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CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

Date: May 17, 2017

To: Members of the Ethics Commission

From: Jessica Blome, Deputy Director, Enforcement & Legal Affairs

Subject: **AGENDA ITEM 5**
San Francisco Ethics Commission Records Management Policy Memorandum

Summary: This memorandum provides a policy update to Commissioners regarding Staff's ongoing effort to update the Commission's Records Management Policy.

Action Requested: Possible action to provide comments or feedback regarding the draft Records Management Policy, which is attached as Attachment 1.

The Ethics Commission's internal Records Management Policy establishes the policies to be followed to ensure appropriate transparency about the transaction of public business at the Ethics Commission. The Commission last reviewed Staff's proposed revisions to the Commission's internal policy during its February 2017 regular meeting. Staff provides the attached updated draft, so the Commission may review the final version after comments from the City Attorney's Office, Controller's Office 2017 Guidance, and members of the public were evaluated and adopted where appropriate.

Section 8.3 of the Records Retention and Destruction Ordinance requires approval of each department's management policy by the City Attorney's Office, Controller, and Retirement Board. Once the Commission approves the proposed revisions, Staff will obtain approval from the necessary parties and proceed with implementation of the policy internally.

We look forward to receiving any comments or questions at your upcoming meeting.

Agenda Item 5, Attachment 1

San Francisco Ethics Commission



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RECORDS MANAGEMENT POLICY

The Ethics Commission's Records Management Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a public records retention and destruction schedule. This policy supersedes all previous record retention policies issued by the Commission, including the Commission's most recent policy of November 3, 2003.

This policy covers all records, regardless of physical form or characteristics, which have been made or received by the Ethics Commission in connection with the transaction of public business. The purpose of this policy is to provide a system for managing the records of the Ethics Commission, to safely store and retain those records that need to be retained, to comply with all applicable legal requirements regarding document retention and destruction, and to identify and establish guidelines for the destruction of those documents that are obsolete or for which retention is not otherwise required.

PART I: POLICY AND PROCEDURES

A. RETENTION POLICY

The San Francisco Record Retention and Destruction Ordinance defines public "records" as "such paper, book, photograph, film, sound recording, map, drawing or other document, or any copy thereof, as has been made or received by the department in connection with the transaction of public business and may have been retained by the department as evidence of the department's activities, for the information contained therein, or to protect the legal or financial rights of the City and County or of persons directly affected by the activities of the City and County." San Francisco Administrative Code (S. F. Admin. Code) § 8.1.

Documents and other materials that do not constitute "records" under Section 8.1 may be destroyed when no longer needed, unless otherwise specified. The Ethics Commission will retain public records for the period of their immediate or current use, unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as set forth below. Pursuant to section 8.4 of San Francisco Record Retention and Destruction Ordinance, the Commission's records shall be classified and preserved as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- A. Permanent records.** Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed or placed on an optical imaging system, and special measures are followed. S.F. Admin. Code Section 8.4. For

the purposes of this Records Management Policy, “optical imaging system” includes any portable digital storage format that fairly and accurately depicts the original record and maintains the integrity of the original record. Once these measures are followed, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the Commission. Examples of permanent records are campaign statements of certain local officeholders, which must be maintained indefinitely. Cal. Gov’t Code Section 81009(b).

- B. Essential records.** Essential records are records necessary for the continuity of the Commission and the protection of the rights and interests of individuals. S.F. Admin. Code Section 8.9. Examples of essential records include advice letters and opinions, policy memoranda, and interpretive materials such as manuals produced by the Ethics Commission.

Category 2: Current Records. Current records are records which for convenience, ready reference, or other reasons are retained in the office space and equipment of the Commission. Current records shall be retained as follows:

- A. Definite Retention Period Specified by Law.** Where federal, state, or local law prescribes a definite period of years for retaining certain records, the Commission will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are statements of economic interest, which must be maintained for seven years, Cal. Gov’t Code Section 81009(e); and certain campaign statements which must be maintained for four years. Cal. Gov’t Code Section 81009(f).
- B. No Definite Retention Period Specified by Law.** Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be specified in the attached Record Retention and Destruction Schedule. Such records may be placed in storage and retained offsite at any time during the applicable retention period. Examples of current records include discrimination and harassment complaints and personnel files.

Category 3: Definite Retention Period Specified by the Office of the Controller. The Office of the Controller has promulgated record retention guidelines for specific types of documents. Examples of records required to be maintained for a period of five years are invoices and purchase orders.

Category 4: Two-Year Retention Before Destruction. Original records (not duplicate copies) reflecting significant or recurring issues and correspondence, including electronic communication, involving the transaction of public business should be retained for a minimum of two years.

Category 5: No Retention. Original and duplicate documents and other materials that are not essential to the functioning or continuity of the Commission and that have no legal significance may be destroyed. Examples include documents and papers generated purely for the convenience of the person generating them and draft documents which have been superseded by subsequent versions or rendered moot by Commission action. Specific examples include telephone message slips, correspondence, notepads, electronic communication of a purely personal nature that does not contain information required to be retained under this Policy, and chronological files.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when the document's business utility has ended.

