



# ETHICS COMMISSION

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LEEANN PELHAM  
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Date: December 17, 2018  
To: Members of the Ethics Commission  
From: Pat Ford, Senior Policy Analyst  
Re: **AGENDA ITEM 6 – Discussion of Staff recommendations regarding amendments to campaign finance and conflict-of-interest regulations.**

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**Summary:** This memorandum presents Staff's initial recommendations for amending regulations following various statutory changes, including the Anti-Corruption and Accountability Ordinance.

**Action Requested:** Staff requests that the Commission review Staff's recommendations for new and amended regulations and provide its feedback regarding the recommendations. Staff will proceed with drafting regulations based on the recommendations below for consideration at a future meeting.

### I. Background

As part of its quarterly policy prioritization discussion, the Commission identified a review of the Campaign Finance Reform Ordinance (CFRO) regulations<sup>1</sup> as a policy priority. Staff has conducted a review of the CFRO regulations and identified several places in which the regulations no longer align with the Campaign and Governmental Conduct Code (the "Code"). This is largely because of recent changes to the Code that require updates to the regulations. Additionally, Staff has identified frequent questions or issues pertaining to CFRO that should be clarified through regulation.

Further, the Anti-Corruption and Accountability Ordinance (ACAO), which was signed into law earlier this year, creates additional areas for regulations to be added or changed. This ordinance has created several new Code sections, which would benefit from further clarification through regulation. It also amended various provisions of existing law, and corresponding changes to the regulations are necessary in order to ensure uniformity with the code. Because the ACAO bears on provisions of both CFRO and the Conflict of Interest Code, Staff is recommending changes to some conflict-of-interest regulations, in addition to the CFRO regulations.

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<sup>1</sup> The Regulations to Campaign Finance Reform Ordinance are available at <https://sfethics.org/ethics/2011/06/-regulations-to-campaign-finance-reform-ordinance-san-francisco-campaign-and-governmental-conduct-co.html>.

## II. Recommendations

Staff recommends that the Commission approve amendments to the CFRO and conflict-of-interest regulations as set forth below. Recommendations are organized by regulation number. After taking into account any feedback received at the December Commission meeting, Staff will draft regulations to implement these recommendations for future consideration by the Commission.

### A. Recommended Changes to the CFRO Regulations

#### 1.104-1(a), 1.104-2(a)

- Clarify that if a candidate redesignates a committee for an earlier election for the same office, contributions already received before the time of redesignation may be used as qualifying contributions or matching contributions. But, if a candidate redesignates a committee for a *future* election, and a given contribution is “carried forward as a contribution to a new campaign,”<sup>2</sup> such contribution cannot be used as a qualifying or matching contribution.

#### 1.104-2(d)

- Delete this subsection because there is no basis in the Code for changing the maximum amount of a qualifying contribution based on inflation.

#### 1.104-4(a), 1.104-5(a)

- Change term “Third Party Spending Forms” to “FPPC Form 496, SFEC 162 and SFEC 163.” The Third Party Spending form is no longer in use.

#### 1.104-5 (a)

- Change the reference to Forms SFEC 152(a)-1 and 152(a)-2 to “Threshold Form.” These two forms were consolidated into a single form that serves both purposes.

#### 1.104-6

- Update figures that pertain to the IEC for supervisorial candidates to conform to changes in the Code.

#### 1.112-[ ]

- Create a single regulation clarifying that the Commission may specify the filing format for any filing required under CFRO, including electronic filing. Currently, this language is repeated throughout the regulations for individual filings.

#### 1.113-5

- Remove the reference to California Government Code section 84203.5, which has been repealed.
- Remove the reference to the FPPC Form 465, which has been discontinued.

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<sup>2</sup> This language already appears in Regulations 1.104-1 and 1.104-2. But, greater clarity is needed to explain that this limitation means.

- In place of the 465, clarify that general purpose recipient committees making independent expenditures in support or opposition to a ballot measure during the signature gathering period must file the Form 460 to satisfy the filing requirement in Code section 1.113. Likewise, clarify that independent expenditure committees making independent expenditures in support or opposition to a ballot measure during the signature gathering period must file the Form 461 to satisfy the filing requirement in Code section 1.113.

#### 1.114-1

- Create greater clarity as to what entities are subject to Code section 1.114(b), the ban on contributions by “corporations.”

#### 1.114-2

- Delete this regulation. The underlying Code sections (1.114(c)(1)–(2)) were enjoined by court order and subsequently removed from the Code.

#### 1.114-[ ]

- Create a regulation clarifying that the \$500 contribution limit applies to a candidate committee’s entire lifetime, or until the committee is redesignated for use in a different election.

#### 1.114.5(b)-[ ]

- Create a regulation providing greater clarity regarding the new Code section 1.114.5(b), which was created by the ACAO. This regulation should specify the timing of required notices, the form used for filing, and relevant timeframes for calculating disclosure thresholds.

#### 1.118-1

- Remove the language in Regulation 1.118-1(a) regarding termination of a committee. A committee cannot be terminated unless all accrued expenses are settled, meaning that a terminated committee will have no accrued expenses and will therefore be outside of the scope of Code section 1.118(a).
- Delete the last sentence of Regulation 1.118-1(a). It can only be read as either surplusage or as contradictory to the immediately preceding sentence. A creditor who forgives a debt owed by a candidate committee in excess of \$500 violates the contribution limit contained in Code section 1.114(a).

