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EXECUTIVE DIRECTOR

Date: August 27, 2012

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Proposed legislation to impose disclosure requirements on draft committees

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## Background

At its August 8, 2011 meeting, the Ethics Commission considered the status of two campaign committees, one called the "Draft Ed Lee Committee," which registered as a primarily formed committee; and another called "Progress for All," which initially registered as a general purpose committee. "Progress for All" funded the "Run, Ed, Run" campaign, which focused on convincing then interim-Mayor Ed Lee to run for election as Mayor in the November 2011 election. Because news reports indicated that the committee functioned as a primarily formed committee that existed solely to support Mayor Lee's potential candidacy,<sup>1</sup> the Executive Director instructed Progress for All to refile as a primarily formed committee.

Mayor Lee was not listed on the ballot, nor had he received any contributions or made any expenditures in support of his election. In other words, he did not meet the definition of being a "candidate" under the law. *See* Cal. Gov't Code § 82007. And because the Commission determined that Mayor Lee was not a "candidate" at that time, there was no basis to require Progress for All to refile as a primarily formed committee.

In making its determination, however, the Commission instructed staff to propose amendments to the City's campaign finance laws that would require a committee promoting an individual as a candidate to the voters to file reports and disclose its activities with the Commission as a primarily formed committee. This memo presents staff's recommendations to create such a requirement.

Both general purpose committees and primarily formed committees are recipient committees that generally file semi-annual statements due January 31 and July 31 to disclose campaign activities of the past six months. Local committees also file pre-

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<sup>1</sup> A primarily formed committee is a committee formed or existing primarily to support or oppose, (a) a single candidate, (b) a single measure, (c) a group of specific candidates being voted upon in the same city, county, or multicounty or state election, or (d) two or more measures being voted upon in the same city, county, multicounty, or state election. *See* Calif. Gov't Code § 82047.5.

election reports and late contribution and late independent expenditure reports, if applicable. The distinguishing feature of a primarily formed committee, however, is that it must file in the jurisdiction where the candidate or measure it is primarily formed to support or oppose normally files its campaign statements. *See* 2 Cal. Code Regs § 18247.5. Thus, a primarily formed committee supporting a candidate for City elective office would be required to file with the Ethics Commission; a general purpose committee that makes expenditures to support a candidate for City elective office need not be required to file with the Ethics Commission.

The proposed changes are to the Campaign Finance Reform Ordinance (CFRO), San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. (C&GC Code). The Board of Supervisors (Board) may amend the CFRO if (a) the amendment furthers the purposes of the CFRO, (b) the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members; (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board or any committee of the Board; and (d) the Board approves the proposed amendment by at least a two-thirds vote of all its members. C&GC Code § 1.103.

## Discussion

The proposed amendments establish a new section in the CFRO, section 1.160, which has two subsections, one setting forth definitions and the other the filing requirements.

### 1. Proposed section 1.160(a)

Section 1.160(a) contains three definitions and a provision that the Ethics Commission may adopt regulations further defining those terms.

The term “draft committee” under section 1.160(a)(1) is perhaps the most critical definition here. Under staff’s proposal, any person, group of persons, or entity that receives at least \$1,000 in contributions or makes \$1,000 in expenditures to support the election of an identifiable person who is *not* yet a candidate will be subject to reporting requirements. The language that describes “identifiable person” in the proposal generally tracks language that defines “candidate” under state law. Under the legislation, a committee that receives contributions or makes expenditures to support the election of *an identifiable person who has not yet qualified as a candidate* will have the same filing obligations as a primarily formed committee that receives contributions or makes expenditures to support a declared candidate. The “draft committee” must register as a committee and file reports disclosing contributions and expenditures during set time periods, just like other primarily formed committees that support candidates.

The term “support” is defined as any public actions or statements encouraging or urging an identifiable person to declare as a candidate for City elective office.

The term “primarily formed committee” is as defined in California Government Code section 82047.5, which is: “a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

(a) A single candidate.

- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.”<sup>2</sup>

**Decision Point 1**

Shall the Commission approve the proposed new language in section 1.160(a) of the CFRO, as set forth on page 1, lines 13-24 of the draft amendments?

2. Proposed section 1.160(b)

Section 1.160(b) sets forth the filing requirements for the draft committees. Under the proposal, a draft committee would be subject to the same state or local filing requirements that apply to a primarily formed committee that supports a candidate seeking the same City elective office. Generally speaking, this means that the draft committee must file its statement of organization as a primarily formed committee. Thereafter, the draft committee would file the FPPC Form 460 on a periodic basis, as required by law, to disclose contributions received and expenditures made.

**Decision Point 2**

Shall the Commission approve the proposed new language in section 1.160(b) of the CFRO, as set forth on page 1, line 25 – page 2, line 7 of the draft amendments?

