



## San Francisco Ethics Commission

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November 4, 2022

To: The Honorable Dean Preston, Chair, Government Audit & Oversight Committee  
Supervisor Rafael Mandelman, Committee Member  
Supervisor Connie Chan, Committee Member

From: LeeAnn Pelham, Ethics Commission Executive Director

Re: **Overview of Ethics Commission Audit Program**

Thank you again for the invitation this week to brief the Government Audit & Oversight Committee at its November 3<sup>rd</sup> meeting on the Ethics Commission's audit program and the current status of audits underway and those planned to be performed under the Commission's audit authority. This transmittal provides a written report of information provided verbally at yesterday's hearing, as discussed under Agenda Item 1 ([BOS File #220139](#)).

We welcome the opportunity to provide this detailed information to the Board. As always, we also look forward to continuing to engage with the Board to support policy and budgetary approaches that will continue to advance the effectiveness of the Commission's independent oversight of campaigns, governmental ethics, and lobbying activities in the City.

Please feel free to contact me or Audit and Compliance Review Manager Linda Fong with any questions about this report at [leeann.pelham@sfgov.org](mailto:leeann.pelham@sfgov.org) or [linda.fong1@sfgov.org](mailto:linda.fong1@sfgov.org).

cc: Supervisor Aaron Peskin  
Ben Rosenfield, Controller  
Angela Calvillo, Clerk of the Board of Supervisors  
Stephanie Cabrera, Government Audit & Oversight Committee Clerk  
Members of the Ethics Commission  
Linda Fong, Ethics Commission Audit and Compliance Review Manager  
Michael Canning, Ethics Commission Acting Senior Policy Analyst

## Overview of Ethics Commission Audit Program

### What is the Ethics Commission's audit authority?

**Campaigns.** The San Francisco Ethics Commission has the duty and responsibility under San Francisco Charter Section C3.699-11(4) to audit campaign statements and other relevant documents to ensure compliance with applicable state and city campaign finance laws and regulations. Under San Francisco Campaign and Governmental Conduct Code Section 1.150(a), all candidate committees whose candidates have received public financing must be audited and committees that have not received public financing may be randomly selected for audit at the discretion of the Executive Director of the Commission.

**Lobbying.** Under SFC&GCC Section 2.135(c), the Executive Director of the Commission shall initiate audits of one or more lobbyists selected at random on an annual basis and undertake any other audits or investigations of a lobbyist authorized by law or regulation.

### What audits are required to be performed?

The Commission must conduct mandatory campaign audits of candidate committees whose candidates have received public financing in any election cycle. In addition, the Commission must conduct audit(s) of one or more lobbyists selected at random on an annual basis. Written campaign audit reports issued by the Ethics Commission are available on the [Campaign Audits page](#) on its website at sfethics.org. Once completed, lobbying audits issued by the Commission will be posted on the [Lobbyist compliance](#) web page.

### What are the duties of the Ethics Commission Audit Division and how is it currently staffed?

The Ethics Commission's Audit Division performs a range of required oversight functions. It has responsibility to plan and implement the Commission's mandatory and discretionary campaign audits, and its mandatory lobbying audits. In addition, the Audit Division has responsibility for developing and implementing the post-filing compliance review program for electronically filed Statements of Economic Interests (Form 700) that was recommended in the Controller's June 2020 Public Integrity Review. During election years, the Audit Division also performs reviews of candidate eligibility and public funds disbursements as part of the City's limited public financing program for qualified Supervisorial and Mayoral candidates.

The Audit Division is currently staffed with one Audit and Compliance Review Manager (a Principal Administrative Analyst, or 1824 in the city's job classification system) and three Auditors (Administrative Analysts, or 1822s). The Commission sought an additional position authority for a Senior Auditor (Senior Administrative Analyst, or 1823) in its FY23 budget, however that request was not included in the budget proposal sent by the Mayor to the Board of Supervisors for adoption.

## Has the Ethics Commission leveraged other resources to help conduct its audits?

Yes. With regard campaign audits, Sec. 1.150 of the SF Campaign & Governmental Conduct Code provides that “[a]t the request of the Executive Director, the Controller shall assist in conducting these audits.” In close, regular collaboration with the Controller’s Office, the Commission has taken full advantage of auditing resources that have been available over time with support from that office.