B. RECORDS NOT ADDRESSED BY THE ATTACHED SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records.

C. ELECTRONIC COMMUNICATION

Regardless of the format in which the communication is made, including electronic mail, facsimile, internet posting, postal mail, or any other written format, if the substance of the communication would otherwise qualify as a public record under this schedule, the record must be retained. Consistent with the California Public Records Act, Cal. Govt. Code Section 6252(3), and Sunshine Ordinance Section 67.20(b), communication of a purely personal nature does not qualify as a public record and need not be retained.

Electronic mail systems should not be used as the repository for public records. The Commission provides an email system to its employees as a convenient and efficient medium of communication. Electronic mail that qualifies as a public record should be removed from an employee's electronic mail system and placed in a paper or electronic file where it is properly labeled and easily accessible for future public records searches. If this Schedule does not require retention of the email, Staff may either delete it as soon as it is no longer necessary for the immediate discharge of official duties or store it elsewhere for as long as Staff deem appropriate. In any case, whether to satisfy records retention obligations or merely to serve administrative needs, Staff may not store email communication on the email system indefinitely.

D. BACKUP TAPES OR SIMILAR ARCHIVAL SYSTEMS

The Commission may use backup tapes or similar archival systems that serve the limited purpose of providing a means of recovery in cases of disaster, departmental system failure, or unauthorized deletion. The department may not access the backup tapes or similar archival systems except in these limited situations. Electronic records such as emails that an employee has properly deleted under this Schedule but that remain on backup tapes or a similar archival system are analogous to paper records that the department has lawfully discarded but may be found in a City-owned dumpster. Neither the California Public Records Act nor the Sunshine Ordinance requires the City to search the trash for such records, whether paper or electronic.

E. STORAGE OF RECORDS

Records may be stored in the Commission's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the Commission's office space or equipment include active chronological files, research and reference files, legislative drafting files, pending complaint files, administrative files and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the

Commission's office space or equipment, may be sent to the City's off-site storage facility or maintained in the Commission's storage facility.

F. HISTORICAL RECORDS

Historical records are records which are no longer of use to the Commission but which because of their age or research value may be of historical interest. Historical records may be offered to the San Francisco Public Library or a historical society for preservation. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code Section 8.7.

G. PENDING CLAIMS AND LITIGATION

The retention periods set forth in the attached record retention schedule shall not apply to materials that are otherwise eligible for destruction, but which may be relevant to a pending claim or litigation against the City. Once a department becomes aware of the existence of a claim against the department, the department should retain all documents and other materials related to the claim until the claim or subsequent litigation has been resolved. Where a department has reason to believe that one or more other departments also have records relating to the claim or litigation, those departments should also be notified of the need to retain such records.

H. RECORDS RELATING TO FINANCIAL MATTERS

Records pertaining to financial matters shall be destroyed only after approval by the Controller. S.F. Admin. Code § 8.3. The Controller's Office reviews and approves each Department's Record Retention and Destruction Schedule. Departments may destroy documents consistent with the Financial Records Retention and Destruction Schedule. Staff must obtain the Controller's Office approval for documents pertaining to financial matters that do not fall within the Financial Records Retention and Destruction Schedule.

I. RECORDS RELATING TO PAYROLL RECORDS

The Retirement Board must approve the destruction of all records pertaining to payroll checks, time cards and related documents. S.F. Admin. Code § 8.3. The Retirement Board reviews and approves each Department's Record Retention and Destruction Schedule. These records are not to be destroyed without prior approval of the Retirement Board.

J. RECORDS THAT CONTAIN LEGAL SIGNIFICANCE

The City Attorney's Office must approve the destruction of all records that contain legal significance. S.F. Admin. Code § 8.3. The City Attorney's Office reviews and approves each Department's Record Retention and Destruction Schedule. Departments may destroy documents consistent with the Record Retention and Destruction Schedule. Staff must obtain the City Attorney's Office approval for documents that contain legal significance and do not fall within the Record Retention and Destruction Schedule.

K. RECORDS RELATING TO EMERGENCY/DISASTER AND COST RECOVERY

Records relating to Emergencies/Disasters and Cost Recovery for the Federal Emergency Management Agency and California Emergency Management Agency programs and activities are governed by 44 CFR §13.42. 44 CFR §13.42 requires the Controller's Office to retain any and all records relating to cost recovery documentation incurred during an emergency or disaster for three (3) years after the State has closed the claim by the City. California Code of Regulations requires the Controller's Office to retain all financial and program records related to cost or expenditures eligible for state financial assistance for three years (19 CCR § 2980(e)). The Controller's Office shall retain all records relating to emergency/disaster recovery costs for three (3) years from the date of the final Financial Status Report (FSR) (FEMA Form 112-0-1) (unless any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period). The records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later. Final closeout (receipt of FSR) is when all Project Worksheets associated with a disaster/emergency are closed. All records related to any and all Project Worksheets associated with an event must be retained for 3 years after the close of the final associated Project Worksheet. Note: State and Federal regulations change from time-to-time, the Controller's Office will issue specific rules for file retention on any given disaster, should there be a change.

