San Francisco
Ethics Commission

25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

Date: June 9, 2025

To: Members of the Ethics Commission

From: Michael Canning, Policy & Legislative Affairs Manager
Ryan Abusaa, Senior Policy Research Specialist
Trishia Lim, Policy Research Specialist

Re: **AGENDA ITEM 7 – Presentation, Discussion, and Possible Action on Ethics Commission Streamlining Project Regarding Major Developers, Campaign Consultants, Recusal Notifications, and Trustee Candidate Reporting Requirements**

Summary and Action Requested

This memo provides a preview of recommendations that Staff are developing regarding various programs and policies administered by the Ethics Commission. This item is mostly informational and requires no action by the Commission, but action may be taken as described below regarding one of the recommendations. Staff does request the Commission consider and offer feedback on the preliminary recommendations presented so that Staff may incorporate that feedback into finalized recommendations and legislation for the Commission.

Background

The Policy Division is currently evaluating various programs and policies administered by the Commission to determine if they are effective, efficient, adding value to the City, and furthering the Commission's mission of promoting the highest standards of integrity in government. This project is focused on several programs and policies that appear to be ineffective or inefficient, including: the Major Developers Program, the Campaign Consultant Program, the supplemental recusal notification requirement, and the reporting requirements for trustee candidates. Each of these items is discussed below. Additionally, **Item 8** of the June Agenda is part of this project and focuses on elements of the public financing program that are ineffective and inefficient, specifically the program's expenditure ceilings and threshold reporting requirements.

San Francisco is a national leader on government ethics issues, often developing and implementing unique rules and policy solutions in the field to meet the specific ethical issues in San Francisco. When leading on new policies, it is important to implement such policies, evaluate their effectiveness, and if the policies are not adding value or worth the cost to administer, it is important for the City to revise and potentially discontinue such efforts. Continuing to dedicate the public's resources to outdated, underperforming, and ineffective programs is a disservice to the public.

The recommendations from this project are intended to reduce or remove programs and policies that are not effectively achieving their goals or otherwise adding sufficient value to the City. This work is particularly important should the Commission face budget cuts in the next fiscal year, as such cuts would make ongoing administration of these programs impracticable. However, even if the Commission's budget were not severely reduced as currently indicated by the Mayor's Office, Staff's recommendations related to this project would remain the same, as the proposed changes would be beneficial regardless of any budgetary factors. Eliminating the policies and programs in question could also free up staff resources to focus on other more critical areas.

Staff have completed an internal review of the below program areas and solicited feedback from the regulated community, members of the public, and other stakeholders. Two Interested Persons meetings were held on March 11 and March 13 as part of this project. During these meetings Staff heard from 10 participants, which included City officials from other departments, campaign treasurers, and community stakeholders.[1] Staff have also had direct communications with stakeholders outside of the Interested Persons meetings.

The remainder of this memo provides an overview of each program or policy, findings, and potential recommendations regarding the Major Developers Program, the Campaign Consultant Program, the supplemental recusal notification process, and the reporting requirements for trustee candidates.

Programs and Policies Under Review

1. Major Developers Program

In June of 2014, the Board of Supervisors passed legislation creating the Major Developers Program (Ord. 98-14). This program requires real estate developers to disclose certain donations made to nonprofit organizations that have contacted City officers regarding major projects of the developer.[2]

A *major developer* is the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department under CEQA for a major project. A *major project* is a real estate development project in the City for which the Planning Commission (or any other local lead agency) has certified an environmental impact report (EIR) under CEQA and which has

[1] Participants included those affiliated with various City departments and organizations, including San Francisco Employees' Retirement System (SFERS), the Board of Supervisors, the League of Women Voters, political consulting firms (Anderson Political, BMWL Campaigns), individual campaign treasurers, and political and election law firm representatives (Rutan & Tucker LLP).

[2] Article III, Chapter 5 of the San Francsico Campaign & Governmental Conduct Code (C&GCC) and its supporting regulations, specify how this program operates.

estimated construction costs exceeding $1,000,000. Residential development projects with four or fewer dwelling units are excluded from the definition of major projects.