In the past, for example, this has included direct management by the Controller’s City Services Audit Division of an external auditing contract with the Controller’s Office to perform 12 mandatory campaign audits for the 2016 election. For the 2018 election cycle, the Controller’s Office assisted the Commission in securing its own Agreement for external auditing services using an existing vendor list on contract with the Controller’s Office to perform 14 audits of publicly financed candidates.

To help promote timely completion of mandatory audits given existing Ethics Commission resources while also allowing for the completion of other competing Audit Division priorities, the Commission requested and received funds in its FY23 budget to secure assistance of the Office of Contract Administration (OCA) to establish its own external auditing contract. This will enable the Commission to more routinely engage external auditing services over multiple years. Ethics Commission staff and OCA staff are currently working on this process.

At the same time, while the Commission works to establish its own contract for external audits, the Commission also will be using a list of pre-qualified external audit firms that are on a re-established list of vendors on contract with the Controller’s Office. This will enable the Commission to secure external resources in the near term to assist with pending audits from the 2020 election cycle.

## How does the Commission select and prioritize its campaign audits, and where are these processes publicly reported?

As a matter of practice, the Ethics Commission regularly issues [public reports on its audit selection process](#). For example, background on the process to determine audits for the [2019 election](#) and for the [2020 election](#) can be found on the Commission’s website.

## What audits are currently being conducted by the Commission?

As detailed in Attachment I, the Ethics Commission currently has 10 audits in progress: two are mandatory audits of publicly financed candidates from the 2019 election; two are mandatory audits of publicly financed candidates from the 2020 election; and six are audits of lobbyists who were active in calendar year 2021.

## What other audits are pending initiation by the Ethics Commission?

As detailed in Attachment I, in addition to the 10 audits underway, 14 other audits are pending at this time. Each of these is a mandatory audit required to be conducted of a candidate who received public financing in connection with their campaign for the Board of Supervisors in the 2020 election.

As explained on the [2020 audit selection page](#), audits of publicly financed candidates from this election have been prioritized for audit starting with the highest total public financing dollars received by a committee. Attachment I details the list of 2020 mandatory audits and the order in which they will be conducted based on this prioritization criteria.

Commission staff have targeted initiating these 14 pending 2020 mandatory audits following the anticipated completion of two mandatory audits from the 2019 election and the anticipated completion of the six lobbying audits that are nearing completion, by December 31, 2022.

## What is the Commission's plan to complete its pending audits timely?

The first step undertaken by the Commission to ensure quality and timely audits that are thorough, consistent, and objective has been to implement essential audit program process improvements. This work was able to be prioritized with the April 2021 hiring of a position dedicated to serve as audit manager for the division. Process improvements undertaken included program improvement measures addressed in findings and recommendations of the Board of Supervisors' August 2020 Budget and Legislative Analyst (BLA) *Performance Audit of the Ethics Commission*. That audit identified the need for the development of standardized campaign audit processes and procedures, including the documentation of work performed and reporting of audit results, and ongoing staff training. Implementing clear and standardized approaches and procedures is critical for any audit program. The Division's work to implement improved procedures has been a necessary prerequisite to maximizing and sustaining the efficiency, timeliness, and effectiveness of audits over time.

As indicated above, additional steps underway include leveraging external auditing resources on a regular basis. This is being pursued both through external auditing firms tapped through the Controller's Office vendor lists in the near-term in early 2023, and through development of an Ethics Commission departmental contract to provide for continuity of supplemental auditing resources over the longer term.

Further, given the breadth of Commission mandates that are the direct responsibility of the Audit Division, the Division continues to require rightsizing to meet the demands those mandates create. The Commission requested a Senior Auditor position authority in its FY23 budget request. While that position was denied in the Mayor's FY23 budget, the need continues to exist. The Commission will likely continue to seek this position as part of its FY24 budget request.

## Can a candidate close their campaign committee before they are audited? If so, how do they pay for audit-related costs?

There is no law or regulation that prohibits a candidate from terminating their committee and campaign account after the election and before their committee audit is completed. The decision about whether and when to leave open a committee and committee account, or terminate them, is a decision candidates and their treasurers/counsel make based on a variety of factors. By way of illustration, for the 2020 election, at least 8 of the 16 publicly financed candidates have to date already chosen to close their campaign committee and committee accounts. Two of the 16 publicly financed candidates from the 2020 election elected to make payments to their campaign treasurers shortly after the 2020 election, forfeited their remaining public funds to the Ethics Commission, zeroed out their campaign accounts, and terminated their committees shortly thereafter. These instances illustrate options candidates have taken under the law, for example, to assess anticipated final costs, analyze and remit required forfeitures, and evaluate and settle remaining fees to be paid for services of their treasurer and compliance counsel in ways that allow them to terminate their committees and accounts.