L. DISCRETION

Commission Staff retain discretion to determine the category for retention for each record and may elect to retain records longer than the designated retention period if necessary as determined by Staff.

PART II

RECORD RETENTION AND DESTRUCTION SCHEDULE

TYPE OF RECORD	RETENTION CATEGORY	RETENTION PERIOD	LAW SPECIFYING RETENTION PERIOD
Advice Letters (formal and informal)	1	Permanent	
Annual Reports	1	Permanent	
Audit Reports, including Public Financing Audit Reports	1	Permanent	
Audit Work Papers, including Public Financing Audit Work Papers	2	4 Years	
Budget Files	4	2 Years	
Calendar, Department Head (Prop G)	2	2 Years	
Calendar, Deputy Director and Unit Managers	4	2 Years	
Calendar, Employees	5	None	
Campaign Consultant Statements	2	5 Years	S.F. C&GC Code Sec. 1.520(e)
Campaign Statements (Original) of all other persons for which the Ethics Commission is the filing officer	2	8 Years	Gov't Code Sec. 81009(c); S.F. C&GC Code Sec. 1.110
Campaign Statements (Original) of candidates not elected to the office of mayor or board of supervisors, and committees supporting such candidates	2	8 Years	Gov't Code Sec. 81009(b); S.F. C&GC Code Sec. 1.110
Campaign Statements (Original) of elected mayors, members of the board of supervisors, and committees supporting such officeholders	1	Permanent	Gov't Code Sec. 81009(b)
Campaign Statements, Statements of Economic Interest, or Reports (Copies) filed with the Ethics Commission	2	4 Years	Gov't Code Sec. 81009(f)
Certificates of Ethics Training	4	8 Years	
Commission and Committee Meetings and Minutes	1	Permanent	
Commission Meeting Agendas and Supporting Documents	1	Permanent	
Commission Meeting Recordings if recorded by Staff	1	Permanent	
Complaint Database Entries	5	None	
Complaint Files if Dismissed after Preliminary Review	4	2 Years	
Complaint Files if Retained for Investigation after Preliminary Review	1	Permanent	

Contract Correspondence	2	2 years or Life of Agreement	
Contract Payment Records	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Contracts	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Correspondence, including electronic mail	4	2 Years	
Employee Accident-Injury Reports	2	5 years	29 CFR Sec. 1904.4, 1904.33
Employee Discrimination and Harassment Complaints	2	Lesser of 50 Years or Life of Employee	
Employee Medical Information	2	Lesser of 50 Years or Life of Employee	
Employee Payroll Records	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Personnel Files	2	Lesser of 50 Years or Life of Employee	
Employee Staff Rosters	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Time Sheets	4	2 Years	Secure permission from S.F. Employee Retirement System prior to destruction
Employee Travel and Reimbursement Records	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Employee Workers' Compensation Records	2	5 Years from Date of Injury and 1 Year from Date Compensation Last Provided	Title 8, Cal. Code of Regulations Sec. 10102
Employment Applications/Resumes	4	2 Years	
Employment Related Records, Miscellaneous	4	2 Years	
Executive Director Reports	1	Permanent	
Financial Records, Miscellaneous	3	5 Years After Applicable Fiscal Year	Controller's Financial Records Retention and Destruction Schedule
Fine Letters	1	Permanent	

Invoices	3	5 Years After Applicable Fiscal Year	Controller's Financial Records Retention and Destruction Schedule
Lease Files	4	2 Years	
Legislative Drafts sent to the Board of Supervisors	2	5 Years	
Lobbyist Statements	2	5 Years	S.F. C&GC Code Sec. 2.140(d)
Manuals and other Commission Publications	1	Permanent	
Memorandums of Understanding	3	Term of Agreement + 20 Years	Controller's Financial Records Retention and Destruction Schedule
Occupational Health and Safety Administration (OSHA) Reports	4	2 Years	
Payables (Invoices)	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Policy Memoranda	1	Permanent	
Press Releases	1	Permanent	
Purchase Orders	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Regulations	1	Permanent	
Revolving Funds Records	3	5 Years	Controller's Financial Records Retention and Destruction Schedule
Staff Reports produced to comply with City Ordinances	1	Permanent	
Staff Research Files	5	None	
Statements of Economic Interest (Original) filed with the Ethics Commission	2	7 Years	Gov't Code Sec. 81009(e)
Stipulations and Settlement Agreements	1	Permanent	
Sunshine Ordinance Declarations	4	8 Years	
Work Orders and Payments	3	5 Years	Controller's Financial Records Retention and Destruction Schedule

APPROVALS:

Approval by the Ethics Commission:

LeeAnn Pelham
Executive Director,
Ethics Commission

Date Approved

Approval as to Financial Documents:

Ben Rosenfield
Controller

Date Approved

Approval as to Legal Documents:

Andrew Shen
Deputy City Attorney

Date Approved

Approval as to Payroll Documents:

Jay Huish
Director,
Retirement System

Date Approved