



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: June 3, 2015  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
By: Jesse Mainardi, Deputy Executive Director  
Re: Further Proposed Changes to C.F.R.O. Amendments

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At its meetings in January and February of this year, the Commission approved a number of amendments to San Francisco's Campaign Finance Reform Ordinance ("CFRO"). Among other things, the amendments standardized and streamlined the reporting requirements for persons making independent expenditures, electioneering communications, and member communications concerning candidates for City office.<sup>1</sup>

On May 28, 2015, the Rules Committee of the Board of Supervisors approved the amendments,<sup>2</sup> and the full Board is expected to consider them on Tuesday, June 9. At the May 28 meeting, Supervisor Avalos also requested that the Commission reconsider and approve an amendment reinstating a provision regarding vendor payment reporting that the Commission's amendments had removed from CFRO.

After the May 28 meeting, Supervisor Avalos' office requested that the Commission reconsider and approve an additional change, removing an exception from the electioneering communications regarding non-profit fundraisers.

The two proposed changes are discussed below. The Board of Supervisors may adopt one or both of these amendments at its June 9 meeting if they are approved by at least four members of the Commission. If the Commission refuses to make either or both of the requested changes, the CFRO amendments may still move forward at the Board's June 9 meeting.

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<sup>1</sup> An independent expenditure is a communication that clearly advocates for or against a given City candidate. An electioneering communication is a communication referencing a City candidate which is distributed to 500 or more individuals within 90 days of an election. A member communication is a communication distributed to members of an organization that advocates for or against a City candidate.

<sup>2</sup> Supervisors Avalos and Tang attended the Rules Committee meeting, but Supervisor Cohen did not.

1. Vendor Payment Reporting.

The first proposed change addresses a CFRO provision that required persons filing electioneering communications reports to provide a description of payments made to vendors, including the date and amount, the payee, and the reason for the payment. This reporting requirement was removed by the Commission in the package of CFRO amendments it previously approved.

Although we did not feel strongly about the matter, staff did not include this requirement in its proposed amendments because we believed that a simpler reporting regime consistent with 24-hour reporting requirements for independent expenditures under state law was preferable, and because of the availability of much of the information on other filings.

Nevertheless, Supervisor Avalos asked the Commission to reconsider this decision. In this regard, the proposed change to Campaign and Governmental Conduct Code section 1.162(b) concerning electioneering communications reporting is indicated **in bold** below:

(b) REPORTING OBLIGATIONS.

(1) Every person who makes payments for electioneering communications in an aggregate amount of \$1,000 *per candidate* during any calendar year shall, within ~~48~~ 24 hours of each ~~disclosure date~~ distribution, file ~~an itemized~~ a disclosure statement with the Ethics Commission, ~~unless that person is otherwise required to file disclosures regarding the communication under Section 1.134, 1.152, or 1.161 of this Code.~~ For the purposes of this subsection, payments for a communication that refers only to one candidate shall be attributed entirely to that candidate. Payments for a communication that refers to more than one candidate, or also refers to one or more ballot measures, shall be apportioned among each candidate and measure according to the relative share of the communication dedicated to that candidate or measure.

(2) Each ~~itemized~~ disclosure statement required to be filed under this Section shall contain the following information for each communication:

(A) the full name, street address, city, state and zip code of the person making payments for electioneering communications;

(B) the name of any individual sharing or exercising direction and control over the person making payments for electioneering communications;

~~(C) the total amount of payments made by the person for electioneering communications during the calendar year;~~

~~(D)~~ **(C) a detailed description of each payment made by the person for electioneering communications during the calendar year, provided that the person has not already reported such payments on an itemized disclosure statement filed under this Section; such detailed description shall include the date the payment was made, the full name and address of the person to whom the payment was made; the amount of the payment, and a brief description of the consideration for which each payment was made;**

~~(C)~~ **(D) the distribution date of the electioneering communication, the name(s) and office(s) of the candidate(s) for City elective office or City elective officer(s) referred to in the communication, the payments for the communication attributable to each such candidate or officer, a brief description of the consideration for which the payments**

~~were made~~, whether the communication supports, opposes, or is neutral with respect to each such candidate or officer, and the total amount of reportable payments made by the person for electioneering communications referencing each such candidate or officer during the calendar year;

~~(E) a detailed accounting of any payments of \$100 or more that the person has received from another person, which were used for making electioneering communications, provided that the person has not already reported such payments received on an itemized disclosure statement filed under this Section; such detailed accounting shall include the dollar amount or value of each payment, the date of the payment's receipt, the name, street address, city, state, and zip code of the person who made such payment, the occupation and employer of the person who made such payment, if any, or, if the person is self-employed, the name of the person's business, and the cumulative amount of payments received for the purpose of making electioneering communications from that person during the calendar year:~~

~~(D) (E) for any payments of \$100 or more that the person has received from another person, which were used for making electioneering communications, the date of the payment's receipt, the name, street address, city, state, and zip code of the person who made such payment, the occupation and employer of the person who made such payment, if any, or, if the person is self-employed, the name of the person's business, and the cumulative amount of payments received from that person during~~

the calendar year which were used for making electioneering communications;

~~(F) the total amount of all payments reported under Subsection (E) during the calendar year;~~

~~(GE) (F) a legible copy of the electioneering communication, and if in printed form, or a transcript of the electioneering communication if in spoken form; and~~

(i) if the communication is a telephone call, a copy of the script and if the communication is recorded, the recording shall be provided; or

(ii) if the communication is audio or video, a copy of the script and an audio or video file shall be provided.

~~(HF) (G)~~ any other information required by the Ethics Commission consistent with the purposes of this Section.

(3) The filer shall verify, under penalty of perjury, the accuracy and completeness of the information provided in the ~~itemized~~ disclosure statement, and shall retain for a period of five years all books, papers and documents necessary to substantiate the ~~itemized~~ statements required by this Section.

(4) ~~The Ethics Commission may permit any required statement or mailing to be filed by facsimile~~ The Ethics Commission shall determine the method for filing the disclosure statement and the copy of the communication, which may include electronic filing.

2. Exemption for Invitations to Charitable Fundraisers.

The second issue concerns a provision staff added to CFRO, at the suggestion of an interested party, which exempts fundraising event invitations for 501(c)(3) nonprofit organizations that mention candidates (e.g., the candidate appears as the keynote speaker at the charity's fundraiser) from the definition of electioneering communications.

Staff agreed with this suggestion given that 501(c)(3) nonprofit organizations are strictly prohibited by federal tax law from directly or indirectly participating in any candidate election. Staff believed that the added exemption eliminated a trap for the unwary, and relieved 501(c)(3) nonprofit organizations from having to include "Paid for by" disclaimers (including a reference to the Ethics Commission website) in 12-point font on invitations to fundraisers.

At the Rules Committee's May 28 meeting, Supervisor Tang was clear that she was not in favor of removing this exemption for the reasons set forth above and the committee did not support this change at that time. However, after the meeting, Supervisor Avalos' office has asked the Commission to reconsider this exemption.

To make this change, the legislation would **remove** the exemption below from the definition of an electioneering communication, which is included in Campaign and Governmental Conduct Code section 1.104:

*(c) The term "electioneering communication" shall not include:*

...

*(10) invitations sent by an entity exempt from taxation pursuant to Title 26, Section 501(c)(3) of the United States Code for its own fundraising event.*

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