

# THE SUTTON LAW FIRM

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March 15, 2015

SAN FRANCISCO  
ETHICS COMMISSION

VIA E-MAIL & PERSONAL DELIVERY

Mr. John St. Croix, Executive Director  
San Francisco Ethics Commission  
25 Van Ness Ave., Ste. 220  
San Francisco, CA 94102-6053

RE: Requested "Forfeiture" from Mark Farrell for District 2 Supervisor 2010 Committee

Dear Mr. St. Croix:

This letter responds to your December 9, 2014 letter requesting that our client, the Mark Farrell for District 2 Supervisor 2010 committee ("Farrell Committee"), forfeit funds to the City stemming from a stipulation entered into last November by the FPPC, the Common Sense Voters committee ("CSV"), and Chris Lee. The letter also follows up the meetings which you were willing to have with us to discuss some of the issues raised by your letter. We understand that the full Commission will discuss this matter at its meeting on March 23, 2015, and would appreciate you forwarding a copy of this letter to the Commissioners before that meeting.

In short, pursuant to its authority under section 1.114(f) of the Campaign & Governmental Conduct Code, the Commission should completely waive this "forfeiture request," for the reasons set forth below.

**Supervisor Farrell and the Farrell Committee have done nothing wrong.**

Supervisor Farrell never coordinated with CSV. He had no involvement with CSV's mailers. He never authorized his campaign consultant Chris Lee to interact with CSV. Neither Supervisor Farrell nor any of his other campaign staff knew that Mr. Lee was doing so. The Farrell Committee never received any funds from CSV.

Supervisor Farrell went to great lengths to make certain that the political committee set up for his 2010 election (and the committee for his 2014 re-election) abided by all legal and ethical requirements. After a comprehensive investigation spanning over two years, which included interviews of Supervisor Farrell, everyone who worked on his campaign, and everyone involved with CSV, as well as the review of hundreds of e-mails produced by

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Supervisor Farrell and the Farrell Committee, the FPPC completely exonerated Supervisor Farrell and the Farrell Committee of any wrongdoing. The FPPC stipulation confirmed that, “The evidence supports the finding that Mark Farrell did not authorize Respondent Lee, as an agent of the Farrell Committee, to coordinate with Respondent CSV.” (In the Matter of Common Sense Voters, SF 2010 and Chris Lee (11/14) FPPC No. 10/973.)

After being apprised of the results of the FPPC’s investigation (and participating in some of the interviews), staff of the Ethics Commission evidently agreed with the FPPC’s conclusion, because they told the FPPC that they would not take any action against the Farrell Committee. No subsequent investigations or findings of fact contradict the conclusions of the FPPC’s two-plus year investigation.

The Commissioners may not agree with staff’s decision to not take any action – but that is not a basis to now penalize Supervisor Farrell or the Farrell Committee. Supervisor Farrell and the Farrell Committee did nothing wrong. Levying any type of penalty against them four and a half years after the campaign ended, and after a comprehensive investigation completely cleared them of any wrongdoing, would be completely unjust and unprecedented.

**Forfeiture is barred by the statute of limitations.**

The forfeiture is unwarranted, as a matter of law, because of the four-year statute of limitations in the City’s campaign law. (S.F. Camp. & Govt. Conduct Code section 1.168(c)(3).) The four-year statute has long passed. You sent the forfeiture letter in December 2014, but the activities of CSV which form the basis for the request took place in October 2010 – almost four and a half years and two election cycles ago.

Commission staff was fully aware of the possible issues involving CSV as early as December 2010, and could have reached its own conclusions within the time limitations set out in its official Forfeiture Policy. Specifically, the Commission received the original complaint letter from the Reillys’ attorney alleging possible coordination between CSV and the Farrell Committee in December 2010, and Commission staff participated in the FPPC interviews of several people involved with the two committees in 2012. Although the FPPC did not finalize its investigation until last year, the actions of an independent state agency can of an independent state agency do not trump the statute of limitations of City law – especially when the Commission could have acted earlier.

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The Commission's official Forfeiture Policy (discussed more fully below) explicitly states that the Commission will abide by the four-year statute of limitations when deciding whether to pursue forfeitures:

**“Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years.”**

(3/4/08 staff memorandum, attached to separate letter to Commissioners.) Just as the City Attorney's office evidently concluded that the statute of limitations barred it from pursuing any action against the Farrell Committee, the statute of limitations also requires the Commission to waive the forfeiture request.

The assertion by the Reillys' attorney that the statute of limitations has been tolled because of “fraudulent concealment” is unfounded. Courts have consistently held that this doctrine is only applicable if the government is not aware of the potential violation during the time period, and if the government bears no fault for failing to discover the violation during the time period. (See, e.g., Community Cause v. Boatwright (1981) 124 Cal. App. 3d 888.) Here, the Commission was put on notice of possible issues involving CSV in 2010, and actively participated in gathering information about these issues in 2012. The Commission therefore cannot claim that it was not aware of the potential issue involving CSV until the FPPC issued its stipulation, and has no excuse for not acting within the four-year statute of limitations.

**Forfeiture is also barred by the Commission's official Forfeiture Policy.**

The forfeiture is also unwarranted because of the official Policy which the Commission adopted to regulate forfeiture requests. (Commission's Forfeiture Policy, outlined in 3/4/08 and 8/12/08 staff memorandum, attached to separate letter to Commissioners.) The Forfeiture Policy explicitly states that the Commission will not pursue forfeiture unless Commission staff has delivered a notice to the political committee within one year from the date that the applicable campaign report is due:

**“If the Commission fails to send a [forfeiture assessment notice] to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture.”**

(8/12/08 staff memorandum; emphasis added.) The Forfeiture Policy underscores the importance of the Commission acting in a timely manner when seeking forfeiture, stating

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that “the Commission has an obligation to let candidates and committees know that ‘the clock is ticking’ at the earliest possible occasion.” (3/4/08 staff memorandum.) Your letter requesting forfeiture from the Farrell Committee of course arrived years after CSV and the Farrell Committee filed their campaign reports, well beyond this one-year rule.

