

REPORT OF THE
ETHICS COMMITTEE
TO THE BOARD OF SUPERVISORS



CHRIS NGUYEN
Chairman
Third District

BRIAN PROBOLSKY
Vice Chairman
First District

DENIS BILODEAU
Committee Member
Fourth District

JOEL ANGELES
Committee Member
Second District

PAUL WALTERS
Committee Member
Fifth District

SEPTEMBER 22, 2015



Dear Chairman Spitzer and Members of the Board:

As members of the Orange County Ethics Committee, we wanted to first thank you for authorizing this Ethics Committee and entrusting us to explore and consider the possibility of establishing an Ethics Commission for the County.

Within the 60 days allotted to the committee, we:

- Held 10 meetings
- Invited over 20 subject matter experts and stakeholders
- Heard from 15 speakers
- Studied existing ethics commissions from throughout California
- Reviewed over 15 documents including one proposal to create an ethics commission
- Took public comments from the community

We believe it is a priority for the County to provide the residents of Orange County an assurance that their County government is ethical, transparent, and accountable.

Herein, we are presenting the list of speakers, a summary of their testimony, and a comparison of some of the existing ethics commissions.

However, rather than simply providing your Board with reading materials for you to review and research on your own, we also wanted to share with you what we have learned and provide the Board a road map of tackling the question of the need to establish an ethics commission, and if needed, how the commission should be constituted.

After receiving testimony from our speakers and hearing from the public, committee members believe that there is a need to enhance the public trust in County government. However unfair it is, County government is affected with the same public distrust in governments as at all levels – be it at the municipal, state, or federal level.

In considering the formation of an ethics commission, a common theme among speakers was the suggestion to avoid simply making symbolic gestures. According to the Institute of Local Government, “symbolic gestures rarely accomplish much in terms of ethics.”

The Ethics Commission of the City of Los Angeles provided sound guidance on establishing ethics guidelines from the Cowan Commission report:

“Compliance, not prosecution, is the central goal of an ethics code, but to be truly effective the code must contain tough sanctions and the reasonable assurance that enforcement will be swift and sure.”

“...the law should be as clear – and as fully understood – as is humanly possible... we sought to banish the gray: eliminate those areas of uncertainty that represent loopholes for those who wish to avoid compliance and are confusing traps for those who wish to comply.”

As you may know, the Orange County Campaign Reform Ordinance (TINCUP) contains some provisions that are unconstitutional, confusing, or difficult to enforce. More importantly, to create an ethics commission, TINCUP needs to be amended to shift enforcement roles.

As for the various measures to address ethics, including the possibility of establishing an ethics commission at the County, a majority of members of the committee made the following findings:

Recommendation 1: Proposed Ordinance Should Substantially Increase Ethics Training and Education for County Officials and Staff

Compliance training and education needs to be enhanced by the County.

Recommendation 2: Proposed Ordinance Should Substantially Increase and Improve Campaign Finance Disclosure

There is a clear need for the County to more easily compile donations to verify compliance with TINCUP.

Recommendation 3: Proposed Ordinance Must Be Flexible to Accommodate TINCUP.

If a commission were to be established, it is recommended that only the foundational provisions of an ethics committee be codified in the County Charter. There needs to be flexibility for modernizing amendments, which is only possible when the bulk of the law is established as an ordinance.

Recommendation 4: Proposed Ordinance Should Incorporate a Safe Harbor Provision

With complicated laws that can be confusing, an advice provision with safe harbor is needed to assist the public to understand the law and provide guidance to those seeking to comply.

Recommendation 5: Proposed Ordinance Should Approach Subpoena Powers with Caution

Caution and great care should be taken when considering subpoena power to a possible ethics commission.

Recommendation 6: Proposed Ordinance Should Follow Already Established Best Practices for Appointments

The screening and appointment of members to an ethics commission by elected officials is the standard practice. The FEC, FPPC, the ethics commissions of the City of Los Angeles, City of San Diego, City of San Jose, the City and County of San Francisco, and the County of Kern all have members appointed by elected officials.

Recommendation 7: Proposed Ordinance Should Adopt Confidentiality during the Investigation Stage Prior to Determination of Guilt or Innocence

The foundational principle of the American justice system is a presumption of innocence. Ethics investigations and false claims can be used as a political weapon. Therefore, confidentiality during an investigation is recommended.

Lastly, we wanted to address the only written proposal to establish an ethics commission for Orange County that was presented to the committee. The committee learned that the draft proposal conflicts with provisions of TINCUP and state laws that would make it unworkable or unconstitutional. Committee members have also identified unintended County operational consequences if implemented. With a provision to require the Grand Jurors Association of Orange County to essentially control a mandatory step in the selection process of the members of an ethics commission, County Counsel has also advised that the County cannot require a private, non-governmental organization (that requires its members to pay dues) to do what is required in the proposal.

As a committee, we accomplished a significant amount of work in the 60 days we were allotted. However, given additional time we are confident that we would be able to:

- More thoroughly identify the appropriate goals in order to enhance the public trust that their County government is indeed operating ethically, transparently, and with accountability
- Continue to advise the Board on the need to improve policy and support for the implementation of the County Campaign Reform Ordinance, the County Gift Ban Ordinance, the County Lobbyist Registration Ordinance, and the County Code of Ethics and Commitment to Public Service.

Again, we want to thank you for the opportunity to serve the Board and our community.

