



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: March 18, 2015
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director
Re: Proposed Project Calendar for 2015

Introduction

At its last meeting, the Commission directed staff to investigate four proposals for augmenting the City's Campaign Finance Reform Ordinance ("CFRO"), found at Campaign and Governmental Conduct Code section 1.100 et seq. The Commission also directed staff to create for its review a "project calendar" setting forth a proposed schedule for addressing the approved issues.

A proposed project calendar is attached. The calendar contemplates that staff will also work on other pending, important issues. In addition to the CFRO augmentation ideas approved at the last meeting, these issues include: (1) certain Commission policies and procedural issues; (2) outstanding issues identified by the San Francisco Civil Grand Jury in June 2014; and (3) ongoing reporting issues. A summary of all these issues follows this introduction.

In this regard, the Commission specified at its last meeting that staff was to prioritize most immediately exploring contribution limits and prohibitions for City candidate-controlled ballot measure and general purpose committees. Thus, the discussion below regarding this item includes more detail than the other items as well as draft legislative language.

Otherwise, in creating the proposed project calendar, staff has had to prioritize certain of the issues to be considered by the Commission. A summary of staff's proposed prioritization of these issues is attached. Staff welcomes the Commission's input, comments, and changes in this regard.

The calendar assumes that the staff will work on at most two issues at any one time, although it may at times only focus on one. This assumption reflects staff's

current capacity¹ and allows for the Commission to consider other items in the future of which it is not currently aware (e.g., enforcement matters, waiver requests, intern presentations, etc.).

The calendar only covers the period through December 2015, and does not contemplate that all of the issues discussed below will be addressed. Staff believes that a significantly longer project calendar ceases to be a good planning tool, given the speculative and contingent nature of items slated for consideration too far in the future.

Regardless of the Commission's ultimate decisions regarding its priorities and the calendar, staff would like the Commission and the public to recognize that it views the calendar primarily as a goal setting tool, and that deviations from that calendar may occur based on unanticipated work (particularly related to the upcoming elections), other issues that come before the Commission, etc. In this regard, staff intends to "check in" with the Commission at least every four months to track progress and to allow the Commission to re-assess priorities, if necessary.

Staff welcomes the Commissions comments on the proposed calendar.

Issues for Consideration by the Commission

A. CFRO Augmentation Ideas Approved February 23, 2015

1. Candidate-controlled committee limits.

In response to a recommendation from the Friends of Ethics, the Commission decided to explore subjecting contributions to City candidate-controlled ballot measure and general purpose committees to the limits and prohibitions on contributions for City candidates. The Commission may wish to place a measure enacting these limitations and prohibitions directly on the ballot.

As a first step in that process, the Commission directed staff to draft proposed language that would enact this proposal so that it could be used to solicit input from interested parties, experts, etc. That language is attached.²

This project will entail developing a factual record which demonstrates the compelling governmental interest served by the proposed limitations, particularly given that this is a relatively novel issue impacting First Amendment concerns.³ More specifically, staff anticipates that its work may include the following:

¹ The project calendar does not include other work staff must do related to this year's races for Mayor, Sheriff, District Attorney, City Attorney and the District Three seat for the Board of Supervisors.

² A legal defense fund is another type of candidate-controlled committee, which may be used to cover legal expenses that arise in connection with a campaign or the performance of governmental duties. (Cal. Govt. Code §§ 85304, 85304.5.) The Commission may wish to determine whether the proposed bans and limits are appropriate for those committees as well. Staff is aware of only one legal defense fund ever opened by a candidate in San Francisco.

³ See for example *Citizens for Clean Government v. City of San Diego* (9th Cir. 2007) 474 F.3d 647, 652-54 ("hypotheticals, accompanied by vague allusions to practical experience" are insufficient to establish record), *Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290, 299 (limits on ballot measure committees are invalid); *Long Beach Area Chamber of Commerce v. City of Long Beach* (9th Cir. 2010) 603 F.3d 684, 699 (limits on

- Conducting factual research regarding the use of candidate-controlled committees, including relevant campaign finance data;
- Conducting legal research and analysis in coordination with the City Attorney's office;
- Reviewing relevant media reporting and law review articles;
- Holding interested persons meetings and otherwise soliciting input from the public;
- Consulting with other ethics commissions, the FPPC and/or the FEC;
- Interviewing past candidates who controlled ballot measure/general purpose committees;
- Drafting staff memoranda and revising proposed language;
- Arranging for written or oral testimony of experts;
- Coordinating and holding a Commission hearing for testimony, public input, etc.;
- Compiling and organizing all collected information into a single record; and
- Presenting a record to the Commission for review.

Staff estimates that this project will require approximately 6-8 months of staff work and approximately 2-3 meetings of the Commission.