Not only does the Forfeiture Policy not provide for any exceptions to this one-year rule, there is no reason in this case why Commission staff could not have sent such a notice to the Farrell Committee on a timely basis. As mentioned above, Commission staff was put on notice of the possible issues involving CSV in 2010 and then participated in FPPC interviews in 2012, so the Commission could have easily acted within the time limitation set out in its official Forfeiture Policy.

In sum, the Commission could have determined whether forfeiture was warranted within the Forfeiture Policy’s one-year deadline, and certainly within the four-year statute of limitations. More to the point, if it wanted to pursue forfeiture against the Farrell Committee, it was legally required to act years ago, and is legally barred from requesting forfeiture at this time.

**The Farrell Committee does not have funds to forfeit.**

The Farrell Committee was closed in March 2013, so therefore does not legally exist, and has no funds to forfeit. Moreover, while in existence, the Farrell Committee never received any of the money that the City is now attempting to seize. The request that the Farrell Committee now “forfeit” any amount to the City, let alone \$191,000, is therefore nonsensical.

Moreover, although neither the Commission nor any court has ever, to our knowledge, issued any interpretations of the forfeiture provision, the provision by its own wording seems to only apply to situations in which a committee actually receives money which does not comply with section 1.114. Nothing in the provision supports the position that the forfeiture requirement can apply to money spent by one committee which never makes it into the other committee’s bank account (even though such expenditures can technically be interpreted to be “contributions” under the law). According to Commission records, it has asked a total of approximately 100 committees to forfeit funds to the City – and every one of these committees actually received and deposited the funds.

**The Farrell Committee and Supervisor Farrell are inappropriate respondents.**

Even though the FPPC stipulation only involved CSV, and even though the FPPC determined that Supervisor Farrell and the Farrell Committee did nothing wrong, your letter inexplicably demands forfeiture from the Farrell Committee, not CSV. Whether or not the Commission decides to pursue remedies against CSV, it is certainly not appropriate to now target the only person who had absolutely nothing to do with CSV's activities.

You informed us in one of our meetings that the Commission may consider looking to Supervisor Farrell's personal funds to satisfy this demand. This suggestion is absurd. Such an action would be wholly unprecedented and patently inequitable, especially in light of the fact that no governmental entity – not the FPPC, not the City, and not the Commission – has brought any action against Supervisor Farrell accusing him of any wrongdoing. In fact, only the opposite has happened – after a comprehensive investigation, the FPPC went out of its way to exonerate Supervisor Farrell. Asking Supervisor Farrell to personally pay any amount would be even more preposterous than making that demand of the Farrell Committee, as under no stretch of the law or facts did Supervisor Farrell ever receive any of the money in dispute (which would be a prerequisite for demanding that he now has to forfeit the funds to the City).

**The Commission has no legal basis to request forfeiture.**

You also told us in one of our meetings that asking a political committee to forfeit funds to the City is only appropriate when the committee's campaign reports reveal a *prima facie* violation of the law; i.e., when a violation can be discerned without any factual or legal investigation. In fact, in all of the approximately 100 prior forfeiture matters, the violation of section 1.114 was clear and undisputable on the face of the committee's campaign report – accepting a contribution from a corporation, not listing a contributor's occupation or employer, accepting a \$600 contribution, etc.

The present situation could not be more different. Supervisor Farrell vehemently denies any wrongdoing, and never agreed that CVS could be characterized as his "controlled committee." The only way to reach the conclusion that the Farrell Committee violated section 1.114 would be to conduct an investigation into the relevant facts and law. Not only has the Commission never conducted such an investigation, but the appropriate result of such an investigation, should it conclude that a violation occurred, would be an administrative penalty levied pursuant to the enforcement procedures of the City Charter and Commission rules (Charter section C3.699-13; S.F. Camp. & Govt.

Mr. John St. Croix, Executive Director  
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Conduct Code sections 1.168 et al.), not a conclusory demand that a defunct committee somehow pay hundreds of thousands of dollars to the City.

Moreover, there has not been any finding by the Commission, the FPPC, any other enforcement entity, or a court that the Farrell Committee actually received a contribution which exceeds the \$500 limit or which does not otherwise comply with the requirements of section 1.114. Although your letter claims that the expenditures by CSV "have been treated as contributions to [Supervisor Farrell]," this claim is not stated in the FPPC stipulation or any other document. Instead, the FPPC stipulation only found that CSV made errors on its campaign reports and did not include the proper sender identification on its mass mailings, and does not reach the conclusion that CSV's mailers constituted contributions to the Farrell Committee; in fact, the stipulation does not make any findings about Supervisor Farrell or the Farrell Committee at all. The Commission therefore does not have the legal basis to request forfeiture from the Farrell Committee.

\* \* \*

In sum, the Commission has no basis to demand any payment from the Farrell Committee. We therefore request a complete waiver of the December 2014 forfeiture demand. We also request -- four and a half years later, including a comprehensive, two-plus year investigation by the FPPC which specifically exonerated Supervisor Farrell -- that this issue be put to rest.

Please let us know if you need any additional information before next week's Commission meeting.

Sincerely,



James R. Sutton

cc: Supervisor Mark Farrell  
JRS/lc  
#1440.02

# THE SUTTON LAW FIRM

March 15, 2015

VIA E-MAIL & PERSONAL DELIVERY

Benedict Y. Hur, Esq.  
Chair, San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

RE: Ethics Commission's Official "Forfeiture Policy"

Dear Chair Hur:

In connection with the Commission's consideration of the "forfeiture request" to the Mark Farrell for District 2 Supervisor 2010 committee, we have attached the Commission's official policy on forfeitures, which outlines the rules and restrictions which the Commission will follow when deciding whether political committees have to forfeit funds to the City under section 1.114 of the Campaign & Governmental Conduct Code. The Policy was not, to our knowledge, included with any of the Commission's prior discussions about this matter, and it is not mentioned in Mr. St. Croix's December 9, 2014 letter requesting forfeiture from the Farrell Committee. Because this Forfeiture Policy is of course relevant to the Commission's consideration of the forfeiture request, we would appreciate you making certain that the other Commissioners receive a copy of this letter and the Policy before the March 23, 2015 meeting.

The Commission adopted this Forfeiture Policy in 2008, and we confirmed with Mr. St. Croix that the Policy has not been changed since that time. The Policy is originally set out in a staff memorandum to the Commission; after the Commission approved the Policy at its March 2008 meeting (making a few changes, not relevant to this matter), Mr. St. Croix prepared a memorandum to staff providing more specifics about the Policy. Both of these memoranda are attached, along with the minutes from the Commission meeting.

