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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: August 3, 2009
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Re: Proposed amendments to Campaign Finance Reform Ordinance

Staff has worked with Supervisor Daly to propose amendments to the Campaign Finance Reform Ordinance (CFRO), Article I of the San Francisco Campaign and Governmental Conduct Code (S.F. C&GCC), for the Commission's consideration at its August 10, 2009 meeting. On July 17 and 28, staff held two interested persons meetings to present and obtain input on the proposed amendments. The proposed amendments incorporate some of the comments made at those meetings.

This memorandum highlights the more substantive amendments, most of which stem from staff's administration of the CFRO and the City's public financing program. In general, the proposed changes will make it easier for candidates and committees to comply with the law, and will consolidate filing requirements to make it easier for the public to monitor campaigns as well as for the staff to administer the law.

Section 1.104. Definitions:

In this section, the proposals:

- reference the Political Reform Act, California Government Code section 81000 et seq. (PRA) for definitions such as "candidate," "committee," "contribution," "controlled committee," "general purpose committee," and "independent expenditure";
- add new definitions such as "candidate committee" to distinguish between an individual candidate and that individual's campaign committee; add "Code" to mean the S.F. C&GCC; "member communication," "withdrawal" or "withdraw;"
- move certain definitions such as "itemized disclosure statement," "mass mailing," "unexpended public funds" from other sections of the CFRO into this definitions section;
- amend the definition of "surplus funds" to exclude its application to funds remaining in the campaign account of a committee primarily formed to support or oppose a ballot measure; and
- make other clarifying changes to definitions, including "matching contribution," "measure" and "qualifying contribution."

Section 1.108. Candidate Committee Campaign Trust Accounts and Campaign Contingency Accounts:

In this section, the proposals:

- delete the requirement that a committee file its bank account and branch identification number with Ethics Commission, as state law already requires committees to provide this information when they are first established; and
- clarify how publicly financed candidates may use their contingency accounts.

1.112. Electronic Campaign Disclosure

- The proposals clarify that certain committees required to file disclosure reports under the *state law* must file electronically with the Ethics Commission if they meet specific thresholds (e.g., committees that meet the \$5000 contribution or expenditure threshold). The proposals also authorize the Commission to require the electronic filings of reports required by *local law*, without any monetary threshold.

1.113. Disclosure Requirements During Signature Gathering Periods for Initiatives, Referenda and Recalls

- The proposals simplify the schedule governing when committees raising or spending funds to support or oppose a measure during the signature-gathering period for initiative, referendum, or recall petitions must file disclosure reports with the Ethics Commission.

1.118. Payment of Accrued Expenses

- The proposals codify the March 23, 2009 Ethics Commission Pearce Advice Letter by clarifying that candidate committees, rather than individual candidates, are responsible for the payment of accrued expenses. Individual candidates still may be liable for their controlled committees' violations of CFRO.

1.122. Solicitation or Acceptance of Campaign Contributions – Limitation

- The proposals clarify that a withdrawn, defeated or departed candidate may use campaign funds to pay outstanding campaign debts and expenses associated with terminating the committee. The proposals also authorize Commission to identify by regulation other permissible uses of such funds.

1.128. Acceptance or Rejection of Voluntary Expenditure Ceilings

In this section, these proposals:

- change the law so that candidates for the Board of Supervisors or Mayor may no longer accept a voluntary expenditure ceiling (VEC) because candidates for those offices may opt to accept public financing, which requires each candidate to comply with an individual expenditure ceiling (IEC). Candidates for all other local offices still could accept a VEC;
- allow other candidates to accept the VEC any time – instead of no earlier than June 1 of the year in which they are seeking election – up to the deadline for filing nomination papers;
- delete the requirement that the Director of Elections publish notices in the Voter Information Pamphlet indicating which candidates have accepted the VEC; and
- require the Ethics Commission to maintain on its website a list of candidates who have accepted the VEC.

1.130. Amount of Voluntary Expenditure Ceilings

The proposals adjust the voluntary expenditure ceilings as follows to reflect inflation:

- the VEC for the offices of Assessor, Public Defender, City Attorney, District Attorney, Treasurer or Sheriff would increase from \$229,000 to \$243,000; and
- the VEC for the offices of Board of Education or Community College District would increase from \$98,000 to \$104,000.

1.134. Lifting of Voluntary Expenditure Ceilings; Supplemental Reporting etc.

In this section, the proposals:

- require all candidates in races other than for the Board of Supervisors or Mayor to report, within 24 hours, when they receive contributions or make expenditures that total more than 100 percent of the applicable VEC; and
- clarify that third parties must file supplemental reports, along with a legible copy or electronic recording of the communication, when their expenditures regarding those races reach or exceed \$5,000 per candidate.

1.135. Supplemental Pre-Election Statements

In this section, the proposals:

- clarify that a committee must file pre-election statements if it makes contributions or *independent* expenditures of \$500 or more during the pre-election period; and
- clarify that in even-numbered years, committees must file supplemental pre-election statements in accordance with the schedule established by the Fair Political Practices Commission. (The Commission approved the substance of these amendments in May 2008, but the Board of Supervisors did not take up the legislation.)

