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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: December 9, 2009
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Re: Proposed amendments to CFRO regulations

The amendments to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. (C&GC Code) that the Ethics Commission approved in September 2009 will take effect on January 1, 2010. The CFRO amendments generally stemmed from staff's experiences in administering the CFRO and the City's public financing program, particularly in the 2008 election. The changes make it easier for candidates and committees to comply with the law; they also consolidate filing requirements to make it easier for the staff and the public to monitor campaigns and compliance with the law. In order to implement these changes, staff recommends that the Commission adopt several proposed amendments to the CFRO's regulations.

This memo contains 19 decision points. All but two of staff's proposed amendments are technical changes that incorporate the recent changes in the CFRO. The two more substantive amendments are discussed in Decision Points 3B and 11B below. Staff has also proposed several amendments that would clarify existing regulations or delete language that merely restates the language of the ordinance in order to shorten the regulations as much as possible.

In considering these proposed regulations, the Commission may wish to consider en masse the technical changes. The Commission may then wish to consider separately Decision Points 3B and 11B.

Regulations adopted by the Commission shall become effective 60 days after their adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to overturn the regulations. S.F. Charter § 15.102.

1. Proposed changes to regulations implementing section 1.104 (pages 1-4)

The proposed amendments to the regulations corresponding to C&GC Code section 1.104 are technical. For this reason, there is one decision point related to these changes.

Regulation 1.104-1: Definition of Matching Contribution; Documentation Sufficient to Establish Contributor’s Residency; and

Regulation 1.104-2: Definition of Qualifying Contribution; Documentation Sufficient to Establish Contributor’s Residency; Adjustment of Maximum Qualifying Contribution.

For these two regulations, staff proposes to delete language that repeats the ordinance's definitions of “matching contribution” and “qualifying contribution.” In addition, staff proposes to add subsection notations, *i.e.*, (a) and (b), in order to easily reference separate sections of each regulation. Staff has added subsection (c) in both regulations to reference Regulation 1.142-3(b), which identifies the types of documentation that a candidate may rely upon to show a contributor’s residency in San Francisco. Proposed subsection (d) in Regulation 1.104-2 adds a description of the process by which the Commission will adjust the threshold for qualifying contributions for inflation. This description is currently described later in the regulations, and staff believes it is more appropriately included near the other regulations concerning qualifying contributions.

Regulation 1.104-4: Individual Expenditure Ceiling

Staff proposes to delete current Regulation 1.104-4, which repeats language in section 1.143 of the CFRO.

Regulation 1.104-~~54~~: Determination of Total Opposition Spending; and

Regulation 1.104-~~65~~: Determination of Total Supportive Funds

In these renumbered regulations, staff’s proposed changes reference the correct code section – 1.143 – under which the staff may adjust individual expenditure ceilings for publicly financed candidates. Staff’s proposed changes also simplify the description of what information the Ethics Commission may consider to determine a candidate's total opposition spending or total supportive funds. The amendments also reflect that the Commission will also begin consolidating forms (related to reports required under sections 1.134, 1.152, 1.161 and 1.161.5) that disclose third-party spending.

Regulation 1.104-7: Member Communication

Staff proposes to delete current Regulation 1.104-7, as the definition of “member communication” is now set forth in section 1.104(t) of the CFRO.

Regulation 1.104-~~86~~: Trust Account Limit

The proposed changes reflect the new individual expenditure ceiling (“IEC”) amounts for publicly financed candidates. Staff also proposes to delete the last two sentences in the regulation, as they repeat language found in section 1.104(b)(b) of the CFRO. In the examples, the amendments update the sample figures to reflect the new IECs.

<p>Decision Point 1: Shall the Commission adopt the proposed changes to Regulations 1.104-1, 1.104-2, 1.104-4, 1.104-54, 1.104-65, 1.104-7 and 1.104-86, as drafted?</p>
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2. Proposed changes to regulations implementing section 1.107 (pages 4-5)

Regulation 1.107-1: Training Requirements for Candidates and Candidate Treasurers

The proposed amendment incorporates the term “candidate committee,” a new term in the CFRO. The other proposed amendment clarifies that section 1.107(a)(2) applies to treasurers of non-candidate committees.

Decision Point 2: Shall the Commission adopt the proposed changes to Regulation 1.107-1, as drafted?

3. Proposed changes to regulations implementing section 1.108 (pages 5-6)

Regulation 1.108-1: Candidate Committee Campaign Trust Account

CFRO section 1.108 no longer requires a candidate committee to disclose to the Ethics Commission its bank account number and branch identification, as state law already requires committees to provide this information. For this reason, the current regulation is no longer necessary.