The Forfeiture Policy makes very clear that Commission staff must research and pursue forfeitures on a timely basis. Specifically, it states that the Commission will not ask a committee to forfeit funds, for any reason, more than a year after an applicable filing deadline: "If the Commission fails to send a [forfeiture assessment notice] to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek

Benedict Y. Hur, Esq.  
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forfeiture.” (8/14/08 staff memorandum.) It also confirms that the Commission will abide by the four-year statute of limitations in the City’s campaign law: “Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years.” (3/4/08 staff memorandum.)

We look forward to discussing this Policy with you in more detail at next week’s meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Sutton".

James R. Sutton

cc: Supervisor Mark Farrell  
Attachments  
JRS/lc  
#1440.02





## ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIEENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: March 4, 2008  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
Re: Ethics Commission Policy Changes

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As you know, in recent months the Commission has received critical commentary from both the California Political Treasurers Association and the California Political Attorneys Association regarding methods and policies used by the Commission staff in dealing with the regulated community. Staff initiated several conversations with people in the regulated community, including an interested persons meeting. Based on the feedback received and subsequent managerial staff discussions, staff is planning to initiate a number of policy changes and is also planning to initiate an annual policy review to discuss other appropriate updates and alterations in order to achieve an environment of fairness and continuity and to gain more even-handed administration. As part of these policy changes, staff has also included recommendations to provide some administrative simplicity which will primarily benefit "small filers" and grassroots campaigns that have also expressed concerns about Commission policies. At this time, staff recommends the following policy changes:

1. Early selection of audits – staff proposes to set an annual March deadline for audit selection so that committees chosen for audits are aware as early as possible that they must keep their committees "open" until the audits are complete. Staff also proposes that, to the extent it is practical in light of the Commission's resources, audits must be completed within two years of audit selection. Because officeholders usually are available and their committees tend to remain open for years after an election, staff will audit those persons whose bids for office were successful *last* in each cycle.
2. Statute of limitations regarding late fines and forfeitures – the legal limitations period is four years. However, staff believes that the Commission has an obligation to let candidates and committees know that "the clock is ticking" at the earliest possible occasion. Candidates are required by law to pay off all campaign debts within 180 days, but it has at times taken considerably longer for the Commission to notify committees of filing and other obligations. Staff proposes adopting an internal one-year limitations period regarding late fines and forfeitures. Under this policy, the Commission would not enforce late fines or forfeitures against any committee if the staff has failed to send a notice to

notify that committee of its delinquent filing or forfeitures within one year of the actual filing deadline.

3. Contributor Information -- State law requires certain information from donors to campaigns, including street addresses and complete employer information. Contributions without such information are subject to forfeiture. Staff proposes that except during the pre-election and late filing periods, upon discovery of incomplete or inaccurate donor information, the Commission should notify the corresponding committee and allow the committee thirty days to cure the information, thus negating the need for forfeiture.
4. Separation of forfeiture process from fines process -- Under current staff practices, notices of forfeitures are issued from the Campaign Finance Division, from the Audit Division and occasionally the Enforcement Division. In order to add both continuity and due process, staff proposes that all forfeiture activity be referred to the Enforcement Division. Forfeitures that are enforced will become part of the public record and situations when investigation reveals that no violation has occurred will remain confidential, as required under the Charter for all enforcement matters. In addition, all referrals to the Bureau of Delinquent Revenues will now be handled and managed by the Enforcement Staff.
5. Waivers -- each year following the annual policy discussion, the Commission should issue a copy of its waiver policy along with any other policy changes or announcements that it makes.
6. Specific Written Notice -- Staff generally sends out three notices of violations: Non-specific written notice, one phone call, and then Specific Written Notice. Under the law, the Commission cannot grant a waiver if a filer does not respond within ten days after Specific Written Notice has been sent. This ties the hands of the Commission, most notably for some committees who raise very little money but incur huge fines. Staff recommends terminating the practice of sending Specific Written Notice in all but the most egregious circumstances.
7. Non-filer list -- The Commission posts a non-responsive filer list on its website. Staff recommends continuing to do so. However, staff also recommends removing names after the four-year statute of limitations has been reached. Further, staff recommends that any name posted to the list be temporarily removed for ten days under the following conditions: the person whose name is posted requests removal and the requestor is attempting to come into compliance.
8. Self-correction -- Some members of the regulated community have suggested that candidates and committees are reluctant to report their own mistakes because the Commission will then impose fees/fines. Self-reporting should be added as a factor in the waiver consideration process as a separate factor from "cooperation."
9. Postmarks -- except where law specifically provides otherwise, the Commission should accept documents as "on time" if they are postmarked by the due date.

10. Materiality Standard – Although the Commission is charged with enforcing CFRO for all filers, staff recognizes that there are de minimis infractions and also very “small” filers. Staff recommends that candidates and committees who raise or spend less than \$5,000 in any election cycle not be included in audit pools or subject to late fines except in those instances where such committees refuse to file appropriate forms. Further, staff also recommends that the Commission consider total infractions of less than 10% of revenues or expenditures as “not material” and so not use staff resources to assess fines, fees or forfeitures.
11. Time to File Amendments or Provide Information – When staff requires the filing of amendments or additional information, current practice is to allow ten days to respond. Unless otherwise required, staff recommends that this period generally be extended to 30 days.

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## SF Ethics Commission

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(Approved April 14, 2008)

Minutes of the Special Meeting of  
The San Francisco Ethics Commission  
March 24, 2008  
Room 400, City Hall

- **Call to order and roll call.**

Chairperson Harriman called the meeting to order at 6:05 p.m. Commissioner Studley was excused from the first portion of the meeting; she joined the meeting during consideration of Agenda Item V.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne Studley, Commissioner; Eileen Hansen, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Supervisor Aaron Peskin; Kimo Crossman; Allan Grossman; Dan Boreen; Anita Mayo; Nancy Warren; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Memorandum from Executive Director to Ethics Commission re: Ethics Commission Policy Changes, March 4, 2008
- Memorandum from Executive Director to Ethics Commission re: Ordinance and Ballot Measures, re: Contractor Contributions, March 4, 2008
- Memorandum from Executive Director to Ethics Commission re: Audit Selection of Year 2007 Committees, March 5, 2008
- Draft Minutes of the February 11, 2008 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of March 24, 2008

- **Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission**

Kimo Crossman requested that the Commission prioritize Sunshine Ordinance complaints. He stated that his concern was that the Ethics Commission has no official procedures for handling referrals from the Sunshine Ordinance Task Force. Mr. Crossman further stated that during investigation of at least one of his complaints, he was not contacted for additional information. He stated that although Sunshine Ordinance Task Force hearings are public, Ethics Commission investigations are confidential.

