



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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**Date:** August 23, 2017

**To:** Members of the Ethics Commission

**From:** Pat Ford, Policy Analyst

**Re:** **AGENDA ITEM 6 – Ordinance amending the Campaign and Governmental Conduct Code to disqualify members of City boards and commissions who have not filed their Form 700s from participating in or voting on certain matters**

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**Summary** This memo provides staff analysis and recommendations to assist the Ethics Commission (“Commission”) in developing its policy position on the draft ordinance.

**Action Requested** That the Commission review the attached memo and provide Staff with its policy direction.

### I. Background

At its May 22, 2017 meeting the Commission requested that Staff research and provide a draft Ordinance (“Ordinance”) that would restrict the ability of certain City Board and Commission members from voting on substantive matters if they fail to timely file their Form 700 Statement of Economic Interests after receiving notice from the Commission. To address the request of the Commissioners, Staff has developed the Ordinance attached in Appendix A, which would disqualify any member of a board or commission from making certain decisions if he or she has failed to timely file a State law required Statement of Economic Interest. The purpose of the proposed Ordinance is to help ensure that City decision making on behalf of the public is free from any real or perceived conflict between an official’s public duties and any economic interests the official may hold.

### II. Disqualification Requirement as Proposed in the Ordinance

Pursuant to the City’s Conflict of Interest Code (the “Code”), any City officer or employee specified by law, including those specifically designated in California Government Code Section 87200, *et seq.*, must file a Statement of Economic Interest to disclose certain reportable interests that may present a conflict with the officer or employee’s governmental

duties.<sup>1</sup> The Code requires filers to complete the Fair Political Practices Commission Form 700 within thirty days of assuming office and annually thereafter.<sup>2</sup> If an officer or employee has not filed a Form 700 within thirty days of assuming office, the Ethics Commission may issue a notice to the officer or employee informing him or her of the failure to file. A City officer or employee who fails to file a Form 700 “within 30 days after receiving notice from the Ethics Commission of a failure to file may be subject to disciplinary action by his or her appointing authority, including removal from office or termination of employment,”<sup>3</sup> in addition to late fees and penalties.

The Ordinance would amend the Code to create an additional consequence when certain City officers fail to file a Form 700. Under the Ordinance, if a City board or commission member fails to timely file a Form 700, he or she would be disqualified from making decisions on matters that come before that board or commission until he or she files a Form 700. As discussed in the section below the ordinance does allow for narrow exceptions, which would allow a non-filer to still “participate in and vote on (i) general public comment, (ii) meeting minutes, and (iii) the selection of a Chair or Vice-Chair for [the] board or commission.”<sup>4</sup> The ordinance would require secretary (or equivalent) of the board or commission would have to make an announcement at the beginning of each meeting stating that the non-filing member has failed to file a Form 700 and is disqualified from making decisions.

### **III. Discussion**

The filing of Form 700 by City officers serves two important goals. First, it enables individuals serving in government to regularly identify possible conflicts of interests that may arise in the conduct of their official duties and seek guidance to ensure they avoid creating a conflict of interest. Second, it enables the public to understand whether officials hold economic interests that could be affected by their public duties and to help hold officials accountable for the decisions they make. If a City officer has not filed a Form 700, it is difficult, if not impossible, to assess when a conflict of interest may exist.

In City government, members of boards and commissions are vested with considerable policy- and decision-making authority. Members of boards and commissions frequently make decisions that have significant economic implications across the City. If a board or commission member has not reviewed her reportable economic interests and filed a Form 700, the Commissioner might inadvertently make a decision concerning a matter in which she has an economic interest, and it is unlikely that this conflict of interest would be knowable at the time of the decision. Moreover, failure to file prevents public transparency about interests’ officials hold that they could potentially impact through their governmental duties. That transparency, however, is a fundamental underpinning of accountability in government.

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<sup>1</sup> San Francisco Campaign & Gov’t Conduct Code §§ 3.1-101, 3.1-102(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at § 3.1-102.5(a).

<sup>4</sup> ORDINANCE NO. [ ] (2017), § 3.1-102.5(c).

While current provisions of the Code provide for disciplinary action and monetary penalties, the Commission and interested persons have noted skepticism that these current provisions are adequate to promote timely filing. The existing repercussions for non-filers (fines, discipline, including removal from office) are intended to incentivize compliance by City officers. However, during the time it takes to carry out these penalties, a board or commission member may continue making official decisions despite his or her failure to file a Form 700. In this sense, the Code is incomplete and may allow a board or commission member to make decisions under an undisclosed conflict of interest.

Instances of City officers failing to file a Form 700 after receiving a notice from the Commission have been identified in numerous instances over the past five years.

<b>Summary of Annual SEI Filings, 2013 through 2017</b>		
	Filed 30+ Days Late	Not Filed
2013 Annual SEIs	21	14
2014 Annual SEIs	15	3
2015 Annual SEIs	15	6
2016 Annual SEIs	11	7
2017 Annual SEIs	10	10

In each of these cases, the non-filing City officer was subject to fine and/or removal from office. But, even if such measures were taken, nothing prevented the officer from making decisions on governmental matters during the interim. This indicates a concerning gap in the City’s approach to conflicts of interest where considerable harm to the public interest may occur.

**IV. Proposal**

To address this gap in the Code, the Ordinance would disqualify a member of a City board or commission from making decisions on matters that come before his or her board or commission if he or she fails to timely file a Form 700 after receiving notice from the Commission. This rule would end the practice whereby a non-filing board or commission member is included in governmental decision making until such time as he or she either belatedly files a Form 700 or is removed from office. As mentioned above, the ordinance does contain several exemptions which allow for non-substantive matters to be heard and addressed by noncompliant board or commission members to ensure the effective administration of the body as a whole. Staff believes however that these narrow exceptions aren’t likely to impact the concerns advanced by the ordinance in disclosing potential conflicts and increasing the overall transparency of the bodies involved.