Regulation 1.108-~~2~~1: Inaugural Expenses

Staff proposes a change in the title to identify correctly the content of the regulation, which is not a prohibition of multiple accounts, but a clarification on how a candidate may pay for inaugural expenses.

Regulation 1.108-~~3~~2: Campaign Contingency Accounts for Candidates.

Staff proposes to delete current subsections (a), (c), and (d) because they merely repeat language that appears in CFRO section 1.108.

Regulation 1.108-3: Transfer of Funds to Campaign Contingency Account.

Staff proposes that the Commission adopt this new regulation to clarify the term “immediately transferred.” As set forth in CFRO section 1.108(a)(3), funds in a candidate committee's account that would otherwise cause the candidate committee to violate the trust account limit do not result in a violation if the committee immediately transfers those funds to its campaign contingency account.

Decision Point 3A: Shall the Commission adopt the proposed changes to Regulations 1.108-1, 1.108-~~2~~1, and 1.108-~~3~~2, as drafted?

Decision Point 3B: Shall the Commission adopt new Regulation 1.108-3, as drafted?

4. Proposed changes to regulations implementing section 1.113 (page 6-7)

Regulation 1.113-3: Disclosure Requirements During Signature Gathering Periods – Start and End Dates of Signature Gathering Period.

Regulation 1.113-4: Duties of Signature Gatherer.

Regulation 1.113-5: Disclosure Requirements During Signature Gathering Periods – Forms Required to be Filed.

In Regulation 1.113-3, staff has added the words “or circulation” to track the language now used in CFRO section 1.113.

In Regulation 1.113-4, staff has changed “24 hours” to “one business day” to reflect the changes made to section 1.113 of the CFRO. Staff has also deleted the last part of the title and the last sentence because section 1.113 now establishes a standard time period for each proponent to file campaign disclosure reports, which eliminates the need for staff to calculate and post individualized reporting periods for each proponent.

Staff has edited and shortened Regulation 1.113-5 to ease comprehension and understanding.

Decision Point 4: Shall the Commission adopt the proposed changes to Regulations 1.113-3, 1.113-4 and 1.113-5, as drafted?

5. Proposed changes to regulation implementing section 1.115 (page 12)

Regulation 1.115-1: Coordination of Expenditures.

Staff has restated the regulation so that it is easier to follow.

Decision Point 5: Shall the Commission adopt the proposed changes to Regulation 1.115-1, as drafted?

6. Proposed changes to regulation implementing section 1.116 (page 12)

Regulation 1.116-1: Loan Limits; Adjustments

Staff has added language so that this regulation is consistent with language in other regulations regarding the adjustment of limitations or thresholds.

Decision Point 6: Shall the Commission adopt the proposed changes to Regulation 1.116-1, as drafted?

7. Proposed changes to regulations implementing section 1.118 (pages 12-13)

Regulation 1.118-1: Payment of Accrued Expenses.

Staff has deleted subsection (a) because it merely repeats language that appears in CFRO section 1.118. The other amendments clarify the regulation and correct a citation.

Decision Point 7: Shall the Commission adopt the proposed changes to Regulation 1.118-1, as drafted?

8. Proposed changes to regulations implementing section 1.122-1 (page 13)

Regulation 1.122-1: Surplus Funds Held by a Committee Other Than a Candidate Committee

CFRO section 1.122(b)(3) now states that surplus funds held by a candidate or committee must be “returned on a “last in, first out” basis to those persons who have made said contributions; donated to a charitable organization; donated to the City and County of San Francisco; used to pay outstanding campaign debts or accrued expenses; used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or used for other permissible purposes established by the Ethics Commission by regulation.” Instead of repeating all of these permissible uses in the regulation itself, staff’s amendments just reference CFRO section 1.122(b)(3).

Decision Point 8: Shall the Commission adopt the proposed changes to Regulation 1.122-1, as drafted?

6. Proposed changes to regulations implementing section 1.128 (pages 18-19)

Regulation 1.128-1: Acceptance or Rejection of Voluntary Expenditure Ceilings.

As discussed below, most of the changes to this regulation are technical, to reflect changes to the underlying ordinance.