Within 30 days of the Planning Commission certifying the EIR for a major project, the major developer must report the following to the Ethics Commission:

1. Information about the developer and its affiliates.
2. The EIR case number and a description of the major project.
3. The date the EIR was certified.
4. Information on any nonprofit organization: 1) to whom the developer or any of their affiliates made cumulative donations of $5,000 or more since the date one year before the Environmental Evaluation Application was filed, and 2) that made one or more contacts to a City officer regarding the developer's major project. For the purposes of this rule, *contact* includes oral or written testimony received at a public hearing.
5. The dates and amounts association with each of the donations referenced above.
6. Any other information required by the Ethics Commission.

After a developer files an initial report and pays the $500 registration fee, they must submit four additional quarterly reports. For example, any donations to a nonprofit who testified in support of a project between Jan 1 to March 31 would not need to be reported until April 15. These reports are still required even if the developer made no donations during the period.

Once these four quarterly reports are submitted, the developer's reporting obligations are complete, regardless of the status of the project. Noncompliance is subject to a late filing fee of $50 per day after the deadline until the reports are received by the Ethics Commission, though it can be waived or reduced. This late filing fee is in addition to the other standard penalties that may be issued for violations of the C&GCC.

To implement this program, the Ethics Commission administers an electronic filing process that allows filers to complete their disclosures online. The Electronic Disclosure and Data Analysis Division (EDDA) publishes and maintains a dataset of disclosure statements that can be opened as PDFs and a summary of the data that is presented on the Major Developer dashboard. The Engagement & Compliance Division answers advice and guidance questions regarding the program, which in practice are rarely asked. Lastly, the Enforcement Division may investigate violations associated with this program, but the Commission has never issued penalties related to this program.

Findings

When creating the Major Developers Program, the Board of Supervisors sought "…to protect public confidence in the fairness and impartiality of City and County land use decisions…" by imposing "…reasonable disclosure requirements on developers" regarding their donations to certain nonprofit

organizations.[3] The program also seems intended to address general concerns around what is commonly known as 'shadow lobbying,' which is when an individual or entity makes communications to public officials with the intent to influence them, while avoiding registering as a lobbyist and reporting those contacts as a lobbyist would.

Staff have found that this program is not an effective tool for satisfying the intended goals of the program, as the program is poorly structured, burdensome, underutilized, redundant, and lacks clear objectives.

Poorly Structured Reporting

Several aspects of how the program is structured contribute to it being ineffective and inefficient.

The program's retroactive reporting requirement undermines the intent of the policy, as donations are not reported until after communications have already occurred and decisions have likely already been made.

Timeline of Reporting:

- Day 1-90: Donation and Nonprofit Engagement
    - A developer donates to a nonprofit. The nonprofit communicates with City officers, such as testifying in support of the developer's project during a public meeting or communicating privately with the City officer.
- Day 30-90: Key Meetings & Decisions
    - City officers make the land-use decisions after engaging with stakeholders, unaware of any donations the nonprofits may have received from the developer.
- Day 90: Reporting Period Ends
    - Donations from this period remain undisclosed.
- Day 105: Filing Due
    - Date at which a filing for the 90-day reporting period is due to be filed with the Ethics Commission.

While the program does eventually shed light on these specific donations and communications, it does little to prevent a City officer from being influenced by a nonprofit organization, while being ignorant as to the donations that the nonprofit may have recently received from a developer.

Additionally, the disclosure requirement applies to real estate projects with an estimated construction cost of more than $1 million, a threshold easily met due to the City's high development costs. Even with

[3] Campaign & Governmental Conduct Code § 3.500.

the exception for residential development projects with four or fewer dwelling units, this $1 million threshold is likely to be overly broad given the high costs of development in the City.

The requirement to only file four quarterly reports after the initial report also likely contributes to the ineffectiveness of the program, as development projects in the City can often take longer than 15 months to complete. A developer could theoretically satisfy their reporting obligation, while their development project remains ongoing.

For the reasons described below, it is better to discontinue the reporting requirements of this program rather than adjust these structural elements in hopes of better meeting the original intended policy objectives of the program.