One important policy outcome of this rule to better support the likelihood of conflict-free decision making in the City. A secondary benefit of the rule would be the added incentive for non-filing board and commission members to file a Form 700; if members are prohibited from making decisions as part

of their membership on a board or commission, they may be more likely to comply with the requirements of the Code and file the required statement if their participation in substantive matters is dependent on their compliance with required disclosures. A proposed public announcement stating that the member has failed to file a Form 700 is designed to provide additional impetus on the member to file a Form 700. A third policy goal the Ordinance may advance is to increase the public's confidence in City government. Ethics laws generally, and financial disclosures in particular, reassure the public that government officials are acting in the best interest of the City rather than their own private interests. Members of the public are likely to have greater confidence in the impartiality of board and commission decisions if members are plainly prohibited from making governmental decisions unless they disclose their financial interests. The mandatory public announcement will further educate the public and build their confidence in the efficacy of the City's conflict of interest rules and the integrity of its governmental processes.

#### **V. Recommended Next Steps**

Staff recommends that the Commission review and consider the Ordinance, seek public comment on it, and provide its policy direction to the Staff about any desired changes for its further consideration and action.

1 [Campaign and Governmental Conduct Code - Failure to File Form 700s]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to disqualify**  
4 **members of City boards and commissions who have not filed their Form 700s from**  
5 **participating in or voting on certain matters.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
8 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
9 **Board amendment additions** are in double-underlined Arial font.  
10 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
11 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
12 subsections or parts of tables.

10

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. Findings.

13 (a) The City, through its Board of Supervisors, had adopted a Conflict of Interest Code  
14 that designates the City officials required to file the Fair Political Practices Commission's  
15 Statement of Economic Interests (also known as the Form 700). On these Form 700s, City  
16 officials must disclose, subject to the appropriate disclosure category, their financial interests  
17 in entities, individuals, or persons that may come before them in the course of carrying out  
18 their official duties.

19 (b) The Form 700 offers City officials an opportunity to catalog potential conflicts of  
20 interests that may arise from their governmental decisions and duties. The Form 700 is also a  
21 public document, which allows members of the public at large to monitor potential conflicts of  
22 interest of City officials. Likewise, the Form 700 permits the Ethics Commission, and other  
23 relevant agencies, to monitor potential conflicts of interest.

24 (c) If a City official who must file a Form 700 fails to do so, they are subject to potential  
25 late fees and penalties for failing to file. Such failure to file may also result in discipline. The

1 City finds that disqualifying members of City boards and commissions who fail to file their  
2 Form 700s will strengthen the public confidence in the integrity of government. Until such City  
3 officials have filed their Form 700s, it would be difficult for the public and other government  
4 agencies to assess whether these officials are violating conflict of interest laws. Because the  
5 failure to file a Form 700 frustrates such oversight, it is appropriate to disqualify such City  
6 officials who have failed to file from any substantive City decisions.

7 Section 2. The Campaign and Governmental Conduct Code is hereby amended by  
8 revising Section 3.1-102.5, to read as follows:

9 **SEC. 3.1-102.5. FAILURE TO FILE.**

10 (a) **Potential Discipline.** Subject to the removal and Civil Service provisions of the  
11 Charter as well as any applicable Civil Service Rules, any officer or employee of the City and  
12 County of San Francisco who fails to file any statement required by Sections 3.1-101 and 3.1-  
13 102 of ~~this Chapter the Campaign and Governmental Conduct Code~~ within 30 days after receiving  
14 notice from the Ethics Commission of a failure to file may be subject to disciplinary action by  
15 his or her appointing authority, including removal from office or termination of employment.

16 (b) **Warning Letter.** The Ethics Commission may issue a letter to an appointing  
17 authority recommending suspension or removal of any City officer or termination of any City  
18 employee who has failed to file a statement required by Sections 3.1-101 and 3.1-102 of ~~this~~  
19 ~~Chapter the Campaign and Governmental Conduct Code~~ if the City officer or employee has not  
20 filed the required statement within 30 days of receiving notice from the Ethics Commission of  
21 his or her failure to file.

22 (c) **Required Disqualification by Members of Boards and Commissions.** Any member of a  
23 City board or commission who has failed to file a statement required by Sections 3.1-101 and 3.1-102  
24 of this Chapter by the applicable filing deadline shall be disqualified from all participation in and  
25

1 voting on matters coming before the board or commission until such time as the member files the  
2 required statement.

3 (1) **Public announcement.** If a member of a board or commission has failed to file a  
4 required statement, at the beginning of each meeting of the board or commission that occurs after the  
5 applicable deadline for the required statement and before the member of the board or commission files  
6 the required statement, the Commission Secretary, or any City staff who fulfills that role, shall  
7 announce that the member of the board or commission has failed to file a statement required by  
8 Sections 3.1-101 and 3.1-102 of this Chapter and that the member will be disqualified from all  
9 participation in and voting on matters coming before the board or commission..

10 (2) **Exceptions.** Notwithstanding this subsection (c), a member of a City board or  
11 commission who has failed to file a required statement may participate in and vote on (i) general public  
12 comment, (ii) meeting minutes, and (iii) the selection of a Chair or Vice-Chair for his or her board or  
13 commission.

14 Section 2. Effective Date. This ordinance shall become effective 30 days after  
15 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
16 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
17 of Supervisors overrides the Mayor's veto of the ordinance.

18 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
22 additions, and Board amendment deletions in accordance with the "Note" that appears under  
23 the official title of the ordinance.

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