CFRO section 1.128 now establishes that the voluntary expenditure ceiling applies only to candidates for Assessor, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, the Board of Education of the SF Unified School District and the Governing Board of the SF Community College District. The proposed amendments to subsection (a) of Regulation 1.128 track this change. In addition, staff has deleted language in subsection (a) that contained a restriction prohibiting any candidate from filing the Form SFEC-128 prior to June 1, in order to track the changes in the CFRO.

To implement the changes in section 1.128 discussed above, staff recommends deletion of subsection (b) of the regulation. Under another regulation interpreting section 1.134, candidate committees will be required to notify the Commission within 24 hours of receiving contributions, making qualified campaign expenditures, incurring expenses or having funds in their campaign accounts that exceed 100 percent of the applicable voluntary expenditure ceiling – based upon this information, staff will be able to determine whether the applicable voluntary expenditure ceiling must be lifted.

Staff has recommended deletion of subsection (d) because the language replicates language that appears in sections 1.140 and 1.142 of the CFRO.

Staff has recommended deletion of subsection (e) because the CFRO no longer requires the Department of Elections to publish a notice of whether a candidate has accepted or declined to accept the voluntary expenditure ceiling in the Voter Information Pamphlet. Instead, the Ethics Commission will maintain on its website a list of candidates who have accepted the voluntary expenditure ceiling.

Staff has recommended deletion of subsection (f) because CFRO no longer requires every candidate to file the Form SFEC-128 to indicate acceptance or rejection of the voluntary expenditure ceiling. Only candidates who accept the ceiling must file the form.

Decision Point 9: Shall the Commission adopt the proposed changes to Regulation 1.128-1, as drafted?

10. Proposed changes to regulations implementing section 1.130 (pages 19-20)

Regulation 1.130-1: Amount of Expenditure Ceilings; Adjustments.

In adopting the amendments to CFRO that will take effect on January 2010, the Commission and the Board of Supervisors revised the voluntary expenditure ceiling amounts that are applicable to all City elective offices (except the Mayor and Board of Supervisors, which are subject to

individual expenditure ceilings if the candidates are eligible to receive public financing). For this reason, it is no longer necessary to separate out Regulation 1.130-1(a) into three subsections, with different base dates for the calculation of adjustments. Instead, any adjustments will be based on the Consumer Price Index as of January 2010. The proposed changes reflect the new law.

Regulation 1.130-2: Individual Expenditure Ceilings for Candidates.

Staff has moved Regulation 1.130-2 so that it now appears as Regulation 1.140-5. Section 1.140 addresses requirements for candidates who seek public financing; thus, it is more appropriate that a regulation governing how an adjustment of the individual expenditure ceiling would occur under CFRO sections 1.140(b) and 1.140(c) appear under regulations implementing section 1.140. For this reason, staff has moved Regulation 1.130-2 so that it now appears as Regulation 1.143-1.

Decision Point 10: Shall the Commission adopt the proposed changes to Regulations 1.130-1 and 1.130-2, as drafted?

11. Proposed changes to regulations implementing section 1.134 (pages 20-22)

Regulation 1.134-1: Reports by Candidates.

Revised CFRO section 1.134 provides that only candidates for Assessor, Public Defender, City Attorney, District Attorney, Treasurer, Sheriff, the Board of Education and the Governing Board of the Community College District are eligible to accept voluntary expenditure ceilings and are subject to the reporting requirements of section 1.134. The proposed amendments to this regulation track the changes to section 1.134 and add terminology - “qualifying campaign expenditures” and “campaign contribution trust account” – consistent with other CFRO provisions.

Regulation 1.134-2: Reports by Committees or Persons who Make Independent Expenditures, Electioneering Communications and Member Communications.

The proposed amendments to Regulation 1.134-2 reflect changes in the underlying ordinance: (1) by setting forth that the regulation applies only to spending that clearly identify candidates who may accept voluntary expenditure ceilings; and (2) referencing the new Third Party Spending Form. The proposals also generally clarify the regulation's purpose and scope.

Regulation 1.134-3: Lifting Voluntary Expenditure Ceilings.

Staff proposes new Regulation 1.134-3, along with examples, to clarify how the voluntary expenditure ceilings may be lifted. In past elections, staff has received many inquiries about how the ceilings may be lifted; staff believes that the regulation will provide helpful guidance to candidates, treasurers and members of the public.

Decision Point 11A: Shall the Commission adopt the proposed changes to Regulations 1.134-1 and 1.134-2, as drafted?

Decision Point 11B: Shall the Commission adopt the proposed new Regulation 1.134-3, as drafted?

12. Proposed changes to regulations implementing section 1.140 (pages 22-24)

Regulation 1.140-1: Eligibility to Receive Public Financing – “Candidate’s Previous Campaign Committee.”