Allan Grossman stated that referrals from the Sunshine Ordinance Task Force should not be considered Ethics complaints because the Task Force has fully vetted the issue before they are referred. Mr. Grossman stated that referrals are the last resort for records seekers and they should not be re-investigated by the Ethics Commission.

Dan Boreen stated that he supported protections for whistle blowers and read from the whistle blower protection ordinance. He stated that he was able to establish a violation of the whistle blower ordinance through the Sunshine Ordinance.

Commissioner Hansen asked the Executive Director whether staff had followed-up on Mr. Boreen's inquiry from the last Commission meeting. Mr. St. Croix responded that staff had followed-up on the matter.

- **Proposed legislation to amend sections 1.104 and 1.126 of the Campaign and Governmental Conduct Code to expand the definition of controlled committees to encompass elected officials who raise \$10,000 or more in contributions for the committee and to prohibit elected officials and their controlled committees from soliciting or accepting contributions from certain City contractors**

Supervisor Aaron Peskin stated that the purpose of this proposed amendment was to clear ambiguities involving the definition of a "controlled committee." Supervisor Peskin stated that the language is meant to further clarify those actions by a candidate that have a significant influence on a committee. Supervisor Peskin stated that candidates often circumvent campaign finance the law by advertising their candidacy freely on ballot measure campaigns without being subject to regular candidate spending limits. He stated that he believes the legislation serves a compelling interest, would survive constitutional challenge, and that the \$10,000 fund-raising figure was a proposal that could be further examined.

Commissioner Gusukuma asked whether there were specific examples of candidates using ballot measure campaigns for free publicity. Supervisor Peskin stated he would not discuss specific examples but provided a hypothetical scenario. Supervisor Peskin stated that without further consideration of how candidates may influence a committee, it would be difficult to meaningfully regulate controlled committees.

Chairperson Harriman stated that although she found the legislation to be in the public's best interest, she was concerned about the constitutionality of the legislation, particularly regarding the \$10,000 fund-raising figure. She stated that a record must be developed in order to support appropriate legislative findings and protect against constitutional challenges. Supervisor Peskin responded that this is an untested area of law, but that a record could be developed by the Board of Supervisors Rules Committee through public hearings and research. Chairperson Harriman stated that the Rules Committee should develop that record before the Commission votes on the legislation.

Commissioner Hansen added that the legislation attempts to accomplish a worthy goal and that a record must be first developed.

Commissioner Ward asked what constituted "acceptance" of contributions within the proposed legislation. Deputy City Attorney Shen stated that acceptance occurs when the contribution is deposited into a bank account and not returned within a 48-hour time period.

Commissioner Gusukuma asked what entities or individuals would be liable under the proposed legislation. Deputy City Attorney Shen stated that both candidates and committees could be liable for violation of the law.

Commissioner Hansen stated that she believed the \$10,000 figure had some rationale and asked how the legislation compares to Mayor Newsom's similar ballot measure. Deputy City Attorney Shen stated that, other than Supervisor Peskin's definition of "controlled committee," the two pieces of legislation are identical. Executive Director St. Croix stated that Supervisor Peskin's legislation adds clarity to existing law.

Public Comment:

Anita Mayo stated that the constitutionality of the proposed legislation is suspect and that the Governor has successfully challenged this type of law at the state level. She stated that confusion could arise because state and local definitions of "controlled committee" would differ.

- **Proposed legislation to amend section 1.104 of and add section 1.127 to the Campaign and Governmental Conduct Code to prohibit making, soliciting or accepting contributions to members of the Board of Supervisors, candidates for the Board of Supervisors, the Mayor, candidates for Mayor and their controlled committees from any person with a land use matter before a City board or commission**

Supervisor Peskin stated that the intent of the proposed legislation is to prevent influencing legislators in anticipation of any possible administrative appeals concerning land use. He stated that a factual record supporting this legislation could easily be produced.

Chairperson Harriman asked whether it would be possible for a factual record to show the discrepancy between contributions to incumbents and contributions to challengers. Supervisor Peskin responded that he believed a record could be developed. Chairperson Harriman then asked about the timeframe of the land use appeals and whether they would occur during a single term of office. Supervisor Peskin responded that almost all land use matters are concluded within one term of office.

Commissioner Hansen stated that in gathering the factual evidence to formulate a record, the process should not be rushed. Chairperson Harriman stated that there is no need to bring all of Supervisor Peskin's proposed legislation back to the Commission at the same time.

Commissioner Gusukuma asked how individuals would be notified about reporting requirements under the proposed legislation. Supervisor Peskin stated that a tracking system could be implemented at the Planning Department or the Department of Building Inspection. He said that the process could be similar to the requirements of Proposition J for members of the Board of Supervisors.

Public Comment:

Anita Mayo stated that there are also constitutional problems with this legislation as well, concerning the expanded definition of "controlled committee." She stated that changing the definition will increase the likelihood of violations for contributors and committees alike.

- **Proposed legislation to amend section 2.117 of the Campaign and Governmental Conduct Code to require campaign consultants to disclose lobbying contacts with any officer of the City and County**

Supervisor Peskin stated the intent of the legislation is to treat campaign consultants the same as lobbyists under City law. He stated that currently, many campaign consultants are not required to report activity when they advise inactive campaigns. Supervisor Peskin stated that the public has a right to know about these activities.

Commissioner Hansen stated that she supported the legislation but asked why the legislation is necessary in light of the fact that City law covers lobbyists and consultants separately. Supervisor Peskin stated this was his first attempt at legislation in this arena and that he would be receptive to any proposals from the Commission about how to appropriately address the issues.