2. Bundling and fundraising reporting.

In response to a recommendation from the Friends of Ethics, the Commission decided to explore requiring reporting with respect to individuals who engage in a certain level of fundraising and/or bundling for candidates.⁴ If it enacts this measure, the Commission will have to decide (among other things) the appropriate monetary threshold and whether fundraising, bundling, or both should trigger disclosure.

This project may entail conducting legal and factual research in coordination with the City Attorney's office, holding an interested persons meeting, consulting various other reporting regimes, preparing proposed language, and drafting a staff memorandum. **Staff estimates that this project will require approximately 2 months of staff work and approximately 1-2 meetings of the Commission.**

3. Prohibitions triggered by receipt of "public benefits." In response to a recommendation from the San Francisco Civil Grand Jury, the Commission decided to explore reenacting certain aspects of Proposition J, which imposed a prohibition on campaign

independent expenditure committees are invalid), and *Citizens to Save California v. Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, 753-54 (questioning in dicta the constitutionality of subjecting candidate-controlled ballot measure to limits). But also see FEC Advisory Opinion 2011-21 (federal law places limits on contributions to a federal officeholder's controlled "Leadership PAC" in order to combat quid pro quo corruption).
⁴ Bundling typically refers to collecting multiple contributions and delivering them to a campaign, while fundraising is more expansive and encompasses holding a fundraiser, soliciting contributions, etc., even if the individual does not personally collect and forward the contribution checks to the campaign.

contributions and gifts to certain City officials from persons receiving a “public benefit,” such as a variance, special use permit, tax abatement, etc.

This project will entail developing a factual record which demonstrates the compelling governmental interest served by the proposed prohibitions. More specifically, staff’s work will likely include much of the same work that is required for the candidate-controlled ballot measure limitations (e.g., legal and factual research in coordination with the City Attorney’s office,⁵ holding interested persons meetings, etc.) as well as soliciting input from land use experts and City departments. **Staff estimates that this project will require approximately 9-10 months of staff work and approximately 3 meetings of the Commission.**

4. Slate mailer filings.

In response to a recommendation from the Friends of Ethics, the Commission decided to require slate mailer organizations active primarily in San Francisco to file their semi-annual and pre-election reports with the Ethics Commission, instead of with the Department of Elections, as is currently required under City law.

This project will entail holding an interested persons meeting, consulting with the Department of Elections and the FPPC, preparing proposed language, and drafting a staff memorandum. **Staff estimates that this project will require approximately 2 months of staff work and approximately 1 meeting of the Commission.**

B. Procedural Issues

1. Enforcement regulations and policies.

Students from the UC Hastings Center for State & Local Government Law will give a presentation to the Commission in April, which will include a review of the Commission’s enforcement regulations. Using that presentation as a starting point, staff believes that it would be useful to address certain of the Commission’s enforcement policies and procedures, which may include proposing CFRO/GEO amendments that standardize the various statutes of limitations, updating Commission regulations, adopting a policy regarding priorities, revising the streamline enforcement procedures, and implementing form stipulations for minor violations.

There are many aspects to this project and staff believes that they will entail reviewing existing policies/regulations, consulting with staff, conducting legal and factual research in coordination with the City Attorney’s office, preparing the proposed policy/regulatory revisions, preparing proposed forms, drafting staff memoranda, etc. **Staff estimates that these projects will take approximately 10-12 months of staff work and approximately 5-6 meetings of the Commission.**

⁵ The City Attorney’s office may play a larger role with respect to this issue as, since the Commission’s last meeting, staff has identified potential constitutional issues with Proposition J’s prohibitions.

2. Forfeiture and late fine policies.

In August 2014, after reviewing the San Francisco Civil Grand Jury report, Commissioner Keane asked for a discussion regarding the August 2008 staff memorandum that outlines procedures for handling forfeitures, late fines, and non-filers. Staff believes that certain improvements may be made to this memorandum, particularly with respect to administrative termination procedures for non-filers with little activity.

This project will entail reviewing existing policies, consulting with staff and (possibly) the FPPC and other filing officers, preparing the proposed revisions, and drafting a staff memorandum. **Staff estimates that this project will require approximately 2 months of staff work and approximately 1-2 meetings of the Commission.**

C. **Outstanding Civil Grand Jury Issues**

1. Expenditure lobbyists.

In June 2014, the San Francisco Civil Grand Jury recommended the reinstatement of reporting requirements for individuals and entities who attempt to influence City matters by urging the public to contact City officials regarding those matters (i.e., “expenditure lobbyists”). In its response to the Grand Jury, the Commission stated that it would consider re-examining whether or not there is a need to amend the Lobbying Ordinance to reinstate this requirement, which was eliminated in 2010 due to minimal reporting, within 12 months.