Staff has added more precise references indicating where the term “candidate’s previous campaign committees” appears in CFRO section 1.140.

Regulation 1.140-2: Eligibility to Receive Public Financing – Expenditure Ceiling.

Here, staff has changed the individual expenditure ceilings to reflect the new ceilings set forth in CFRO that will take effect on January 1, 2010. The new ceilings are \$143,000 for candidates for the Board of Supervisors and \$1,475,000 for candidates for Mayor.

Regulation 1.140-3: Adjustments of Qualifying Limits and Thresholds – Board of Supervisors.

Regulation 1.140-4: Adjustments of Qualifying Limits and Thresholds – Mayor.

Staff has added references to “CPI” and “San Francisco-Oakland-San Jose” to describe consistently how staff will adjust limits and thresholds for inflation.

New Regulation 1.140-5: Amount of Individual Expenditure Ceiling – Adjustments.

This new regulation was formerly Regulation 1.130-2. It describes how staff will adjust individual expenditure ceilings for inflation, and sets forth the same process the staff follows to make adjustments to the voluntary expenditure ceilings.

Current Regulation 1.140-5: Adjustment of Maximum Qualifying Contribution.

As noted previously, the adjustment of the maximum qualifying contribution more appropriately belongs in Regulation 1.104-2, which defines “qualifying contribution.” Current Regulation 1.140-5 has been recast as Regulation 1.104-2(d), which appears on page 2.

<p>Decision Point 12A: Shall the Commission adopt the proposed changes to current Regulations 1.140-1, 1.140-2, 1.140-3, 1.104-4 and 1.104-5, and new Regulation 1.104-5, as drafted?</p>
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13. Proposed changes to regulations implementing section 1.142 (pages 24-28)

Regulation 1.142-2: Process for Establishing Eligibility; Filing Requirements.

Regulation 1.142-3: Supporting Material Required for Qualifying and Matching Contributions.

Regulation 1.142-5: Process For Establishing Eligibility; Irrevocability of Decision to Participate or Not Participate; Withdrawal of Declarations.

In Regulation 1.142-2(a), staff has made a stylistic edit, replacing the word “sooner” with “earlier.”

In Regulation 1.142-3, staff has made changes that clarify what a candidate committee must provide along with contributions that would either qualify a candidate for public financing or be matched with public funds. The changes reflect current practice.

In Regulation 1.142-5, staff has added information regarding the last day a candidate may file nomination papers under state law.

Decision Point 13: Shall the Commission adopt the proposed changes to Regulations 1.142-2, 1.142-3, and 1.142-5, as drafted?

14. Proposed changes to regulations implementing section 1.143 (pages 28-31)

Regulation 1.143-1: Individual Expenditure Ceiling for Candidates

New section 1.143 of the CFRO addresses the adjustment of individual expenditure ceilings for publicly-financed candidates. Hence, staff believes it is appropriate to move current Regulation 1.130-2 to this section of the regulations. The regulation has been updated to reference section 1.143 as well as the new individual expenditure ceilings that will apply in January 2010.

Regulation 1.143-2: Lifting of Individual Expenditure Ceiling

Under sections 1.143(a) and (b), the Executive Director shall adjust the individual expenditure ceiling (IEC) of a publicly financed candidate 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 the same race, if such amount is greater than the initial IEC. But the Executive Director may only adjust an IEC in increments of \$100,000 for candidates for Mayor and \$10,000 for candidates for the Board of Supervisors. The proposed amendments to Regulation 1.143-2, reflect the changes in section 1.143. The examples that appear on pages 28-30 have been rewritten not only so they reflect changes in the law but also so that they can be more easily understood.

Regulation 1.143-3: Objection to Executive Director's Determination Whether a Communication Supports or Opposes a Candidate.

Staff has rewritten Regulation 1.143-3 so that it is more concise and easier to parse.

Decision Point 14: Shall the Commission adopt the proposed changes to Regulations 1.143-1, 1.143-2 and 1.142-3, as drafted?

15. Proposed changes to regulations implementing section 1.144 (pages 31-35)

Regulation 1.144(c)-1: Disbursement of Public Funds for Mayoral Candidates; Claims Submitted Before Executive Director Determines Per Candidate Available Disbursement Limit.

Regulation 1.144(c)-2: Disbursement of Public Funds; Public Funds for Mayoral Candidates After Executive Director Determines Per Candidate Available Disbursement Limit.