Deputy City Attorney Shen stated that the legislation could be enacted by the Board of Supervisors, without the Ethics Commission's approval, because it does not seek to amend the Campaign Finance Reform Ordinance. He also stated that the Campaign Consultant Ordinance could only be amended through an initiative.

Executive Director St. Croix stated that the Commission will be soon considering changes to the Lobbyist Ordinance that may address some of the changes in Supervisor Peskin's legislation. He stated that Supervisor Peskin and Commission staff could work together on new legislation.

Commissioner Gusukuma stated that she would not support legislation that posed more stringent standards for campaign consultants than those applied to lobbyists. Supervisor Peskin agreed stating that he was not interested in regulating consulting services valued under \$3,200 a quarter. Supervisor Peskin stated that the compelling interest is to make the public aware of the influence of campaign consultants after an election.

Commissioner Studley asked whether pre-campaign conversations, between a non-incumbent candidate and a potential campaign consultant, would be covered by the legislation. Supervisor Peskin stated that he was not interested in regulating those contacts absent polling work or other services that typically receive economic consideration.

Chairperson Harriman thanked Supervisor Peskin for attending the meeting personally.

Public Comment:

None.

- **Selection of Random Audits of 2007 Committees**

Deputy Director Ng discussed the staff memo regarding random selection of 2007 committees for audits. Commissioner Gusukuma asked how many audits were conducted last year. Ms. Ng responded that 17 audits were conducted last year, but now staff must conduct audits of publicly financed committees in conjunction with randomly selected committees. Executive Director St. Croix stated that staff will conduct targeted audits as well.

Deputy Director Ng, Anita Mayo, Nancy Warren, and Dan Boreen participated in the random drawing of committee names for audit.

Level 1 Committees selected (pool of 20): Plan C San Francisco PAC; Captain Democracy for Mayor of San Francisco; Committee for Election Sunshine, Yes on C; Campaign for Small Business; Vote for Chicken.

Level 2 Committees selected (pool of 3): Citizens Against Recall Abuse.

Level 3 Committees selected (pool of 10): Yes on A, a Coalition of Muni Riders, Environmentalists, Labor, and Supervisor Aaron Peskin; Re-elect District Attorney Kamala Harris; Parking for Neighborhoods, Yes on H/No on A; Gavin Newsom for Mayor.

Public Comment:

None.

• **Policy Discussion/Determination**

Executive Director St. Croix stated that the impetus behind the recommend changes was to ease burdens placed upon individuals with no professional campaign assistance while treating well-funded candidates and committees fairly. Mr. St. Croix stated that one of the goals is to achieve more consistent enforcement.

Commissioner Gusukuma stated that, concerning policy recommendation number 2, she did not support the proposed "internal one-year limitations period." Executive Director St. Croix stated that the policy change is not a change in the law but a way for staff to expeditiously process late fines and forfeitures. Commissioner Hansen concurred with Commissioner Gusukuma and stated that, in the past, she did not believe that the Commission had accepted internal restrictions on its ability to impose fines. Commissioner Studley stated that creating this type of policy may create unnecessary tension with regulated individuals. She stated that staff should endeavor to provide notice within a year but should not make a definitive internal policy on fines. Chairperson Harriman stated that Commission staff should be able to notify individuals within a year and should not pursue late fines after that time has passed.

Commissioner Ward asked whether, concerning policy recommendation number 3, "shall notify" is more appropriate language than "should notify." Executive Director St. Croix responded that "should" could be changed to "shall."

Commissioner Hansen asked why, concerning policy recommendation number 6, staff would eliminate specific written notice. Executive Director St. Croix responded that specific written notice is based upon state administrative procedure and its elimination would provide staff with more flexibility in granting appropriate waivers. Commissioner Hansen stated that a consequence could be that more waivers could be granted than previously warranted.

Commissioner Hansen asked why, concerning policy recommendation number 7, staff would recommend taking names off the non-responsive filers list. Executive Director St. Croix responded that some individuals should not be on the list due to lack of notice or other valid reasons. Commissioner Hansen stated that if an individual has not yet filed, they should remain on the list due to their non-compliance.

Commissioner Ward stated that if an individual has been in contact with staff to remedy their non-responsive status, they should no longer be considered non-responsive. Commissioner Hansen stated that although individuals may contact staff representing that they will comply, they may not. Chairperson Harriman stated that there should be an assumption that good faith communications to staff will result in compliance.

Commissioner Ward suggested that, concerning policy recommendation number 10, staff use a pre-determined dollar figure to determine the materiality of infractions, rather than a percentage of the total activity of the candidate or committee. Executive Director St. Croix responded that staff chose the percentage approach to be fair to the smaller candidates and committees. Commissioner Gusukuma suggested combining the two methodologies by using the smaller of either a percentage figure or a pre-determined dollar figure. Mr. St. Croix stated that staff could employ Commissioner Gusukuma's suggestion on a trial basis. Commissioner Hansen concurred with Commissioner Ward's concern and stated that the Los Angeles Ethics Commission may have helpful approaches in addressing this issue.

Commissioner Gusukuma asked, concerning policy recommendation number 9, if staff would apply the proposed postmark policy to 24-hour reporting requirements. Deputy Director Ng responded that it would not apply because 24-hour reporting requirements are specified in law. Commissioner Hansen stated that she was concerned that filings would be received after the deadline. Executive Director St. Croix stated that the goal is to ease some of the burden on filers, especially those with less reporting experience.

Public Comment:

Nancy Warren, on behalf of the California Political Treasurers Association, stated that she strongly supports policy recommendation number 2 concerning the one-year statute of limitations. She also stated that she supports policy recommendation number 3 concerning contributor information. Ms. Warren stated that qualified people should be removed from the non-responsive filers list because often times the issue is simply one of administrative error. She also stated that the materiality standard developed in policy recommendation number 10 is necessary so that individuals are not penalized for administrative errors.

Commissioner Hansen stated that staff shares a burden regarding non-responsive filers. She also stated that she believes the policy recommendations were crafted as a direct result of communications with two specific groups and may lack input from many other groups affected by these issues.

Dan Boreen stated that the intent of the proposed policies have merit. He also stated that the Commission should develop policies concerning whistle blowers.

