ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: March 10, 2011

To: Members, Ethics Commission

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

Re: Proposed Amendments to the Campaign Finance Reform Ordinance

Based on its administration of the Campaign Finance Reform Ordinance ("CFRO" or "the Ordinance"), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. ("C&GC Code"), staff recommends that the Commission consider several policy issues to provide guidance to staff before staff moves forward on proposals to amend the CFRO. Staff has requested that the City Attorney's Office draft legislation and plans to convene at least one interested persons meeting in order to gather public comment on the proposed legislation in the next month. We hope to be able to provide draft legislation to the Commission for consideration at its April and/or May meetings.

Under section 1.103 of the CFRO, the Commission and the Board of Supervisors may amend the CFRO without voter approval if (1) the amendment furthers the purposes of the law; (2) the Ethics Commission approves the proposed amendment by at least a 4/5 vote of all its members; (3) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any of its committee; and (4) the Board approves the proposed amendment by at least a 2/3 vote of all of its members.

Staff's proposed changes, if enacted, would go into effect for the 2012 election, and would not change the rules in the middle of the game for candidates and committees active in the November 2011 election.

1. Disclaimer and Disclosure Requirements for Communications by Third Parties

First, staff proposes amending several sections of the CFRO to consolidate the disclosure and disclaimer requirements that apply to third parties. Currently, third parties that spend money in San Francisco elections must navigate a number of different filing requirements—they must file one type of disclosure for "electioneering communications" within 90 days of an election (as set forth in CFRO section 1.161.5); another disclosure for communications that support or oppose a candidate for the Board (section 1.152(b)(2)); a third for communications that support or oppose a candidate for Mayor (section 1.152(b)(3)); a fourth for communications that support candidates for

other local office (section 1.134(c)); and a fifth for communications sent by mail to 200 or more recipients (section 1.161(b)). These filings provide important information to the public and enable Commission staff to track contributions and expenditures to determine whether to lift the voluntary expenditure ceilings and administer the public financing program. But the requirements have become unwieldy and burdensome for staff, the filers and the members of the public who seek to review and use the information disclosed in the filings. Approximately 18 of the CFRO's sections or sub-sections address third-party filing requirements, and the Third Party Disclosure Form is now *eleven* pages long.

Third parties also are subject to a number of different requirements to include "paid for by" disclaimers in those communications—one disclaimer rule applies only to items sent by mail (section 1.161(b)), another to electioneering communications issued within 90 days of an election, a third to advertisements (section 1.162), and a fourth to recorded phone messages (section 1.163).

Staff proposes eliminating this tangled mess and replacing it with a simpler disclosure and disclaimer rule that would require certain disclosures and disclaimers in three situations: races for Mayor or the Board of Supervisors involving a publicly financed candidate, races for other elective offices where at least one candidate has accepted the voluntary expenditure ceiling, and all races within 90 days of election day. Because of the different policy considerations in those three situations, staff would propose setting different triggers for required filings in each. For instance, in races involving a publicly financed candidate where staff needs to track spending in small increments to raise candidates' spending caps, the proposal would require third parties to file reports every time they spend $5,000 on a communication – even several months before election day. But in races where no candidate is subject to a spending cap and the staff does not need to monitor spending closely, the public need for disclosure of third party spending is more acute closer to the election, so staff would propose requiring no such filings until 90 days before election day.

II. Disclaimer and Disclosure Requirements for Communications by Candidate Committees

Second, staff proposes amending several sections of the CFRO to consolidate the disclaimer requirements that apply to communications paid for by candidates for local office. The CFRO currently applies a number of different disclaimer rules to candidates for local office. Under current law, candidates must indicate that they paid for communications by making disclaimers on communications sent by mail to 200 or more recipients (section 1.161), on campaign advertisements (section 1.162), and on recorded telephone messages (section 1.163). (The CFRO also requires disclosure reports for candidates at certain thresholds, but staff does not propose changing those requirements at this time.)

Like the third-party disclosure/disclaimer rules, the disclaimer requirements for candidates should be consolidated into a single section. This consolidation would help candidates comply with the law.

III. Cumulative Contribution Limits

The CFRO currently provides a $500 per candidate contribution limit, which staff does not propose amending. But the CFRO also provides that no person may contribute cumulatively to all candidates more than $500 times the number of offices on the ballot. Staff proposes eliminating this latter limit because it is difficult for candidates to monitor and has arbitrary effects. In an even-numbered year like 2010, when 13 City elective offices were on the ballot (Public Defender, Assessor, three Community College Board members, three School Board members and five Board of Supervisors members), the cumulative contribution limit was $6,500. Any individual could contribute as much as $6,500 to candidates, even if the contributor focused his or her donations in one or two races by, say, giving six $500 contributions to different candidates in a single race. In 2011, with three offices on the ballot, the cumulative limit will be $1,500. This law is arbitrary because it limits contributions in any given race based on the entirely irrelevant matter of how many *other* races are on the ballot that year. Moreover, it is exceedingly hard for candidates to comply with the rule in the middle of a race because they cannot easily or effectively monitor how much their donors have contributed to other candidates in other races. Both candidates and contributors are subject to penalties when a contributor exceeds the cumulative limit, which is unfair to candidates who often have no way of knowing whether a contributor has exceeded the contribution limit by donating to other candidates. Staff proposes eliminating the cumulative limit.

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