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CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: March 12, 2018

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director
Jessica Blome, Deputy Director & Director of Enforcement and Legal Affairs

Re: **AGENDA ITEM 7 - Information Requested by Commissioner Kopp Regarding Process to Obtain Separate Legal Counsel for Ethics Commission**

Summary: This memorandum discusses Staff's research in response to Commissioner Kopp's request that the Ethics Commission be provided information about the process for obtaining separate legal counsel for the Commission.

Action Requested: That the Commission evaluate the options identified in this memo and provide any further policy direction to Staff.

Background

At the request of Commissioner Kopp, the Commission has asked Staff to provide research about what process could be used to amend the existing [SF Charter Section 15.102](#) requirement that the San Francisco City Attorney's Office shall be the Commission's legal advisor to omit that requirement. Commissioner Kopp also asked for recommendations for Charter language that would provide the Commission with separate legal counsel separate from the City Attorney's Office.

Charter Amendment Process

The San Francisco Charter empowers the Ethics Commission to send directly to the voters any ballot measure that would create or amend an ordinance related to conflicts of interest, campaign finance, lobbying, campaign consultants, or governmental ethics. [Charter § 15.102](#). The Charter does not, however, empower the Commission to send directly to the voters a proposed Charter amendment.

Amending the Charter instead requires action by a majority of the members of the Board of Supervisors. [SF Municipal Elections Code § 305\(a\)](#). Alternatively, a private citizen could qualify of a Charter amendment through the ballot initiative process. *Id.* [§ 310](#).

1. Via the Board of Supervisors

The Board of Supervisors may submit a Charter Amendment to the voters. To do so, at least 30 days before the date of the first committee hearing it must prepare for the Clerk of the Board of Supervisors, and make available for public review, (1) a draft of the proposed Charter Amendment that is approved as to form by the City Attorney and (2) a legislative digest prepared by the City Attorney. [SF Municipal Elections Code § 305\(a\)\(1\)](#).

A member of the Board of Supervisor must introduce the proposed amendment at a regular Board meeting “held not less than 168 days prior to the election at which it is to be acted upon by the electors.” Board Rule 2.22.1. Likewise, the election must be no fewer than 102 days after the date the Board transmits the measure to the Director of Elections. [SF Municipal Elections Code § 300\(a\)](#).

2. Via the Initiative Process

To qualify a proposed Charter Amendment through the initiative process, a proponent must gather signatures of ten percent of the total number of registered San Francisco voters as reported by the Department of Elections in its most recent official report of registration to the Secretary of State prior to the proponent’s submission of the “Notice of Intent to Circulate Petition.” [Cal. Elections Code § 9255\(c\)\(2\)](#).¹ As with Charter amendments submitted by the Board of Supervisors, proposed ballot initiatives must be submitted to the voters “at the next election held no fewer than 102 days after the date said measure is received by the Director of Elections.” [SF Municipal Elections Code § 300\(a\)](#).

Sample Language

The following language provides one approach to a Charter Amendment that would provide independent legal counsel for the Ethics Commission separate from the City Attorney’s Office. This proposal envisions that a full-time employee who reports to the agency’s Executive Director and is exempt from the City’s civil service rules would serve as the Commission’s legal adviser.

Related to the Ethics Commission: San Francisco City Charter Section 15.102

The City Attorney shall be the legal advisor of the Commission. The Commission shall have its own legal counsel independent of the City Attorney who is exempt from the competitive civil service selection process under Charter Section 10.104(13).²

For ease of reference, code sections linked in this memo also appear in Attachment 1.

¹ Based on current data, a proponent must gather at least 51,340 valid signatures of registered San Francisco voters. See California Secretary of State Report of Registration as of February 10, 2017, available at <http://elections.cdn.sos.ca.gov/ror/ror-pages/ror-odd-year-2017/county.pdf> (listing the number of total registered voters in San Francisco at 513,401).

² [Charter Sec. 10.104\(13\)](#) explicitly exempts from competitive civil service selection, appointment, and removal procedures “All attorneys, including an attorney to the Sheriff and an attorney for the Tax Collector, City Attorney’s and District Attorney’s investigators, hospital chief administrators, physicians and dentists serving in their professional capacity (except those physicians and dentists whose duties are significantly administrative or supervisory).”

Agenda Item 7, Attachment 1

SF CHARTER SEC. 15.102. RULES AND REGULATIONS.

The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records. The Commission shall transmit to the Board of Supervisors rules and regulations adopted by the Commission within 24 hours of their adoption. A rule or regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of this 60- day period two-thirds of all members of the Board of Supervisors vote to veto the rule or regulation.

The City Attorney shall be the legal advisor of the Commission.

Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.
(Amended November 2001)

SF MUNICIPAL ELECTIONS CODE SEC. 300. DEADLINES FOR SUBMISSION OF MEASURES.

(a) **Charter Amendments and Bond Measures.** Except as provided in Subsection (c) of this Section, proposed Charter amendments and bond measures shall be submitted to the voters at the next election held no fewer than 102 days after the date said measure is received by the Director of Elections.

The Board of Supervisors may submit, and the Director of Elections shall have the discretion to accept, one proposed Charter amendment or bond measure per election that is received fewer than 102 days before the date of the election, provided that said measure is received no fewer than 95 days before the date of the election.

