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Date: December 13, 2019

To: Members of the Ethics Commission

From: Eric Willett, Senior Investigative Analyst
Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 8: Informational Report and Preliminary Discussion of Possible Elements in Revising the Commission's Fixed Penalty Policy**

Summary: This report provides an informational update regarding Staff's progress developing proposed revisions to the Commission's existing Fixed Penalty Policy.

Action Requested: No action is required by the Commission, as this item is for informational purposes only.

Introduction

At the August 2019 Commission Meeting, Enforcement Staff presented an [overview of process improvements](#) Staff were undertaking to increase the efficiency and effectiveness of the Commission's enforcement program. Among other process improvements Staff identified at the August 2019 Commission Meeting was expansion of the Commission's [Fixed Penalty Policy](#). This policy provides that certain violations of law can be resolved through a fixed penalty schedule to provide a level of standardization and predictability designed to reduce the uncertainty and time that negotiating a settlement might otherwise entail. The Commission directed Staff to move forward with that proposal and take steps to bring forward a revised policy for its consideration. At the September 2019 Commission Meeting, Enforcement Staff presented a [preliminary outline](#) of the process Staff identified to do that.

Following the process outline delivered in September, Commission Staff have continued to review the enforcement practices of other jurisdictions and to consult internally with staff who administer programs within the Commission's jurisdiction. Commission Staff likewise hosted two [Interested Persons Meetings](#) after the November election and before Thanksgiving, to solicit stakeholder input on a series of questions related to the Commission's efforts to revise the approaches taken in the Fixed Penalty Policy.

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Proposed Approaches

Based on a review of other jurisdictions, internal consultation with Commission Staff, and feedback from interested persons, Staff have developed a preliminary set of factors governing participation in, and exclusion from, the Streamlined Administrative Resolution Program that Staff envisions implementing as a result of a revised Fixed Penalty Policy. Staff have likewise developed the following preliminary considerations regarding which violations are suitable for treatment under that Streamlined Administrative Resolution Program. Staff will also be preparing an analysis regarding proposed penalty structures and will be working to bring that analysis to the Commission in early 2020.

Overview of Preliminary Considerations for Participation in the Streamlined Administrative Resolution Program

Staff have preliminarily identified the following general considerations as factors that would govern participation in the Streamlined Program:

The Director of Enforcement may include or exclude any respondent from participating in the Streamlined Administrative Resolution Program based upon mitigating or aggravating circumstances. Mitigating circumstances may result in the issuance of a Warning Letter in lieu of an administrative penalty, and aggravating circumstances may result in initiation of the formal enforcement process in lieu of eligibility for streamlined case resolution, which generally results in a higher penalty for a respondent.

General Eligibility Requirements: Considerations, Factors, and Exclusions

General Eligibility Requirements for Participation in the Streamlined Program

1. Respondent agrees to sign and submit to the Commission a stipulation, decision, and order pursuant to Enforcement Reg. section 12(A) in which the respondent acknowledges responsibility for the violation.
2. Respondent agrees to pay a proposed penalty by cashier's check, electronic payment, or money order in an amount as determined according to the penalty structure.
3. Respondent agrees to abide by established program timeframes for resolving cases.

General Exclusions from the Streamlined Program

1. Any evidence of an intent to conceal or violate the San Francisco Campaign and Governmental Conduct Code and accompanying regulations or the Political Reform Act and accompanying regulations.
2. Failure to cooperate with a Commission investigation, including by presenting the Commission false or altered evidence, making false statements regarding material facts, or interfering with a witness.
3. Failure to abide by established program timeframes for resolving matters.
4. The same candidate, committee, or principal officer has paid a prior penalty to the Commission for the same type of violation occurring within the last five years.
5. Violations caused in the aggregate more than minimal public harm.

6. Respondent has other violations under review for prosecution that do not qualify for a streamlined penalty.

Specific Eligibility Requirements: Considerations, Factors, and Exclusions

Following input from the Commission at its discussion on December 20, and in ongoing consultation with staff from other divisions of the Commission, Enforcement Staff will draft specific requirements for eligibility and additional considerations, factors, and exclusions specific to each violation over the coming weeks and will bring those more detailed provisions to the Commission when it has prepared a full draft of the revised policy.

Violation Types

Staff have preliminarily identified the following violations to explore making subject to treatment under a revised fixed penalty approach (with * indicating violations included in the current Fixed Penalty Policy):

Article I:

1. Campaign statement non-filing (SF C&GCC §§ 1.106, 1.135; Gov't Code § 84200)
2. Major donor notification (SF C&GCC § 1.106; Gov't Code § 84105)
3. Campaign statement omission (SF C&GCC § 1.106)
4. Committee incorrectly named (SF C&GCC § 1.106; Gov't Code § 84102(a))
5. Cash contribution or expenditure of \$100 or more (SF C&GCC § 1.106; Gov't Code § 84300)
6. Candidate and Treasurer Training (SF C&GCC § 1.107)
7. Failure to create Campaign Contribution Trust Account or make expenditures therefrom (SF C&GCC § 1.108)
8. Campaign recordkeeping (SF C&GCC § 1.109; Gov't Code § 84104)
9. Contribution limits (SF C&GCC § 1.114)*
10. Loan limit violations (SF C&GCC § 1.116)*
11. Payment of accrued expenses beyond deadline (SF C&GCC § 1.118)
12. Legal defense fund contribution limit violations (SF C&GCC § 1.120)
13. Pre-candidacy fundraising (SF C&GCC § 1.122(a))
14. Improper expenditure (SF C&GCC § 1.122(b))
15. Bundled contributions reporting (SF C&GCC § 1.125)
16. Contractor contribution (SF C&GCC § 1.126)
17. Disclaimer violations (SF C&GCC §§ 1.161, ~~1.161.5~~,¹ 1.162)*
18. Campaign consultant non-filing (SF C&GCC § 1.515)

Article II:

19. Lobbyist registration disclosures or updates (SF C&GCC § 2.110(a), (b), (d))

¹ Redesignated as Section 1.162 and amended by Ord. 102-15, File. No. 150294, App. 6/25/2015, Eff. 7/25/2015.

20. Lobbyist report non-filing (SF C&GCC § 2.110(c))
21. Lobbyist report omission/failure to update (SF C&GCC § 2.110(c)-(d))
22. Lobbyist contribution (SF C&GCC § 2.115(e))
23. Lobbyist bundling (SF C&GCC § 2.115(f))
24. Lobbyist Training (SF C&GCC § 2.116)
25. Lobbying by campaign consultant (SF C&GCC § 2.117)
26. Lobbyist recordkeeping (SF C&GCC § 2.135)

Article III:

27. Statement of Economic Interest non-filer (SF C&GCC §§ 3.102, 3.242)
28. Statement of Economic Interest omitted interest (SF C&GCC §§ 3.102, 3.242)
29. Conflict of interest recusal procedural noncompliance (SF C&GCC § 3.209(a))
30. Conflict of interest recusal notification non-filing (SF C&GCC § 3.209(b))
31. Gift limit (SF C&GCC § 3.216(b))
32. Gifts of travel reporting disclosures (SF C&GCC § 3.216(d))
33. Permit consultant registration and disclosure (SF C&GCC § 3.410)
34. Major developer disclosure (SF C&GCC § 3.520)
35. Behested payment report non-filing by officer (SF C&GCC § 3.610(a))

We look forward to receiving feedback at the December meeting and to answering any questions you may have at that time.