fund. Thereafter, for each additional dollar of matching contributions that you raise up to \$450,000, you will receive one dollar from the Election Campaign Fund. The maximum amount you may receive is \$900,000, unless your individual expenditure ceiling is raised under section 1.143 and it is determined that the per candidate available disbursement limit is greater than \$900,000.

Funds available and disbursement ratio	
Candidate raises	Election Campaign Fund pays
\$25,000 in qualifying contributions	\$50,000 (initial payment)
Up to \$100,000 in matching contributions	Up to \$400,000 (4:1 ratio)
Up to \$450,000 in matching contributions	Up to \$450,000 (1:1 ratio)
Total available to eligible candidate	Up to \$900,000

If the per candidate available disbursement limit is greater than \$900,000, and you have already received \$900,000 in public funds, you may continue to be eligible for further disbursements at the rate of one dollar for each dollar of a matching contribution raised up to the per candidate disbursement limit, provided that no funds will be disbursed if such disbursement would result in your exceeding your trust account limit.

See S.F. C&GC Code § 1.144(c)(3)(E)

How does the Ethics Commission determine the per candidate available disbursement limit?

On the 59th day before the election, the Executive Director of the Ethics Commission will divide the total amount of non-administrative funds in the Election Campaign Fund by the total number of qualified candidates. The result is the per candidate available disbursement limit.

If the per candidate available disbursement limit is less than or equal to \$900,000, you will have access to funds from the Election Campaign Fund on a first-come first-served basis up to a maximum of \$900,000.

If the per candidate available disbursement limit is greater than \$900,000, you will have access to the amount of the per candidate disbursement limit, subject to the limitations discussed in the section above.

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1 [Campaign and Governmental Conduct Code – Capping the amount of public matching funds.

2
3 **Ordinance amending sections 1.144 of the Campaign and Governmental Conduct Code,**
4 **to cap the amount of public matching funds.**

5 Note: Additions are single-underline italics Times New Roman;
6 deletions are ~~striketrough italics Times New Roman~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~striketrough normal~~.

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

9 Section 1. The San Francisco Campaign & Governmental Conduct Code is hereby
10 amended by amending Sections 1.144 to read as follows:

11 **SEC. 1.144. DISBURSEMENT OF PUBLIC FUNDS.**

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

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

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

23 (1) ~~Until the Per Candidate Available Disbursement Limit has been determined,~~ cCandidates for
24 Mayor whom the Ethics Commission has certified as eligible to receive public financing for
25 their election campaigns will have access to up to a maximum per candidate of \$900,000 in

1 funds from the Election Campaign Fund on a first come, first served basis according to the
2 formula set forth in Subsection (c)(3) of this Section.

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

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

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

13 (32) A candidate for Mayor who is certified as eligible to receive public financing under this
14 Chapter shall receive payments for eligible matching contributions according to the following
15 formula:

16 (A) Upon qualification the candidate shall receive a one-time payment of \$50,000 from the
17 Election Campaign Fund.

18 (B) After the initial payment under Subsection (c)(3)(A), for the first \$100,000 in matching
19 contributions raised by the candidate, the candidate shall receive four dollars from the
20 Election Campaign Fund for each dollar raised.

21 (C) After the payments under Subsection (c)(3)(B), for the next \$450,000 in matching
22 contributions raised by the candidate, the candidate shall receive one dollars from the Election
23 Campaign Fund for each dollar raised.

1 (D) The maximum amount of public funds a mayoral candidate may receive is \$900,000.,
2 ~~unless the candidate's Individual Expenditure Ceiling is adjusted according to the rules set forth under~~
3 ~~Section 1.143.~~

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

10 (d) PAYMENTS FOR ELECTION EXPENSES TO CANDIDATES FOR THE BOARD OF
11 SUPERVISORS.

12 (1) ~~Until the Per Candidate Available Disbursement Limit has been determined,~~ Candidates for the
13 Board of Supervisors whom the Ethics Commission has certified as eligible to receive public
14 financing for their election campaigns will have access to up to a maximum per candidate of
15 \$89,000 in funds from the Election Campaign Fund on a first come, first served basis
16 according to the formula set forth in Subsection (d)(3) of this Section.

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

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

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

4 (32) A candidate for the Board of Supervisors who is certified as eligible to receive public
5 financing under this Chapter shall receive payments for eligible matching contributions
6 according to the following formula:

7 (A) Upon qualification the candidate shall receive a one-time payment of \$10,000 from the
8 Election Campaign Fund.

9 (B) After the initial payment under Subsection (d)(3)(A), for the first \$10,000 in matching
10 contributions raised by the candidate, the candidate shall receive four dollars from the
11 Election Campaign Fund for each dollar raised.

12 (C) After the payments under Subsection (d)(3)(B), for the next \$39,000 in matching
13 contributions raised by the candidate, the candidate shall receive one dollar from the Election
14 Campaign Fund for each dollar raised.

15 (D) The maximum amount of public funds a candidate for the Board of Supervisors may
16 receive is \$89,000. ~~, unless the candidate's Individual Expenditure Ceiling is adjusted according to~~
17 ~~the rules set forth under Section 1.143.~~

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

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

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

15 ~~Immediately upon calculating the Per Candidate Available Disbursement Limit, the Executive Director~~
16 ~~shall inform the Controller of the initial determination of the Per Candidate Available Disbursement~~
17 ~~Limit. Thereafter, the Executive Director shall immediately inform the Controller of any subsequent~~
18 ~~changes in the Per Candidate Available Disbursement Limit due to a determination that a candidate~~
19 ~~has not qualified to receive public financing.~~

20 (fe) SUBMISSION OF CLAIMS FOR PUBLIC FUNDS. The Ethics Commission shall
21 determine the information needed to submit a claim for payment of public funds. The
22 Executive Director shall certify each request for payment of public funds within four business
23 days of the request, except that within 14 calendar days before the election, when the
24 certification of a request for public funds shall be made within two business days of the

1 request. No candidate may submit a claim for public funds if the candidate has any such
2 claims pending with the Ethics Commission. For candidates for Mayor, any submission of a
3 claim for public funds must include a minimum of \$5,000 of matching contributions; provided
4 that in the 14 calendar days preceding an election, a claim must include a minimum of \$1,000
5 of matching contributions. For candidates for the Board of Supervisors, any submission of a
6 claim for public funds must include a minimum of \$1,000 of matching contributions; provided
7 that in the 14 calendar days preceding an election, a claim must include a minimum of \$200 of
8 matching contributions. All claims for public funds must be submitted no later than 5:00 p.m.
9 on the 30th day following the date of the election.

10 (g) DEPOSIT IN CAMPAIGN CONTRIBUTION TRUST ACCOUNT. A candidate must
11 deposit all payments received from the Election Campaign Fund in his or her candidate
12 committee's Campaign Contribution Trust Account.

13 APPROVED AS TO FORM:
14 BARBARA J. PARKER, Oakland City Attorney
15 Acting as Special City Attorney, City and County of San Francisco

16 By: _____
17 MARK MORODOMI
18 Deputy City Attorney