Commissioner Gusukuma stated that she believed several grassroots groups attended the interested persons meeting that formed the basis for the policy recommendations. She also stated that the policies benefit both large and small groups within the regulated community. Commissioner Studley added that citizens should be notified about these issues and given the opportunity to comment. She stated that although the Commission should consider the viewpoint of many groups, the Commission should nonetheless implement the policies and monitor them accordingly.

**Motion 08-03-24-1 (Harriman/Studley) Moved, seconded and passed (4-1; Hansen dissenting) that the Ethics Commission adopt staff's policy recommendations as proposed, except for recommendations 2 and 10, which shall be amended to reflect the Commission's discussion.**

• **Minutes of the regular Commission meeting of February 11, 2008**

Commissioner Hansen stated that the name of the staff member preparing the minutes should appear at the bottom of the minutes document. Commissioner Gusukuma concurred.

Public Comment:

None.

**Motion 08-03-24-2 (Gusukuma/Hansen) Moved, seconded and unanimously passed (5-0) that the Ethics Commission adopt the minutes for the February 11, 2008, regular meeting.**

• **Executive Director's Report**

Executive Director St. Croix stated that Statements of Economic Interests, Form 700, are due by April 1, 2008.

Mr. St. Croix stated that three 2008 candidates for the Board of Supervisors have qualified for public financing and that staff is currently spending

significant time with outreach and education for the upcoming elections.

He also stated that staff recently met with staff from the Bureau of Delinquent Revenue (BDR) where BDR expressed a desire to make changes to the referral system, because the existing referral process has been complicated and burdensome. Mr. St. Croix added that BDR considers referrals to be confidential, though they are represented on the Executive Director's Report.

Commissioner Hansen asked whether staff could engage in more outreach and education. Executive Director St. Croix stated that staff is doing all that it can to prepare the candidates and committees in addition to carefully reviewing initial filings. Commissioner Hansen also asked whether discussions with BDR produced any suggestions on how to make collections in a timelier manner. Mr. St. Croix stated that BDR is the collection agency for all City departments and that Ethics referrals may not be BDR's first priority. Commissioner Hansen asked how the Commission could be notified of BDR collections, to which Mr. St. Croix responded that they may be represented in future Executive Director's Reports.

Public Comment:

Dan Boreen stated that within Executive Director's Report, there should be more discussion on investigations and enforcement, especially concerning whistle blower protections. He also stated that complainants should be notified as to the status of the investigation pertaining to their complaint.

- **Closed Session**

Public Comment:

None.

**Motion 08-03-24-3 (Gusukuma/Studley): Moved, seconded, and unanimously passed (5-0) that the Commission go into closed session.**

The Commission went into closed session at 8:35 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, Deputy City Attorney Shen, Executive Director St. Croix, Deputy Director Ng, Investigator/Legal Analyst Paul Solis.

- **Discussion and vote regarding closed session action and deliberations**

At 8:39 p.m. the Commission returned to open session.

Public Comment:

None.

**Motion 08-03-24-4 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Ethics Commission finds that it is in the best interest of the public not to disclose its closed session deliberations regarding existing litigation.**

- **Items for future meetings**

Public Comment:

Dan Boreen stated the Commission should hold hearings on whistle blower protections.

- **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

None.

- **Adjournment**

Public Comment:

None.

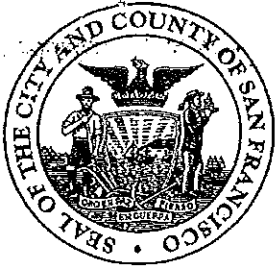
**Motion 08-03-24-5 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.**

The meeting was adjourned at 8:42 p.m.

Respectfully submitted,

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Paul Solis  
Investigator/ Legal Analyst



## ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

SUSAN J. HARRIMAN  
CHAIRPERSON

EMI GUSUKUMA  
VICE-CHAIRPERSON

EILEEN HANSEN  
COMMISSIONER

JAMIEENNE S. STUDLEY  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: August 12, 2008  
To: Ethics Commission Staff  
From: John St. Croix, Executive Director  
Re: New Policies and Procedures

At its March 24, 2008 meeting, the Ethics Commission approved several policy directives, which are discussed below. Commission staff will implement these policies immediately. These policies are subject to further clarification and refinement.

### **I. Random Selection of Committees for Audit**

- A. No later than the March meeting of each year, the Commission will endeavor to conduct a random selection of political campaign committees that were active in the previous calendar year for audits. The pool of committees subject to the random selection process will not include the committees of candidates certified to receive public funds. All candidates certified to receive public funds will be subject to audits (public financing audits) and will not be part of the random selection pool. Committees that have been designated by enforcement staff for audits (targeted audits) will also not be part of the random selection pool.
- B. The Commission will not include candidates or committees that raise less than or equal to \$5,000 and spend less than or equal to \$5,000 per election cycle in the audit pool for random selection. (For example, a committee that raises \$8,000 and spends \$4,000 will qualify for the audit pool; a committee that raises \$5,000 and spends \$5,000 will not qualify for the audit pool.) An election cycle generally covers activity through December 31 of the election year. Staff may recommend, and the Commission may approve, that candidates or committees that raise and spend less than or equal to \$10,000 be excluded from the audit pool in a given year.
- C. Of the randomly selected committees, the Commission will conduct the audits of committees of candidates who were elected after it conducts the audits of committees of candidates who were not elected.
- D. Following selection by the Commission, staff will notify all selected committees that they must preserve their records until the audits are completed. During its training sessions and in its manuals, staff will remind committees that state law requires committees to retain their records for four years.
- E. The Commission will endeavor to complete randomly selected audits within two years of selection.
- F. In general, when audits reveal that the total infractions constitute less than ten percent of contributions or expenditures for the auditing period, or less than



\$10,000, whichever is lower (“materiality standard for audits”) staff will not institute any enforcement action against the committee. At its discretion, staff may institute actions arising out of infractions below this threshold. (For example, if the records show that a candidate raises \$50,000, but \$5,000 is from a single contributor, staff may deem the violation to be material.) Findings not deemed material will not be forwarded to any enforcement authority for follow-up.