Administrative Burdens & Low Utilization

Requiring developers with constructions costs exceeding $1 million to submit these reports is overly broad and unreasonably burdensome, which has likely led to low utilization of this program. Since the creation of this program, only 35 developers have filed reports associated with the program. During the same time, the Planning Commission has posted 58 environmental impact reports on their website. Not all of these development projects necessarily meet the requirements for reporting under the Major Developers Program, and some may be from the same developer, but the gap between the number of projects and number of major developer filers suggests poor compliance with this program.

Of the reports filed since 2019, 47% reported no donations made to nonprofits. This means that for roughly half of all filings, no new information was being provided to the public and developers were merely restating information that is already publicly available from the Planning Department.

In the past year, only two developers filed major developer reports, both representing large-scale development firms who had prior experience navigating the process already. This again suggests a low utilization rate, which reinforces how burdensome and ineffective this program is in practice.

This low utilization may partially be due to limited awareness of the program and limited expectations regarding such a program existing. Staff looked for other jurisdictions with similar programs and were unable to find comparable programs elsewhere. The novelty of the City's program suggests that developers and the public are likely to have no expectation that such a program exists. This aligns with feedback Staff heard during the recent Interested Persons meetings and in other conversations with stakeholders, where virtually no one had heard of the program's existence.

Unclear & Redundant Objectives

The intent of the Major Developers Program appears to suggest that it is problematic for a nonprofit organization to communicate with City officers about a development, if the organization recently received funding from that developer. The level to which this behavior is problematic is largely unclear. If a developer were to donate to a nonprofit organization near their development and that generated

good will from the nonprofit regarding the project, which they then decided to communicate about, that would appear to be protected speech and not necessarily evidence of any corrupting influence.

However, if the developer were to pay the nonprofit organization in exchange for the nonprofit contacting a City officer regarding a project, that would require registration and reporting under the City's Lobbyist Ordinance. Given that such contacts would already require registration and reporting, the Major Developers Program is largely redundant as a tool for preventing shadow lobbying.

Preliminary Recommendation

The Major Developers Program is inefficient, places an unreasonable disclosure obligation on developers, offers little value to the public, and is not an effective transparency tool or method for discouraging shadow lobbying. It is thus not an effective use of City resources to continue to administer this program. Staff recommend the current reporting requirements of this program be eliminated. Instead, the program should be scaled down and revised to support the disclosure of any lobbying activity already required under City law. Discontinuing the existing reporting requirements of the Major Developers Program would remove unreasonable reporting obligations and allow the Commission to focus more on other programs that better promote fairness and impartiality in City decision-making.

2. Campaign Consultant Program

San Francisco's Campaign Consultant Program was implemented following the passage of Proposition G in 1997, after the measure was put on the ballot by then-Supervisors Tom Ammiano, Sue Bierman, Gavin Newsom, and Leland Yee. The Campaign Consultant Program established requirements similar to those defined in San Francisco's Lobbyist Ordinance – including registration requirements and required periodic disclosures of clients, payments, and other activities.

The purpose and intent of the program is to "…impose reasonable registration and disclosure requirements on campaign consultants…[to] assist the public in making informed decisions, and protect public confidence in the electoral and governmental processes."[4]

The public oversight of campaign consultants was intended to highlight political relationships and financial transactions that were otherwise not easily accessible to the public at the time. Since the program's inception, there have been minimal updates to the program. There was a 2011 ballot measure to amend the program that failed, and in 2024 the Ethics Commission adopted regulations requiring the full electronic filing of campaign consultant disclosures.[5] Also in 2024, voters approved

[4] Campaign & Governmental Conduct Code § 3.500. Article I, Chapter 5 of the C&GCC and its supporting regulations specify how this program operates.
[5] Proposition F – Voter Information Pamphlet: November 8, 2011; https://webbie1.sfpl.org/multimedia/pdf/elections/november8_2011.pdf

Proposition D, the ethics reform measure placed on the ballot by the Ethics Commission. Proposition D created an amendment provision for the campaign consultant chapter of the C&GCC, which allows legislative changes to be made to the program if such changes are approved by supermajorities of both the Ethics Commission and the Board of Supervisors. Prior to Prop D, changes to the campaign consultant could only be made through a ballot measure.