Regulation 1.144(d)-1: Disbursement of Public Funds for Supervisorial Candidates; Claims Submitted Before Executive Director Determines Per Candidate Available Disbursement Limit.

Regulation 1.144(d)-2: Disbursement of Public Funds; Public Funds Available to Supervisorial Candidates After Executive Director Determines Per Candidate Available Disbursement Limit.

Regulation 1.144(f)-1: Schedule for Submission of Claims from Election Campaign Fund.

In general, staff has rewritten these regulations so that they are easier to read and understand. In Regulations 1.144(c)-2(b) and 1.144(d)-2(b), staff has made corrections so that the term "individual expenditure ceiling" is replaced with "trust account limit." A publicly financed candidate's trust account limit is reduced by the same amount as any expenditure made by the candidate; it will be increased if the individual expenditure ceiling of the candidate is increased.

Staff proposes changes to Regulation 1.144(f)-1 in order to harmonize the regulation with the changes in the CFRO that increase the minimum amount of matching contributions that a publicly financed candidate for the Board of Supervisors may submit, bar a candidate from submitting a claim for public funds if he or she has a pending claim with the Commission, and modify the time by which checks must be issued by the Controller.

Decision Point 15: Shall the Commission approve the proposed changes to Regulation 1.144(c)-1, 1.144(c)-2, 1.144(d)-1, 1.144(d)-2, and 1.144(f)-1, as drafted?

16. Proposed changes to regulations implementing section 1.148 (pages 35-36)

Regulation 1.148-1: Restrictions on Use of Public Funds; Purchase of Equipment.

The CFRO no longer sets restrictions on the purchase or surrender of equipment. Thus, staff has deleted this regulation. (Staff has also renumbered current Regulation 1.148-2 as new Regulation 1.148-1.)

Decision Point 16: Shall the Commission approve the proposed changes to current Regulation 1.148-1, as drafted?

17. Proposed changes to regulations implementing section 1.152 (pages 36-37)

Regulation 1.152(a)-1: Supplemental Reporting in Elections for the Board of Supervisors – Candidates.

Regulation 1.152(a)-2: Supplemental Reporting for Elections for the Board of Supervisors – Persons Other than Candidates.

Regulation 1.152(b)-1: Supplemental Reporting in Elections for Mayor – Candidates.

Regulation 1.152(b)-2: Supplemental Reporting for Elections for Mayor – Persons Other than Candidates.

In Regulations 1.152(a)-1 and 1.152(b)-1, staff has separated the provisions into subsections (a), (b), and (c) in order to provide greater ease of reading.

In Regulations 1.152(a)-2 and 1.152(b)-2, staff has proposed language to clarify the regulations. Staff has also identified the Third Party Spending Form as the form that third parties must use to report spending related to races for Mayor and the Board of Supervisors.

Decision Point 17: Shall the Commission approve the proposed changes to Regulations 1.152(a)-1, 1.152(a)-2, 1.152(b)-1 and 1.152(b)-2, as drafted?

18. Proposed changes to regulations implementing section 1.161 (pages 37-38)

Regulation 1.161(a)-1: Filing Requirements for Mass Mailings by Candidates.

Regulation 1.161(b)-1: Filing Requirements for Mass Mailings by Persons Other than Candidates.

In Regulation 1.161(a)-1, staff has proposed the deletion of language that merely replicates language appearing in CFRO section 1.161. In addition, staff has defined the term “working day,” which appears in CFRO section 1.161(a).

In Regulation 1.161(b)-1, staff has proposed the deletion of language that appears in CFRO section 1.161(b). Staff has also referenced the Third Party Spending Form that non-candidates must use to report mass mailings.

Decision Point 18: Shall the Commission approve the proposed changes to Regulations 1.161(a)-1 and 1.161(b)-1, as drafted?

19. Proposed changes to regulations implementing section 1.161.5 (pages 38-40)

Regulation 1.161.5-1: Electioneering Communications

In this regulation, staff has deleted language that merely replicates language appearing in CFRO section 1.161.5. Staff has also proposed language to specify that persons who make payments for electioneering communications must report such payments on the Third Party Spending Form.

Staff has deleted subsection (c) because it is no longer necessary in light of section 1.112 in the CFRO, which provides that whenever any committee is required to file a report with the Commission under the CFRO, the committee shall file the report in an electronic format if the Commission has prescribed the format at least 60 days before the report is due.

Decision Point 19: Shall the Commission approve the proposed changes to Regulation 1.161.5-1, as drafted?