## What laws and regulations govern the use of campaign funds after an election? Are public funds received treated differently than contributor funds received?

When candidate committees have funds remaining in their campaign contribution trust account ("CCTA") after an election, SFC&GCC Sections 1.104, 1.108(b), 1.122(b)(4), and 1.148(c), and San Francisco Regulation 1.148-1 govern the use of the remaining funds. These provisions appear for general reference in Attachment II.

In short, a candidate who receives public financing and whose committee has unexpended public funds must return ("forfeit") those funds to the City and County of San Francisco no later than 30 days after the Ethics Commission completes its audit of the candidate's committee. Unexpended funds may be used to pay for expenses associated with an audit such as bank fees, treasurer fees, and storage fees until the Ethics Commission completes its audit of the candidate's committee. If the committee has surplus funds (i.e., non-unexpended public funds), the candidate may return funds to contributors, donate funds to charitable organizations or the City and County of San Francisco, pay outstanding campaign debts or accrued expenses, pay expenses associated with terminating the committee, or use the funds for other permissible purposes.

A candidate/elected official may not establish nor control any other committees or accounts for the purpose of making officeholder expenses (i.e., candidate may not open a secondary "officeholder" committee/account). However, they could maintain their existing campaign committee and account, continue to fundraise post-election, and use those funds to cover expenses directly connected with carrying out the candidate's usual and necessary duties of holding office. Funds raised more than 30 days after an election are not considered unexpended public funds.

## Attachment I In-Progress & Planned Audits

NOTE:

\*\* indicates audit planned assuming availability of planned external audit assistance

| <b>2019 Campaign Audits Underway<br/>Mandatory</b> | <b>When Started</b>                    | <b>Targeted Completion Date</b> |
|----------------------------------------------------|----------------------------------------|---------------------------------|
| Brown, Vallie                                      | Started Sept. 2021<br>Testing Underway | Dec 31, 2022                    |
| Preston, Dean                                      | Started Sept. 2021<br>Testing Underway | Dec 31, 2022                    |

| <b>Annual Audits Underway of<br/>Lobbyists Active in CY2021<br/>Mandatory</b> | <b>When Started</b>                  | <b>Targeted Completion Date</b> |
|-------------------------------------------------------------------------------|--------------------------------------|---------------------------------|
| Bracket-Thompson, Bivett                                                      | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |
| CA Hotel & Lodging Association                                                | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |
| Miller, Martha                                                                | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |
| Reyes, Rudolph                                                                | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |
| Sarjapur, Melinda A.                                                          | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |
| Shannon, Carl                                                                 | Started Feb. 2022<br>Testing Wrap up | Dec 31, 2022                    |

| <b>2020 Campaign Audits Initiated<br/>Mandatory</b> | <b>When Started (Planned)</b>                               | <b>Targeted Completion Date</b> |
|-----------------------------------------------------|-------------------------------------------------------------|---------------------------------|
| Brown, Vallie                                       | Started March 2022<br>Testing Initiated                     | April 30, 2023                  |
| Melgar, Myrna                                       | Started March 2022<br>Testing Initiated                     | April 30, 2023                  |
| Engardio, Joel                                      | Committee documents<br>received; audit ready to<br>commence | June 30, 2023                   |
| Nguyen, Vilaska                                     | Committee documents<br>received; audit ready to<br>commence | June 30, 2023                   |
| Philhour, Marjan                                    | Committee documents<br>received; audit ready to<br>commence | June 30, 2023                   |
| Preston, Dean                                       | Committee documents<br>received; audit ready to<br>commence | June 30, 2023                   |

| <b>2020 Campaign Audits Planned<br/>Mandatory</b> | <b>Target Start</b> | <b>Targeted Completion Date</b> |
|---------------------------------------------------|---------------------|---------------------------------|
| Avalos, John                                      | April 2023**        | Jan 31, 2024**                  |
| Chan, Connie                                      | April 2023**        | Jan 31, 2024**                  |
| Lee, David E.                                     | April 2023**        | Jan 31, 2024**                  |
| Murase, Emily                                     | April 2023**        | Jan 31, 2024**                  |
| Sauter, Danny                                     | April 2023**        | Jan 31, 2024**                  |
| Martin-Pinto, Stephen W.                          | April 2023**        | Jan 31, 2024**                  |
| Matranga, Ben                                     | April 2023**        | Jan 31, 2024**                  |
| Peskin, Aaron                                     | April 2023**        | Jan 31, 2024**                  |
| Safai, Ahsha                                      | April 2023**        | Jan 31, 2024**                  |
| Shinzato, Veronica                                | April 2023**        | Jan 31, 2024**                  |