Overview of the Campaign Consultant Program

As defined in San Francisco's Campaign and Governmental Conduct Code, a *campaign consultant* is a person or entity that receives or is promised $1,000 or more in a calendar year for providing either *campaign management* or *campaign strategy* services.

Campaign management services include conducting, coordinating, or supervising a campaign to elect, defeat, retain, or recall a City candidate or adopt or defeat a City ballot measure. These services may include but are not limited to hiring or authorizing the hiring of campaign staff and consultants, spending or authorizing the expenditure of campaign funds, directing, supervising or conducting the solicitation of contributions to the campaign, and selecting or recommending vendors or sub-vendors of goods or services for the campaign.

Campaign strategy services include planning for the election, defeat, retention or recall of a City candidate, or for the adoption or defeat of a City measure. These services may include but are not limited to producing or authorizing the production of campaign literature and print and broadcast advertising, seeking endorsements of organizations or individuals, seeking financing, or advising on public policy positions.

There are exceptions for certain persons and entities that are not considered campaign consultants:

- Employees of campaign consultants,
- Clients of campaign consultants,
- Attorneys who provide only legal services,
- Accountants who provide only accounting services,
- Pollsters who provide only polling services, and
- Treasurers who provide only those services required by the Political Reform Act

Campaign consultants are required to file disclosures in a format prescribed by the Ethics Commission. The current electronic disclosure portal has consolidated the old paper forms and allows for a new, simplified, and more streamlined filing process. The information collected is submitted via consultant registration/termination forms, quarterly reports, and client authorization/termination forms, and populates in a standalone dataset on the Ethics Commission website. A detailed breakdown of the information collected on campaign consultant disclosures is presented in the following section.

To implement this program, the Ethics Commission administers an electronic filing system (as of December 2024) that allows filers to complete their disclosures online. Additionally, the Commission

publishes and periodically updates compliance materials that explain the requirements around registration, disclosure, and termination. The Engagement & Compliance Division answers advice and guidance questions regarding the program and EDDA assists with any issues and questions related to the electronic filing system. Also, the Enforcement Division may investigate violations associated with this program for the Commission. Since 2010, the Commission has issued penalties in three cases for individuals who failed to register as campaign consultants when required to do so.

Findings

As part of a review of the Campaign Consultant Program, Staff evaluated the current program structure and its efficacy at furthering the purposes outlined in the San Francisco Campaign and Governmental Conduct Code Section 1.500, and solicited additional feedback from relevant stakeholders including current filers and members of the public. Staff have found that the program creates an unreasonable administrative burden on filers and does not add significant value to the public, as much of the information disclosed is now easily accessible elsewhere.

During the recently held Interested Persons meetings, Staff received feedback from both members of the public and participating filers about their experiences with the program. Members of the public highlighted a lack of awareness of the program's existence and that it is often easier to find the campaign finance information they are interested in from the financial disclosures filed by campaign committees and the disclaimers that committees are required to place on their advertisements. Filers emphasized the burdensome and confusing nature of the program's implementation and mentioned that the 'wide net' approach to defining campaign consultants disproportionately burdens filers who are not connected to larger, multi-employee firms.

The current definitions of *campaign consultant*, *campaign management*, and *campaign strategy* are nebulous, and given the $1,000 qualification threshold will often cause confusion or erroneously capture the activity of lower-level campaign staff that are otherwise do not have a significant enough role in a campaign to warrant the administrative burden of registration and filing. Given that the registration and filing requirements largely disclose information that is accessible elsewhere, maintaining the program imposes an excessive administrative burden on filers.

With the recent advancements in electronic filing systems, and uniform electronic reporting requirements for campaign committees, it is now significantly easier for members of the public to access campaign finance information than it was during the time the Campaign Consultant Program was created. These other online disclosures bring to light the relationships and transactions that are currently reported on campaign consultant disclosures. Furthermore, this information can now be more easily found in the Commission's campaign finance datasets, where it is integrated with all of the campaign finance activity of the committee, without needing to review the separate datasets of the Campaign Consultant Program.

As presented in **Table 1**, most of the information currently collected on campaign consultant disclosure forms can be accessed elsewhere. Much of this information is available on Form 460s that are filed by campaign committees. Other information can be obtained from other City datasets or through internet research.