#### 1.124-[ ]

- Create a new regulation to clarify the provisions of Code section 1.124, which was created by the ACAO. Clarify what is meant by the term *election cycle*, and explain how it applies to primarily formed and general purpose committees. For primarily formed committees, an election cycle should be the period of time during which the committee is designated on its Form 410 to support or oppose a particular candidate or measure. For general purpose committees, an election cycle should begin at the end of the semi-annual reporting period during which one election occurs, and end at the end of the semi-annual reporting period during which the next reporting period occurs.

#### 1.125-[ ]

- Create a new regulation to clarify the provisions of Code section 1.125, which was created by the ACAO. The regulation should explain that the bundling disclosure is required once contributions received from a particular bundler reach \$5,000, and for any bundled contributions received thereafter.

#### 1.126-1

- Update code section references to match new language created by the ACAO.
- Remove the subsections explaining the terms *commencement of negotiations* and *termination of negotiations*, which have been removed from the code.
- Amend the subsection regarding the term *person who contracts with*, which has been removed from the code. Provide greater clarity about the new term *affiliate*, which replaced *person who contracts with*.
- Clarify that the filing required under Code section 1.126(f)(4) will only be required if the contract in question has a value of \$100,000 or more.

#### 1.126-2

- Conform the terms of Regulation 1.126-2(a) to the definitions of *City contractor* and *affiliate*, which were created by the ACAO.
- Delete Regulation 1.126-2(b), which conflicts with the Code as amended by the ACAO. The definition of the new term *affiliate* is broader than that of the old term *person who contracts with*, such that the directors and principle officers of an entity that is a 10% equity shareholder in a City contractor will be subject to the provisions of Code section 1.126.

#### 1.134-2

- Delete the reference to the Third Party Spending Form, which is no longer in use. Replace this term with references to the FPPC Form 496, SFEC 162, and SFEC 163, which serve the functions once served by the Third Party Spending Form.

#### 1.135-[ ]

- Clarify the kinds of expenditures that constitute the *establishment and administration* of a committee. Such expenses should be limited to formation of the committee by filing a Form 410, amending the Form 410, filing other forms required by law, or paying someone to prepare and file such forms.

#### 1.140-2

- Update dollar figures to conform to current levels established in the Code.

#### 1.142-1–5

- Change all references to old forms used in the public financing program to the names or numbers of current forms. The regulations currently refer to the old versions that are no longer in use.

- Clarify the reference to the candidate nomination deadline in Regulation 1.142-5(a). This regulation only references the deadline as being the 88<sup>th</sup> day before an election, but the deadline can be postponed under state law to the 83<sup>rd</sup> day before an election.

#### 1.143-1–1.143-2

- Update dollar figures to conform to current levels established in the Code.

#### 1.144(c)–(d)

- Delete references to the Per Candidate Available Disbursement Limit, which was removed from the Code in 2012.
- Update dollar figures in Regulation 1.144(d)-2 to conform to current levels established in the Code.

#### 1.152(a)-2; (b)-2

- Delete references to the Third Party Spending Form, which is no longer in use. Where appropriate, replace with references to the FPPC Form 496, SFEC 162, and SFEC 163.

#### 1.161(b)(1)

- Delete this subsection. The underlying code section no longer requires the Third Party Spending Form to be filed.

#### 1.161.5-1

- Change the number of this regulation to Regulation 1.162 because the number of the underlying Code section was changed to section 1.162.
- Delete reference to Third Party Spending Form, which is no longer in use, and replace with references to Form 1.162, which is now used for disclosures related to electioneering communications.

#### General

- Remove all examples that are included within regulations. Illustrative examples are better provided through supplemental materials, such as the candidate guide or the Commission’s website, rather than being codified as law. Staff will ensure that the information provided in the examples is migrated to the guide and website if it does not already appear there.
- Staff may propose additional changes that are identified through continued review of the Code and regulations between the December and January meetings.

#### B. Recommended Changes to the Conflict-of-Interest Regulations

#### 3.207-[ ]

- Create a new regulation to clarify the provisions of Code section 3.207, which was created by the ACAO. This provision of the Code prohibits a City official from using his or her public office to obtain anything of value for an organization with which the official is associated. New

regulations should explain what it means for an officer to *use* his or her *office* and what it means for an officer to be *associated* with an organization under Code section 3.207(a)(1).

3.209-[ ]

- Create a new regulation clarifying that the recusal notification required under Code section 3.209, which was created by the ACAO, must be submitted on the Form 3.209

3.620-[ ]

- Create a new regulation clarifying the provisions of Code section 3.620, which was created by the ACAO. The new regulation should explain whether, after a filer has already reported making behested payments totaling \$10,000 or more, additional reporting is required if the filer makes additional behested payments. Alternatively, an amended filing could be required only if one of the disclosures listed on the initial filing (including any City contacts obtained by the filer or other governmental outcomes being sought by the filer) has changed since the initial filing.

3.630-[ ]

- Create a new regulation clarifying the provisions of Code section 3.630, which was created by the ACAO. The regulation should explain the requirements of Code section 3.630(a)(2)(i) by specifying an accounting method to account for the use of behested funds.

General

- Staff may propose additional changes that are identified through continued review of the Code and regulations between the December and January meetings.

Staff invites questions about these recommendations or other aspects of the CFRO or conflict-of-interest regulations.