**II. Forfeitures of corporate contributions to candidates for City elective office, contributions that exceed the contribution limits or contributions that are not disclosed properly**

- A. Enforcement staff will handle all forfeiture activities, beginning on August 1, 2008 with the semi-annual report due on July 31, 2008. Enforcement staff will also handle any forfeiture matters arising from violations of law revealed in audits of committees active in 2007. The fines collection staff will continue to handle any forfeiture matters arising from violations of law revealed in audits of committees active in 2006.
- B. Twice a year, within 45 days after the semi-annual campaign filing deadlines, audit staff will endeavor to screen all contributions that may be subject to forfeiture. Contributions for which complete contributor information is not disclosed, contributions that exceed the contribution limits (“excess contributions”), and contributions received by candidates for City elective office from corporations (“corporate contributions”) may result in forfeiture. After audit staff completes its review of filings for possible forfeitures, enforcement staff will send a notice to cure (“NTC”) to committees, in order to provide committees the opportunity to correct contributor disclosure problems within thirty (30) calendar days. (*Note: Corporate and excess contributions cannot be cured.*) Enforcement staff will endeavor to send all NTCs to the affected committees within 60 days of the semi-annual filing deadline. If more than 60 days have elapsed, staff may still send a NTC, but the time period for cure will extend from the date of the NTC.

*Example:*

For the July 31, 2008 semi-annual deadline, audit staff will attempt to screen all filings for potential forfeitures by September 14 and enforcement staff will attempt to send all NTCs by September 30.

- C. Audit staff will attempt to screen Form 496 and 497 pre-election campaign filings within one week of their receipt. Within 72 hours of such screening, enforcement staff will attempt send a NTC to committees to provide them an opportunity to cure any contributor disclosure problems within five (5) calendar days. If staff fails to screen or send a NTC under these deadlines, the screening and/or sending out of the NTC will occur in conjunction with staff’s activities under II.B, and the time to cure will be thirty (30) calendar days of the NTC.
- D. Audit staff will attempt to screen Form 496 and 497 campaign filings received during the late reporting periods on a daily basis. By the next business day, enforcement staff will attempt to send a NTC to committees to cure any contributor disclosure problems identified by audit staff within 48 hours. If staff fails to screen or send a NTC under these deadlines, the screening and/or sending out of the NTC will occur in conjunction with staff’s activities under II.B, and the time to cure will be thirty (30) calendar days of the NTC.
- E. For section 1.113 and quarterly disclosure reports, staff will follow the procedures set forth in this section II.B.

- F. If a committee cures any contributor disclosure problems identified by the NTC within the time frame specified, the committee will not be subject to forfeitures for any such reporting defects.
- G. If a committee does not cure, or cannot cure because the contribution(s) violated the contribution limits or were corporate contributions to candidates for City elective office, enforcement staff will handle as follows:
1. Enforcement staff will attempt to send out a forfeiture assessment notice ("FAN") within one year of the filing deadline or the date the campaign statement was filed, whichever is later.
  2. If the Commission fails to send a FAN to a committee assessing a forfeiture within one year of the filing deadline or the date that the defective report was received by the Commission, the Commission will not seek forfeiture.

*Example:*

Committee ABC files its report by the applicable deadline, July 31, 2008. The report fails to list the occupations for several contributors. On September 15, 2008, Commission staff notifies the committee to cure its report. If the committee fails to cure the defect within the timeline provided, Commission staff must seek forfeiture. If Commission staff fails to send the FAN to Committee ABC to assess the forfeitures by July 30, 2009 – within one year of the filing deadline – the Commission may continue to seek amendments to the report but will no longer pursue forfeitures.

*Example:*

The applicable filing deadline is July 31, 2008, and Committee ABC does not file its report until August 10, 2008. The report fails to list the occupations for several contributors. If Commission staff fails to send a FAN to Committee ABC to assess the forfeitures by August 9, 2009, the Commission may continue to seek amendments but may no longer seek forfeitures. *See Section III below for the handling of late fees against Committee ABC.*

- H. The FAN will provide twenty-one (21) calendar days for the committee to cure any defects, seek a waiver of the assessed forfeitures, and/or pay any forfeitures.
- I. If the committee seeks a waiver, enforcement staff will offer its recommendation to the Executive Director using the following factors:
1. If the forfeiture results from a violation of applicable contribution limits or a corporate contribution to a candidate for City elective office, no waiver may be granted. The committee must forfeit any funds identified as a corporate or excess contribution. However, if a committee returns a corporate or excess contribution to the donor prior to the issuance of a FAN or any other action by the Commission, the returned contribution is not subject to forfeiture if it is properly reported as a returned contribution on a timely basis.
  2. If the forfeiture results from inaccurate or incomplete information about the contributor(s), staff should determine whether the filer is a "small" filer, which is a filer who has never reported more than \$15,000 of contributions or expenditures or cash on hand in any single calendar year. If the filer is a small filer, staff may recommend the granting of a full waiver, if the contributor(s)' information is corrected or completed within the time frame set forth in the FAN.

3. If the forfeiture is due to inaccurate or incomplete information about the contributor(s), and the committee is not a small filer under section II.I.2, staff may make its recommendation based on the following factors: the amount of funds subject to forfeiture may be reduced by 20 percent for each of the following factors for which an affirmative response is made (meeting any five or all six of the factors below will result in a recommendation of 100 percent waiver):
  - a. Does the contributor have a history of filing campaign statements on a timely manner?
  - b. Is the contributor a first-time treasurer or candidate?
  - c. Is the filing a semi-annual or quarterly report?
  - d. Did the committee cure defects within the time set forth in the FAN?
  - e. Does committee demonstrate financial hardship if forfeitures must be paid in full?
  - f. Did the committee self-report the error(s)? (*see* Section VIII).
- J. If the Executive Director reduces a forfeiture based upon a request for a waiver and the committee fails to pay the reduced forfeiture according to the schedule or deadline prescribed, staff may revoke the reduced forfeiture and staff may pursue the matter as set forth below in subsections K-N.
- K. If the committee does not seek waiver, pay the assessed forfeitures, or enter into a payment schedule with staff within the time period prescribed in the FAN, or if the committee fails to pay the reduced forfeiture according to the schedule or deadline prescribed, enforcement staff will determine whether to refer the matter to BDR or file an Ethics complaint against the committee.
- L. If staff refers the matter to BDR, enforcement staff will notify the committee of the date of the referral. In most instances, staff will endeavor to provide such notification on the 91<sup>st</sup> day after the date that the staff sends the FAN to the committee, or as soon as possible after revocation of the reduced forfeiture.
- M. If staff decides to file an Ethics complaint, staff will endeavor to notify the committee of its decision no later than 60 days after the date that the staff sends the FAN to the committee, or as soon as possible after revocation of the reduced forfeiture.