Table 1: *Information Collected via Campaign Consultant Program*

Type of Information	Available Elsewhere	*Only in Consultant Filings
Campaign Consultant Identification and Contact Information	✓	
Minimal Description of the Consulting Activity	✓	
Payments Promised or Received	✓	
Political Contributions Made by the Campaign Consultant (if $100+)	✓	
Payments Promised or Received from Vendors or Sub-vendors	✓	
Gifts Made by the Campaign Consultant	✓	
City Contracts Obtained by the Campaign Consultant	✓	
If the Filer is a Firm, the Names of Employees and Contact Information	✓	
Campaign Consultant Appointments to Public Office by a Client	✓	
Names of Any Local Officeholders or City Employees Employed by the Campaign Consultant or a Client of the Campaign Consultant, at the Behest of the Campaign Consultant		X

A review of comparable jurisdictions found no other instances of standalone campaign consultant programs. Feedback received during the recent Interested Persons meetings is consistent with this finding, as filers noted they do not have similar reporting obligations in other jurisdictions. Last year, the City of Stockton considered creating a similar supplemental disclosure program for campaign

consultants, but declined to do so, in part due to such a disclosure be redundant to the disclosures already filed by campaign committees.[6]

Preliminary Recommendation

Given the amount of redundant information disclosed via the Campaign Consultant Program that is now easily accessible to the public elsewhere, the unreasonable filing burden the program places on filers, and the limited effectiveness of the program at helping the public make informed decisions, Staff recommend discontinuing the bulk of this program, specifically the registration and reporting requirements.

The registration and reporting requirements should be removed, and the program should be scaled down to instead focus on ensuring campaigns have the information necessary to fully disclose their campaign consultant expenditures through other existing requirements. Additionally, the existing rule that prohibits campaign consultants from lobbying their current or former clients should be maintained.

Removing the registration and reporting requirements of the Campaign Consultant Program will continue to promote integrity and credibility in the City's electoral and government institutions and reflect how changes to other disclosure programs have now made the Campaign Consultant Program largely redundant, while removing an unreasonable administrative burden on filers.

3. Supplemental Recusal Notifications

Members of City boards and commissions who have a financial conflict of interest in a matter are required to recuse themselves from discussing or voting on the matter per Section 3.209(b) of the C&GCC and its supporting regulations. Section 3.209 was approved in 2018 and become operative on January 1, 2019 (Ord. 129-19).The requirement to recuse when faced with a conflict of interest already exists for City officers under State law, subsection 3.209(a) merely restates this requirement locally. Subsection 3.209(b), created a duty to file a supplemental recusal notification with the Ethics Commission whenever a board member or commissioner needs to recuse from participation in a particular matter.

Upon identifying a financial conflict of interest in a matter, the board member or commissioner must do the following:

1. **Announce Recusal**: The member must announce their recusal during the meeting and describe the circumstances that give rise to the conflict of interest.

[6] Leathley, A. (2024, September 24). No new consultant rules, ethics commission in Stockton: legislation committee. The Stockton Record. https://www.recordnet.com/story/news/politics/2024/09/23/stockton-will-not-adopt-new-consultant-rules-ethics-commission-grand-jury-report/75298433007/

2. **Recuse**: The member must recuse from acting on, or even discussing, the matter.
3. **Leave the Room:** The member is required to leave the room while the matter is being discussed, voted on, or is otherwise before the body.
4. **Record in Meeting Minutes:** The recusal must be recorded in the official meeting minutes.
5. **File Disclosure Form (Within 15 Days)**: The member must file a signed public disclosure form with the Ethics Commission within 15 calendar days of the meeting, which includes:
    - The member's name,
    - Their board or commission,
    - The meeting date,
    - The agenda item number,
    - A brief description of the matter,
    - Indication of if the matter concerns a contract,
    - An explanation of the financial interest causing the recusal, and
    - A copy of the meeting agenda.

The first four steps above are consistent between State and City law and are important procedures for safeguarding the integrity of City decision-making processes. However, the requirement to file an additional form, as described in the fifth step above, is redundant and places an undue administrative burden on filers, commission secretaries, and Staff.