The initial work on this project will entail conducting legal and factual research in coordination with the City Attorney’s office and drafting a staff memorandum. **Staff estimates that it will need approximately 1-2 months to prepare an initial report on this issue.** Should the Commission wish to propose legislation, additional time will be needed to conduct additional research, hold an interested persons meeting, draft the required language, etc. **The additional time would likely be approximately 2-3 months of staff work and approximately 1-2 meetings of the Commission, although this is only a very preliminary estimate.**

2. Additional reporting for gifts of travel.

In June 2014, the San Francisco Civil Grand Jury recommended the enhancement of reporting requirements for gifts of travel to City officials. In its response to the Grand Jury, the Commission stated that it would conduct a more thorough analysis of this recommendation in connection with potential changes to the Governmental Ethics Ordinance.

The initial work on this project will entail conducting legal and factual research in coordination with the City Attorney’s office and drafting a staff memorandum. **Staff estimates that it will need approximately 1-2 months to prepare an initial report on this issue.** Should the Commission wish to propose legislation, additional time will be needed to conduct additional research, hold an interested persons meeting, draft the required language, etc. **The additional time would likely be approximately 2-3 months of staff work and approximately 1-2 meetings of the Commission, although this is only a very preliminary estimate.**

D. Ongoing Reporting Issues

1. Form 700 electronic filing.

In 2014, the Commission implemented mandatory electronic filing of the Statement of Economic Interests (Form 700) for elected officials, department heads, and members of boards and commissions. The electronically filed statements are available in PDF for review on the Commission's web site. Staff intends to continue this effort and expand the mandatory electronic filing requirement to cover all City employees who file a Form 700. The Commission will likely have to pass a regulation (as opposed to approving an ordinance) in this regard.

This project will entail working with the City Attorney's office, holding an interested persons meeting, preparing the proposed regulations/ordinance, and drafting a staff memorandum. **Staff estimates that this project will require approximately 2 months of staff work and approximately 1-2 meetings of the Commission.**

2. Permit Consultant regulations.

A City ordinance that requires registration and reporting by "permit consultants" took effect on January 1, 2015. Although the first set of quarterly reports are yet to be filed (they are due April 15), Commission staff has continued to field a number of questions from permit consultants regarding their filing obligations, and believes that regulations interpreting the ordinance and providing guidance to the regulated community are likely necessary.

This project will entail consulting interested parties, holding an interested persons meeting, preparing the proposed regulations, and drafting a staff memorandum. **Staff estimates that this project will require approximately 2 months of staff work and approximately 1-2 meetings of the Commission.**

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Ethics Commission Staff's Proposed Prioritization of Issues (3/15)

Higher Priority	Lower Priority
<ol style="list-style-type: none">1. Candidate-controlled committee limits2. Enforcement regulations and policies3. Form 700 electronic filing4. Bundling and fundraising reporting5. Additional reporting for gifts of travel	<ol style="list-style-type: none">6. Permit Consultant regulations7. Prohibitions triggered by "public benefits."8. Expenditure lobbyists9. Forfeiture and late fine policies10. Slate mailer filings

SEC. 1.114. CONTRIBUTION LIMITS.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES.

(1) Per Candidate Limit. No person other than a candidate shall make, and no campaign treasurer for a candidate committee or for any other committee controlled by a candidate shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee or to such other committee controlled by a candidate in an election to exceed \$500. [OPTION: The limitation set forth in this subsection shall not apply to legal defense funds.]

(2) Overall Limit. No person shall make any contribution which will cause the total amount contributed by such person to all candidate committees in an election to exceed \$500 multiplied by the number of City elective offices to be voted on at that election.

(b) LIMITS ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee or any other committee controlled by a candidate, provided that nothing in this subsection shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of federal law including sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those sections. [OPTION: The prohibition set forth in this subsection shall not apply to legal defense funds.]

Proposed Ethics Commission Staff Project Calendar Through December 2015 (Created 3/18/15)

	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1. Limits for candidate-controlled committees			Mtg			Mtg			
2. Reporting of bundling								Mtg	
3. "Public benefit" contribution bans									
4. Slate mailer filings									
5. Enforcement regulations/policies									Mtg
6. Forfeiture/late fine penalties									
7. Expenditure lobbyists									
8. Additional gift of travel reporting									
9. Permit Consultant regulations									
10. Form 700 electronic filing		Mtg							

Notes:

- Shaded squares indicate staff work on the issue. Issues with no shaded squares will not be addressed in 2015.
- "Mtg" indicates the Commission will consider the issue at a public meeting during that month.