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(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18247.5. Primarily Formed Committees.**

- (a) A “primarily formed” committee, as defined in Section 82047.5 and this regulation, is a recipient committee under Section 82013(a) that supports or opposes a single candidate or measure, or a specific group of measures or local candidates on the same ballot. (In contrast, a “general purpose” committee, defined in Section 82027.5 and Regulation 18227.5, supports multiple candidates or ballot measures.)
- (b) Filing. Under Section 84215, a primarily formed committee files in the jurisdiction where the candidate(s) or measure(s) it is primarily formed to support or oppose normally file(s) their campaign statements.
- (c) Special Requirements for Primarily Formed Committees. In addition to other applicable provisions of the Act and regulations, a primarily formed committee must automatically file preelection statements under Section 84200.5 and 84200.7 or 84200.8; must comply with the committee name and identification of donors requirements of Sections 84107, 84503 and 84504, if supporting or opposing a ballot measure; must comply with the committee name rules of Regulation 18402(c)(3) if supporting or opposing candidate(s); must file online 90-day reports under Section 85309 if supporting or opposing a state ballot measure; must file 16-day reports of contributions received under Section 82036; and is subject to mandatory audit if a state committee.

<sup>2</sup> Fair Political Practices Commission Regulation 18247.5 provides further information about primarily formed committees. The regulation is set forth at the end of this memo.

(d) Definition. For purposes of Section 82047.5, a recipient committee under Section 82013(a) is considered to be “formed or existing primarily to support or oppose” a candidate or measure if:

(1) The committee is created for the purpose of or is involved in running the principal campaign for or against the candidate(s) or measure(s) as listed in subdivision (d)(4) below; or

(2) The committee's primary purpose and activities are to support or oppose candidate(s) or measure(s) as listed in subdivision (d)(4) below; or

(3) The committee makes more than 70 percent of its total contributions and expenditures on all candidates and measures (not including administrative overhead) on those specific candidate(s) or measure(s) as listed in subdivision (d)(4) below, during the time period specified in subdivision (e)(3).

(4)(A) A single candidate. A committee formed or existing primarily to support or oppose a single candidate includes a committee that makes contributions and expenditures for a particular candidate and against that candidate's opponent(s).

(B) A single measure.

(C) A group of specific candidates being voted upon in the same city, county, or multicounty election.

(D) Two or more measures being voted upon in the same city, county, multicounty, or state election.

(e) Review.

(1) A committee that has reason to know it is close to triggering the applicable threshold for changing status because its spending is concentrated on candidate(s) or measure(s) as listed in subparagraphs (d)(4)(A), (B), (C) or (D), shall determine whether it is primarily formed quarterly at the end of March, June, September and December.

(2) Newly organized committees.

(A) A committee that files its initial statement of organization within six months of an election in connection with which the committee makes contributions and expenditures shall determine whether it is primarily formed at the end of each month prior to the election unless the committee has not made contributions and/or expenditures of \$1,000 or more to support or oppose candidates or measures during that month.

(B) A committee that files its initial statement of organization within six months of a statewide primary or general election or within 30 days after a declaration calling a special election for a state elective office or measure and makes at least \$25,000 in independent expenditures to support or oppose a state candidate or state measure(s) as listed in subparagraphs (d)(4)(A), (B), or (D), is presumed to be, and shall report as, a primarily formed committee. This presumption can be rebutted when the committee's contributions and expenditures on multiple candidates or measures in different jurisdictions or elections demonstrate that it is not primarily formed and the committee may amend its statement of organization to identify itself as a general purpose committee pursuant to Regulation 18227.5.

(3) For purposes of determining whether it is primarily formed under subdivision (d)(3), a committee shall count contributions and expenditures made to support or oppose candidates or measures during whichever of the following time periods most accurately reflects the current and upcoming activities of the committee:

(A) The immediately preceding 24 months; or

(B) The current two-year period, beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year.

(f) File as Primarily Formed through the Election. A committee that is or becomes primarily formed within 90 days prior to an election shall maintain that status and file disclosure reports as a primarily formed committee up to the date of that election and continuing until the end of the post-election reporting period.

(g) Change of Status.

(1) Amend Statement of Organization. A recipient committee whose status changes from one jurisdiction to another, or between general purpose and primarily formed shall amend its statement of organization pursuant to Section 84103 to reflect the change. If, after filing reports with one jurisdiction, a committee changes jurisdiction, in addition to filing reports with a new filing officer, the committee must continue filing reports with the original filing officer through the end of the calendar year under Section 84215(g).

(2) An existing general purpose committee is not required to change its filing status to a primarily formed committee unless it meets the requirements in subdivision (d) and it makes at least \$100,000 of contributions and/or expenditures if supporting or opposing a state candidate or measure(s) listed in subparagraphs (d)(4)(A), (B), or (D), or at least \$10,000 of contributions and/or expenditures if supporting or opposing local candidate(s) or measure(s) listed in subparagraphs (d)(4)(A), (B), (C), or (D).

(3) Contributions from a general purpose committee to a primarily formed ballot measure or candidate committee shall not be included in the calculations required under subdivision (d)(3) if the sponsor of the general purpose committee is also a sponsor of the primarily formed committee.

(4) A committee that was primarily formed for the election of a candidate or measure, but after that election continues to exist to support or oppose different candidates or measures in the future, may remove the candidate or measure name from the committee name and change its status following the election, as long as the committee is not raising funds to pay debt from the election, except as provided in subdivision (f).

(h) Avoidance of Disclosure. A committee shall not knowingly file in an incorrect jurisdiction or as an incorrect type of committee, with the intention of avoiding the appropriate legal disclosure of campaign contributions and expenditures to the public.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82047.5, Government Code.