Filing this supplemental recusal notification is redundant, as the information reported must already be disclosed in the meeting minutes where the recusal occurred. Recusal information is included in the meeting minutes because that is where the public expects to find it, and it aligns with State law and practices in other jurisdictions.

The filing of supplemental recusal notifications is another policy that appears unique to San Francsico, as Staff have not found other jurisdictions within California that require similar recusal notifications. While the recusal notification data that is currently compiled and presented on the Ethics Commission's website may have some academic value, the primary public benefit is met by the core recusal processes that document recusals in the relevant meeting minutes.

The supplemental recusal notifications are also a burden for filers, who could face enforcement actions and potential administrative penalties, for failing to submit this supplemental notification, regardless of if they otherwise followed the appropriate recusal processes and their recusal was already documented in the public record via the meeting minutes.

The supplemental recusal requirement also does not apply to members of the Board of Supervisors. This means members of the public who volunteer their time to serve a City board or Commission are subject to this supplemental reporting requirement, while the City's top policymakers are not.

Commission secretaries and other City staff who work to support the City's numerous public meetings are also involved in ensuring compliance with this supplemental recusal notification requirement. As are Ethics Commission staff, who administer this disclosure requirement.

To implement this supplemental recusal notification, the Ethics Commission administers an electronic filing system that allows filers to complete this disclosure online. These forms are then presented on the Ethics Commission website. As with all rules administered by the Ethics Commission, the Engagement & Compliance Division answers advice and guidance questions about the rule and the Enforcement Division may investigate potential violations. In 2021, the Ethics Commission penalized Victor Makras $500 for failing to file the supplemental recusal notification (SFEC Complaint No. 2021-001/1920-292).

During the recent Interested Persons meetings held for this project, no stakeholders identified any added value provided by this additional filing requirement, nor were concerns raised about potentially discontinuing this requirement.

Preliminary Recommendation

Staff recommend the supplemental recusal notification required under subsection 3.209(b) be eliminated. Discontinuing this policy would remove a redundant reporting requirement, streamline the process for recusing when a conflict of interest exists, and decrease the administrative load on officers and employees throughout the City.

4. Trustee Election Filings

San Francisco has a Health Service Board, Retirement Board, and Retiree Health Care Trust Fund Board. These bodies help manage and oversee retirement and health care benefits for current and former City employees. Each body is led, in part, by trustees who are elected by current and former City employees. These trustee elections are administered by the Department of Elections but are not open to the public and candidates for these seats are not considered candidates under the Political Reform Act or the Campaign & Governmental Conduct Code.

In 2018, the San Francisco Administrative Code was amended to establish a uniform set of registration, disclosure, and termination filings for both candidates and third-party spenders in trustee elections for members of the Health Service Board, Retirement Board, or Retiree Health Care Trust Fund Board (Ord. 212-18). The amendments were made in response to a single Retiree Health Care Trust Fund Board election in 2017 that was particularly contentious and where third-party spending was prevalent.[7] The legislation sought to require all candidates in these trustee elections to follow the same registration and

[7] Lamb, J. O. (2017, February 7). *Incumbent unseated in SF retirement board election*. San Francisco Examiner. https://www.sfexaminer.com/news/incumbent-unseated-in-sf-retirement-board-election/article_66e049ba-adcf-5be4-9418-eff105f95c93.html

disclosure procedures as candidates for City elective office. This was done by copying language from the Campaign & Governmental Conduct Code into the Administrate Code, against the recommendations of the Ethics Commission at the time.[8]

Upon being nominated for a seat on their respective board, all candidates for the Retirement Board, Health Service Board, or Retiree Health Care Trust Fund Board shall file their Candidate Statement of Economic Interests (Form 700), a candidate intention statement, an initial statement of organization, establish a bank account, and file any required semi-annual and pre-election statements and late contribution reports – all with the Ethics Commission. While unsuccessful candidates may terminate after an election, successful candidates are required to file disclosures until their terms are completed.

Any third-party spenders are also required to register by filing their statement of organization, and then filings any subsequent semi-annual and pre-election statements, and late contribution and independent expenditure reports.