(b) **Measures Submitted by the Mayor, Board of Supervisors, or Four or More Supervisors.** Ordinances and declarations of policy proposed by a majority of the Board of Supervisors or by four or more Supervisors pursuant to Charter Section 2.113, or by the Mayor pursuant to Charter Section 3.100(16), shall be submitted to the voters at the next election held no fewer than 95 days after the date said measure is transmitted to the Director of Elections.

(c) **Measures Proposed by Initiative Petition.** Measures proposed by initiative petition pursuant to Charter Sections 14.101 or 9.110 and Charter amendments proposed by initiative petition shall be submitted to the voters upon certification of the sufficiency of the petition signatures by the Director of Elections. An initiative petition shall be submitted to the Director of Elections no fewer than 120 days before the date of the election for which the initiative is intended. The Director of Elections shall certify the sufficiency of the petition signatures, or determine the insufficiency of the signatures, no later than 30 days after the date the petition is received.

(1) Except as provided in Subdivisions (2) and (3) of this subsection, a vote on an initiative shall occur at the next general municipal or Statewide election occurring no fewer than 90 days from the date of the certificate of sufficiency executed by the Director of Elections. Any initiative petition that is certified by the Director of Elections to contain the requisite number of valid signatures, but that is certified within 90 days of an election, shall not be placed on the ballot for that election but shall be placed on the ballot at the next general municipal or Statewide election.

(2) The Director of Elections shall call for a special municipal election on an initiative if the initiative petition complies with the requirements of Charter Section 14.101.

(3) The Board of Supervisors may call for a special municipal election on an initiative pursuant to Charter Section 14.101, provided that the special election occurs no fewer than 90 days from the date the certificate of sufficiency is executed by the Director of Elections.
(Added by Ord. 429-97, App. 11/17/97; amended by Ord. 183-03, File No. 030652, App. 7/25/2003; Ord. 291-06, File No. 061375, App. 11/29/2006; Ord. 75-14, File No. 140226, App. 5/28/2014, Eff. 6/27/2014)

SF MUNICIPAL ELECTIONS CODE SEC. 305. RULES FOR SUBMISSION OF ORDINANCES AND CHARTER AMENDMENTS BY THE BOARD OF SUPERVISORS.

(a) When the Board of Supervisors considers whether to submit an ordinance or Charter amendment to the voters, the following rules shall apply:

(1) The Board of Supervisors shall be prohibited from considering or deciding whether to submit an ordinance or Charter amendment to the voters unless, at least 30 days before the date of the first committee hearing concerning the proposed ordinance or Charter amendment, the following materials are delivered to the Clerk of the Board of Supervisors and available for public review:

(A) A draft of the proposed ordinance or Charter amendment that is approved as to form by the City Attorney; and

(B) A legislative digest prepared by the City Attorney.

(2) Upon receipt of the materials described in Subsection (a)(1) of this Section, the Clerk of the Board of Supervisors shall transmit a copy of the proposed ordinance or Charter amendment to the Controller. The Controller shall prepare a financial analysis of the proposed measure and deliver the analysis to the Clerk no later than the first committee hearing concerning the proposed ordinance or Charter amendment. The Board of Supervisors shall be prohibited from considering or deciding whether to submit the measure to the voters unless the Controller has provided the Board with the financial analysis required by this subsection.

(3) Any amendments to a proposed ordinance or Charter amendment shall be noticed for an additional public hearing by the Board committee designated to consider the measure. The proposed amendments shall be submitted in writing to the clerk of the designated committee and shall be available for public review no later than the time that notice of the additional hearing is published.

(Added by Ord. 429-97, App. 11/17/97)

SF MUNICIPAL ELECTIONS CODE SEC. 310. INITIATIVE MEASURES AND REFERENDA; INCORPORATION OF STATE LAW.

Except as otherwise provided by the Charter or this Municipal Elections Code, the circulation and qualification of initiative petitions and referenda is governed by California Elections Code Sections 100 and 101, and Section 9200 et seq.

(Added by Ord. 429-97, App. 11/17/97)

CA ELECTIONS CODE - DIVISION 9. CHAPTER 3. ARTICLE 3.

Sec. 9255.

(a) A charter or charter amendment proposed by a charter commission, whether elected or appointed by a governing body, for a city or city and county shall be submitted to the voters at an established statewide general election pursuant to Section 1200, provided there are at least 95 days before the election. A charter commission may also submit a charter pursuant to Section 34455 of the Government Code.

(b) Except as provided in paragraph (2) of subdivision (a) of Section 1415, the following city or city and county charter proposals shall be submitted to the voters at an established statewide general election pursuant to Section 1200, provided there are at least 88 days before the election:

(1) A proposal to adopt a charter, or an amendment or repeal of a charter, proposed by the governing body of a city or a city and county on its own motion.

(2) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.

(c) The following city or city and county charter proposals shall be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election pursuant to Section 1200, 1201, or 1301 occurring not less than 88 days after the date of the order of election:

(1) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city.

(2) An amendment or repeal of a city and county charter proposed by a petition signed by 10 percent of the registered voters of the city and county.

(d) Charter proposals by the governing body and charter proposals by petition of the voters may be submitted at the same election.

(e) The total number of registered voters of the city or city and county shall be determined according to the county elections official's last official report of registration to the Secretary of State that was effective at the time the notice required pursuant to Section 9256 was given.

(Amended by Stats. 2013, Ch. 184, Sec. 2. (SB 311) Effective January 1, 2014.)