| <b>Planned 2022 Campaign Audits<br/>Mandatory</b> | <b>Target Start</b> | <b>Targeted Completion Date</b> |
|---------------------------------------------------|---------------------|---------------------------------|
| Dorsey, Matt                                      | Feb 1, 2024**       | Dec 31, 2024**                  |
| Engardio, Joel                                    | Feb 1, 2024**       | Dec 31, 2024**                  |
| Mahogany, Honey                                   | Feb 1, 2024**       | Dec 31, 2024**                  |
| Mandelman, Rafael                                 | Feb 1, 2024**       | Dec 31, 2024**                  |
| Mar, Gordon                                       | Feb 1, 2024**       | Dec 31, 2024**                  |

| <b>Planned Annual Audits<br/>Of Lobbyists Active in CY2022<br/>Mandatory</b> | <b>Target Started</b> | <b>Targeted Completion Date</b> |
|------------------------------------------------------------------------------|-----------------------|---------------------------------|
| TBD                                                                          | July 2023             | Dec 31, 2024                    |



## Attachment II

### City Law References Cited

#### **SFC&GCC Sections 1.104, 1.108(b), 1.122(b)(4), and 1.148(c), and San Francisco Regulation 1.148-1**

**Per SFC&GCC 1.104, "Unexpended public funds"** shall mean all funds remaining in the candidate committee's account on the 30th day after the candidate controlling the committee is either elected or not elected to office, regardless of the source of the funds, but shall not exceed the amount of public funds provided to the candidate. Funds raised after this date are not unexpended funds." **"Qualified campaign expenditure"** shall not include filing fees, expenses incurred in connection with an administrative or judicial proceeding, payments for administrative, civil or criminal fines, including late filing fees, costs incurred after the election that do not directly affect the outcome of the election, including but not limited to utility bills, expenses associated with an audit, and expenses related to preparing post-election campaign finance disclosure reports as required by the California Political Reform Act, California Government Code Section 81000, et seq., and the provisions of this Chapter, or for inaugural activities or officeholder expenses."

**Per SFC&GCC 1.108(b),** "All funds, services, or in-kind contributions received by a candidate committee for expenses incurred directly in connection with carrying out the candidate's usual and necessary duties of holding office shall be deposited, credited, or otherwise reported to the candidate committee's Campaign Contribution Trust Account. Such contributions shall be subject to the contribution limits in Section 1.114 of this Chapter 1. An elected officeholder may not establish or control any other committees or accounts for the purpose of making officeholder expenses. Nothing in this Section 1.108 shall prohibit an officer from spending personal funds on official activities."

**Per SFC&GCC 1.122(b)(4),** surplus funds held by a candidate or committee shall be:

- (A) returned on a "last in, first out" basis to those persons who have made said contributions;
- (B) donated to a charitable organization;
- (C) donated to the City and County of San Francisco;
- (D) used to pay outstanding campaign debts or accrued expenses;
- (E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or
- (F) used for other permissible purposes established by the Ethics Commission by regulation.

**Per SFC&GCC Sec 1.148(c),** "Any candidate who receives public financing and whose committee has unexpended public funds shall pay to the City and County of San Francisco and deliver to the Ethics Commission those funds for deposit in the Election Campaign Fund no later than 30 days after the Ethics Commission completes its audit of the candidate's committee. Unexpended funds may be used to pay



for expenses associated with an audit such as bank fees, treasurer fees and storage fees until the Ethics Commission completes its audit of the candidate's committee."

Per **San Francisco Regulation 1.148-1**, "Candidates who receive public funds may only use such funds to pay for qualified campaign expenditures, as defined in section 1.104, except that such candidates may use public funds to pay for a limited range of expenses incurred after the election that do not directly affect the outcome of the election. This limited range of post-election expenses includes any pro-rata costs of post-election rent and utility bills that accrue until the campaign office is closed or 30 days after the election, whichever is sooner; expenses associated with the Ethics Commission's audit of the campaign committee; and expenses related to preparing and filing post-election campaign finance disclosure reports as required by the California Political Reform Act and the San Francisco Campaign Finance Reform Ordinance."