To implement this program, the Ethics Commission administers the standard NetFile electronic filing system that allows filers to complete their disclosures online. There are additional forms that are filed via hardcopy only, and those forms are received by staff, scanned into a digital version, redacted, and made available for public inspection. Compliance materials are published and disseminated to candidates and trustee board staff and updated to reflect changes between the intermittent elections. The Engagement & Compliance Division answers advice and guidance questions regarding the program and interfaces with the staff of the different trustee boards throughout the course of an election. Under Section 16.553-4 of the Administrative Code, the Ethics Commission may issue penalties for violations of this program, but in practice no penalties have been issued since this filing obligation was created.

Findings

Staff have found that in practice this program provides little public benefit as these are races in which candidates typically do not raise or spend any money and that the program is poorly structured, creating undue administrative burdens on candidates and City officials.

Virtually No Financial Activity Reported

In the time since this requirement went into effect, a total of seven candidates have registered and filed disclosures with the Ethics Commission – of those seven, only one candidate has ever disclosed raising funds. The total amount of funds raised was just $78.60, which is below the $100 threshold for a

[8] September 11, 2017 memorandum from then Ethics Commission Executive Director, LeeAnn Pelham, to the Board of Supervisors regarding Ordinance 212-18: https://sfgov.legistar.com/View.ashx?M=F&ID=5415704&GUID=36300290-63AD-41DA-8E41-1197C2F2CF96

transaction to show up as an itemized line item on a campaign statement. Instead, a transaction of this amount is disclosed as a lump sum of unitemized transactions.

The minuscule level of financial activity suggests this program is overly complicated, burdensome, and unnecessary, given that candidates for these positions rarely raise or spend any funds.

Overly Strict Requirements Place Undue Burdens on Candidates

By comparison to the Trustee Disclosure Program, candidates for City elective office are required to file a Statement of Economic Interests (Form 700) and a candidate intention statement – but are otherwise not required to file a statement of organization or establish a bank account unless they anticipate raising or spending $2,000 or more. Instead, they have the option to file a Short Form Campaign Statement attesting under penalty of perjury that they will not or have not raised or spent $2,000 or more. In the event they surpass the threshold, they file a supplemental form and follow the registration and reporting procedures required of qualified recipient committees. In practice, this means that candidates for the City's trustee elections have a higher reporter obligation than candidates for Mayor or the Board of Supervisors, despite trustees seldom raising or spending funds and them not being elected by members of the public.

In particular, the Administrative Code's requirement to establish a bank account has been problematic and confusing for candidates who do not plan to engage in the raising or spending of funds. As written, the requirement is unworkable, as it effectively necessitates spending in the race that may not otherwise have occurred. This is because opening and maintaining a bank account, even one with a zero-dollar balance, can still result in service fees that the candidate now needs to pay to the bank. As such, the Engagement & Compliance Division has previously told candidates they do not need to open a bank account if they do not raise or spend money on their campaigns, or do not intend to do so. This is a situation so unworkable and with such dramatic unintended consequences that Staff decided to give advice not technically consistent with the Administrative Code. The advice provided is consistent with how candidates are required to operate under State law and under the C&GCC.

The Administrative Code also requires trustee candidates who win their seats to continue to file semiannual statements "until they file a termination statement with the Ethics Commission that indicates they are no longer holding office."[9] That means these statements must continue to be filed until the trustee's term ends and they leave their seat. This is another instance where these trustee candidates are subject to more stringent reporting obligations than candidates for the Mayor or the Board of Supervisors. Candidates for City elected offices can terminate their committees and stop filing after they are elected and do not need to continue filing throughout their time in office.

[9] Administrative Code § 16.553-2.

Considering that the only participants in these elections are current City employees, retirees, and their beneficiaries, it is ridiculous to subject them to reporting requirements that are more stringent than those followed by the City's elected leaders.

Through the recent Interested Persons meetings and direct meetings with staff from these trustee bodies, Staff learned more about how these disclosure rules impact the trustee candidates. In particular, the administrative burden on candidates was mentioned as a potential barrier to participation for candidates. There were also reports of confusion surrounding the disclosure requirements and how candidates needed to handle campaign activity. This is not surprising, given the stringency of the requirements and the fact that candidates for these boards do not tend to be experienced politicians, but rather employees and retirees who want to take a leadership position regarding their benefits. These requirements raise equity concerns as they may be serving as a barrier to participation for potential candidates, a barrier that may disproportionally impact would be candidates who are less resourced or politically connected.