1.140. Eligibility to Receive Public Financing

In this section, the proposals:

- increase the amount that a publicly-financed candidate may loan or donate to his or her committee from \$5,000 to \$15,000;
- require a candidate to have paid any fines imposed for any violation of the S.F. C&GCC, which would, for example, include fines for violations of the conflict of interest or lobbyist laws;
- require a candidate to have filed any forms required by the S.F. C&GCC;
- require that the candidate has not willfully violated the S.F. C&GCC within the last five years;
- increase the individual expenditure ceiling (IEC) of a publicly financed candidate for the Board of Supervisors from \$140,000 to \$143,000 to reflect inflation; and
- increase the IEC of a publicly financed candidate for Mayor from \$1,375,000 to \$1,475,000 to reflect inflation.

Section 1.144. Disbursement of Public Funds

In this section, the proposals:

- change the time that public funds must be disbursed to candidates by the Controller from 48 hours to two business days, except that in last 15 days (instead of 60 days) before the election, such payments must be made within one business day rather than 24 hours;

- increase the maximum amount of public funds available to publicly-financed mayoral candidates from \$850,000 to \$950,000, unless the per candidate available disbursement limit is greater than \$950,000 and the candidate's IEC has been raised;
- increase the maximum amount of public funds available to publicly-financed supervisorial candidates from \$87,500 to \$89,000, unless the per candidate available disbursement limit is greater than \$89,000 and the candidate's IEC has been raised; and
- provide that no candidate may submit a claim for public funds if the candidate has any claims already pending with the Ethics Commission.

Section 1.148. Restrictions on Use of Public Funds; Unexpended Public Funds

- The proposals eliminate the requirement that a publicly financed candidate turn over to the City any equipment that has a fair market value greater than \$100.

Section 1.150. Audit; Repayment

- The proposals codify the Commission's practice of initiating random and targeted audits.

Section 1.152. Supplemental Reporting in Elections for Board of Supervisors and Mayor

- The proposals clarify that third parties must file supplemental reports, along with a legible copy or electronic recording of the communication, when their expenditures reach or exceed \$5,000 per candidate for the Board of Supervisors, or \$10,000 (instead of \$5,000) per candidate for Mayor.

1.156. Report to the Mayor and Board of Supervisors

- The proposals delete the requirement that the Ethics Commission study and prepare reports on the public financing after the 2007 and 2008 elections. The Ethics Commission has completed these reports.

Section 1.161. Disclosure and Filing Requirements for Mass Mailings

Currently, parties sending mass mailings may, depending on the circumstances, file multiple reports disclosing the same information to the Ethics Commission. In this section, the proposals:

- provide that a person required to disclose expenditures for a mass mailing under section 1.134, 1.152 or 1.161.5 need not file an additional itemized disclosure under section 1.161; and
- authorize the Commission to permit the facsimile filing of itemized disclosure statements and mass mailings.

1.161.5. Disclosure and Filing for Electioneering Communications

Currently, parties sending mass mailings may, depending on the circumstances, file multiple reports disclosing the same information to the Ethics Commission. In this section, the proposals:

- provide that a person required to disclose expenditures for an electioneering communication under section 1.134, 1.152 or 1.161 need not file an additional itemized disclosure under section 1.161.5;
- delete language regarding late filing fees because section 1.170(d) separately addresses late filing fees; and
- eliminate "expenditures" as an exception to the definition of "electioneering communication." In the November 2008 election cycle, the exclusion of "expenditures"

limited the Ethics Commission's ability to track all third-party spending, such as third-party spending relating to ballot measures when such spending included communications that identified a candidate for City elective office.

1.168. Enforcement; Advice

- The proposals shorten the statute of limitations for administrative action from five to four years after the date on which the violation occurred.

Deleted Sections

- **1.134.5** (Lifting of Individual Expenditure Ceilings) has been renumbered and replaced by new section 1.143.
- **1.158** (Implementing Regulations; Forms) has been renumbered as new section 1.175.
- **1.160** (No Limitation of Candidate Liability) has been renumbered as new subsection 1.170(g).

New section 1.109. Retention of Records

- This new section requires all candidates and committees to maintain their records for four years. It also requires committees to submit to the Ethics Commission documents upon ten days' notice if the Commission articulates a reason for its request in writing.

New section 1.143. Adjusting Individual Expenditure Ceilings

This new section:

- generally restates current section 1.134.5, except that it incorporates higher IECs for candidates for Mayor (\$1,475,000) and the Board of Supervisors (\$143,000); and
- shortens the time period in which the Executive Director must determine whether a communication filed under section 1.152 supports or opposes one or more candidates from four business days to two business days.

New section 1.171. Issuance of Subpoenas

- This new section provides that the Ethics Commission, including the Executive Director, may issue subpoenas in furtherance of its duties under the Charter.

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