**III. Late fees which may be assessed based on late receipt of campaign finance filings when either (1) the committee files late and staff assesses late filing fees; or (2) the committee fails to file a report, the committee files its report upon staff's notification of the failure to file, and committee is assessed late filing fees.**

- A. In situation (1), within one year of the Commission's receipt of the late report, fines collection staff will endeavor to send a written late fee notice ("LFN") to the late filer.
- B. The LFN will provide the committee with twenty-one (21) calendar days to pay its late fines, enter into a payment schedule to pay the late fees, or to request a waiver of the late fees.
- C. If the committee seeks a waiver, the fines collection staff will offer a recommendation on the waiver to the Executive Director, using the six factors discussed above in section II.I.3a-f.
- D. If the committee does not seek a waiver, pay the late fees, or enter into a payment schedule with Ethics staff within the time period prescribed in the LFN, the fines collection staff will

refer the matter to enforcement staff for handling. Enforcement staff will determine whether to refer the matter to BDR.

1. Enforcement staff will notify committee of the date of the referral to BDR. In most instances, staff will make its referrals on the 91<sup>st</sup> day after the date the LFN is sent to the committee.
- E. In situation (2), within one year of the date that the filing was due, staff will endeavor to send a notice to file ("NTF") to inform a non-filer know of its filing obligations. Except for NTFs regarding pre-election reports, the notice will inform the non-filer that it has ten (10) days to file its report or its name will be posted as a non-filer on the Commission's website. Staff will endeavor to send a second notice to file ("NTF2") once the 10 days have elapsed and the non-filer has not filed. The NTF2 will provide ten (10) days for the non-filer to file. For missing pre-election reports, the NTF and NTF2 will provide five (5) days for the non-filer to file. If the non-filer fails to file, the fines collection staff will refer the matter to enforcement.
- F. In general, if staff fails to send a NTF to the non-filer within a year of the applicable filing deadline, staff will not impose more than one year of late fees.

*Example:*

Committee XYZ filed its pre-election reports for the November 2008 election and fails to file a second semi-annual report by January 31, 2009. On June 1, 2010, Ethics staff sends a NTF to Committee XYZ to apprise it of its missing report. Committee XYZ files the report on June 30, 2010, approximately seventeen months after the report was due. When Ethics staff sends a LFN, it will limit the time period subject to late fees to 365 days because Ethics did not send a NTF until after a year after the filing deadline.

*Example:*

Committee XYZ filed pre-election reports for the November 2008 election and fails to file a second semi-annual report by January 31, 2009. On June 1, 2009, Ethics staff sends a NTF to Committee XYZ to apprise it of its missing report. Committee XYZ files the report on June 30, 2010, approximately seventeen months after the report was due. When Ethics staff sends a LFN, it will not limit the time period subject to late fees to 365 days because Ethics sent a NTF within a year of the January 31, 2009 filing deadline.

#### **IV. De Minimis Standards for Late Fees and Forfeitures for Incomplete Contributor Information**

In general, a candidate or committee that raises and spends less than or equal to \$5,000 in any election cycle (or calendar year for general purpose committees) will not be subject to fees for failing to file required campaign statements in a timely manner. Nor will such a committee be subject to forfeitures for failing to disclose complete contributor information.

#### **V. Specific Written Notice**

Except in unusual circumstances, the Commission will no longer issue specific written notice pursuant to Government Code section 91013.

#### **VI. Bureau of Delinquent Revenues**

Enforcement staff will handle all referrals to and matters currently pending at the Bureau of Delinquent Revenues (BDR).

## **VII. Posting of Non-Filer List on Commission's Website**

- A. The Commission will remove non-filers listed on the Commission's website after the five-year statute of limitations period for administrative action has expired.

*Example:*

Candidate XYZ for Supervisor failed to file his January 31, 2004 semi-annual report. On January 30, 2009, Candidate XYZ will be removed from the non-filer list posted on the Commission's website.

- B. The Commission will consider temporary removal of a non-filer from the Commission's website for ten days if the non-filer contacts the Commission to request removal and attempts to address his or her failure to file.
- C. The Commission will not list non-filers on its website if the amendments requested by staff are considered minor under FPPC Regulation 18110.

## **VIII. Self-Reporting of Errors and Late Fee Waiver Determinations**

- A. In assessing requests for waivers or reductions of late fees, the Commission will consider a committee's self-reporting of errors, provided that such self-reporting is not the result of news coverage of or other publicity about the errors. Staff will waive late fees in full if a committee satisfies five of the six factors for reduction of fines.

*Example:*

Committee FGH, a committee with \$16,000 in reported activity and a new treasurer, timely seeks waiver of late fees assessed for the late filing of its semi-annual report. Evaluating the five factors currently being used to determine whether and by how much the late fees should be reduced, staff determines:

1. History of timely filing – no
2. 1<sup>st</sup> time treasurer – yes
3. Semi-annual report – yes
4. Timely response to NTF – yes
5. Demonstrated financial hardship – no
6. Self reporting – yes

Since Committee FGH has satisfied four of the six factors for reduction of fines, the late fee would be reduced by 80 percent.

## **IX. Use of Post-Mark to Determine Receipt of Documents**

Except where state or local law specifically provides otherwise, or where the law requires that reports be filed within 24 hours of reaching a reporting threshold, the Commission will accept documents as timely filed if they are postmarked by the applicable deadline.

## **X. Extension of time to file requested amendments**

In general, when the Commission requests the filing of amendments to disclosure reports required under the PRA or CFRO, the Commission will provide the filer thirty (30) days to file the amendment.

## **XI. Distribution of Matrix Regarding Commission's Waiver and Other Policies**

The Commission will distribute and post on its website its waiver and late fee reduction policy.

S:\Commission\Interested Persons Meetings\policy directives implementation 8.08.doc