Administrative Burdens on City Staff

As mentioned above, staff from both the Ethics Commission and trustee bodies themselves, currently work to implement these rules. This includes answering questions and otherwise assisting candidates who are confused by the reporting requirements. Additionally, the protracted timeline for these trustee elections and the requirement to file the three Pre-Election Statements creates additional work the Commission's Engagement & Compliance Division. There has often been significant overlap in the nomination periods and pre-election reporting periods such that the Ethics Commission has had to expend additional staff resources to consolidate disclosure deadlines to offset the fact that candidates are required to file disclosures during an open nomination period.

These administrative burdens are exacerbated by the rules being located in the Administrative Code, rather than the Campaign & Governmental Conduct Code. The rules governing the activity of candidates for City elective office are covered extensively in the Campaign & Governmental Conduct Code and its supporting regulations. Given that the Trustee Election Disclosure Program is outlined wholly in San Francisco's Administrative Code, it does not benefit from the existing definitions and supporting regulations that are administered by the Ethics Commission in the C&GCC. Nor is it possible for the Ethics Commission to establish new regulations to help implement these requirements, as it can for rules located in the C&GCC. This lack of administrative control limits the Commission's ability to effectively implement these rules.

Amendments Soon Necessary

Under the requirements of AB 1637 (2023), cities and counties must maintain websites that utilize a ".gov." or ".ca.gov" domain by January 1, 2029. The disclaimer requirements outlined in Administrative Code Sections 16.553-2 and 16.553-3 state that campaign advertisements must contain a disclaimer with the language "Financial disclosures are available at ***sfethics.org.***" Given that the Ethics Commission will soon transition to a different web domain, the disclaimer language required in this section will be

outdated at the point when the new domain becomes active. This will necessitate changes to these trustee disclosure requirements to ensure future accuracy and compliance with State law.

Preliminary Recommendation:

Considering these requirements were put in place as an immediate response to what appears to be a one-off occurrence, are of limited benefit to the public, and place undue burdens on trustee candidates and City employees, Staff recommends that these requirements be discontinued.

During the recent Interested Persons meetings and subsequent direct meetings with staff from the boards on which these trustees serve, Staff did not encounter any objections to removing these requirements. Eliminating these requirements would lessen burdensome reporting requirements and lower barriers to candidate participation. As mentioned above, these sections of the Administrative Code will soon need to be amended per AB 1637 regardless. Instead of amending these sections, they should be removed entirely.

As these rules are not within the Campaign & Governmental Conduct Code, no formal action is required by the Commission on legislation regarding these rules. Staff have had preliminary conversations with members of the Board of Supervisors and believe there is already a willingness to act on removing these requirements. However, Staff believes it would be advantageous for the Chair and the Executive Director to send a formal communication to the Board of Supervisors requesting such legislation be enacted. This item has been agendized for potential action, should the Chair wish to call for a vote, clearly authorizing her to sign a communication to the Board on behalf of the Commission on the matter.

Summary and Next Steps

In summary, this memorandum recommends:

1. Discontinuing the current reporting requirements of the City's Major Developers Program,
2. Eliminating the registration and reporting requirements of the City's Campaign Consultant Program,
3. Removing the requirement to file supplemental recusal notifications with the Ethics Commission, and
4. Removing the trustee candidate filing requirements from the Administrative Code.

Most of these recommendations are being presented for feedback and discussion now, as Staff are currently working with the City Attorney's Office on drafting legislative language regarding these changes. Unless significant changes are needed based on Commissioner feedback, Staff will continue developing the draft legislation and engage more with the Board of Supervisors on this item before returning to the Commission with the draft legislation for the Commission to review and potentially vote on during an upcoming meeting.

However, as discussed above, the Trustee Election Disclosure Program item is agendized for potential action, should the Chair wish to call for a vote, clearly authorizing her to sign a letter with the Executive Director requesting the Board of Supervisors pursue discontinuing the trustee election reporting requirements.