Sincerely,

Chris Nguyen
Chairman
Third District

Brian Probolsky
Vice Chairman
First District

Joel Angeles
Second District

Denis Bilodeau
Fourth District

Paul Walters
Fifth District

Definitions

The following items will be referred to repeatedly throughout the report:

- **Assembly Bill 910** – AB 910 (Harper) is a bill pending in the State Legislature that will permit the County to contract with the FPPC
- **FEC** – Federal Election Commission
- **FPPC** – California Fair Political Practices Commission, widely cited as the state’s ethics commission
- **Measure E** – November 2014 County ballot measure authorizing the County to contract with the FPPC for local enforcement, which 57.5% of voters approved
- **TINCUP** – “Time is Now, Clean Up Politics” is the 1978 Orange County Campaign Reform Ordinance

List of Documents Studied by the Committee

The Committee reviewed the following documents:

- Assembly Bill 910 by Assembly Member Matthew Harper
- City of Los Angeles Ethics Ordinance
- City of San Diego Ethics Ordinance
- City and County of San Francisco Ethics Ordinance
- City of San Jose Ethics Ordinance
- County of Kern Ethics Ordinance
- County of Ventura Ethics Ordinance
- “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement” by the 2013-14 Orange County Grand Jury, and County of Orange Official Responses to the Grand Jury
- Measure E of 2014 – Full Text, Impartial Analysis by County Counsel, Ballot Arguments in Favor and Against
- Orange County Code of Ethics
- Orange County Gift Ban Ordinance
- Orange County Lobbyist Registration Ordinance
- Proposal for an Orange County Ethics Commission by Shirley Grindle, et al. (July 15 Version)
- Proposal for an Orange County Campaign Finance and Ethics Commission by Shirley Grindle, et al. (August 22 Version)
- TINCUP – Orange County Campaign Reform Ordinance of 1978
- “Understanding the Role of Ethics Commissions” by the Institute for Local Government

List of Individuals Providing Testimony

The Committee thanks the following individuals for providing their testimony. They are in alphabetical order:

- **Shirley Grindle**, Author of TINCUP
- **Matthew Harper**, California State Assembly Member for the 74th District, which consists of Costa Mesa, Newport Beach, Laguna Beach, Laguna Woods, the southwestern 1/3 of Irvine, and the southern half of Huntington Beach
- **Heather Holt**, Executive Director of the Los Angeles City Ethics Commission
- **Neal Kelley**, Orange County Registrar of Voters
- **Mario Mainero**, Professor at the Dale E. Fowler School of Law at Chapman University
- **Bill Mitchell**, former Chairman of Orange County Common Cause
- **John Moohr**, President of the Grand Jurors Association of Orange County
- **Martha Perego**, Director of Ethics at the International City/County Management Association
- **Dan Schnur**, former California Fair Political Practices Commission Chairman appointed by Governor Arnold Schwarzenegger, now the Director of the Jesse M. Unruh Institute of Politics at the University of Southern California
- **David Tristan**, Deputy Executive Director of the Los Angeles City Ethics Commission
- **Darryl Wold**, former Federal Election Commission Chairman appointed by President Bill Clinton, now an elections law attorney
- **Gary Winuk**, former Chief of the Enforcement Division of the California Fair Political Practices Commission, now an elections law attorney

Staffing Support for Committee

The Committee gives its appreciation to County Counsel Leon Page, Deputy Clerk of the Board Jamie Ross, and Director of Government and Community Relations Cymantha Atkinson for their diligence as the lead staff for the offices of County Counsel, Clerk of the Board, and the County Executive Office in working with the Committee throughout the hearings.

The Committee also thanks Deputy County Counsel Angie Daftary, Deputy Clerk of the Board Maria Lopez, and the Public Information Manager Jean Pasco for their assistance at the Committee's hearings.

Testimony from Chapman Law School Professor Mario Mainero, Proponent of an Orange County Campaign Finance and Ethics Commission

Chapman Law School Professor Mainero provided public comment to the Committee on July 28, previewing the formal testimony of the proponents of an Orange County Campaign Finance and Ethics Commission on August 18.

Professor Mainero stated there are enough ethics rules already, and that there needs to be enforcement. He stated the FPPC does not have time to look at Orange County. Professor Mainero stated the District Attorney has said he would not enforce it. He stated the District Attorney is an elected official and whoever is the occupant of the office in the future is likely a member of the dominant political party in Orange County.

Professor Mainero stated (at the time) the proposal has the Grand Jurors Association, which is composed of retired grand jurors, who would make nominations to the Board of Supervisors.

Professor Mainero stated the proposal has a balance of enforcement and fairness. He stated the early stages of investigations are confidential. He stated the proposal has a probable cause hearing. He stated the proposal includes training and seminars. He stated the proposal has whistleblower protection. He stated he was referencing the July 15 version of the proposal (the most recent at the time).

In response to a question from the committee for a specific example of the District Attorney stating his refusal to enforce TINCUP, Professor Mainero did not provide a specific example but stated the District Attorney has made such statements repeatedly and that the enforcement record proves it.

In response to a question from the committee, Professor Mainero stated the jurisdiction of the commission (at the time) would include the County Code of Ethics, including human resources issues that would have prevented situations like the Carlos Bustamante case.

Testimony from former Federal Election Commission Chairman Darryl Wold

Current elections law attorney and former Federal Election Commission (FEC) Chairman Darryl Wold provided public comment to the Committee on August 6, ahead of his formal testimony on August 18.

Chairman Wold had signed the ballot argument in favor of Measure E. He urged that the County continue to pursue voter-approved Measure E and AB 910 in order to allow the County to contract with the FPPC for local enforcement. He cited:

- **Cost** – The FPPC would be an inexpensive option
- **Limited Scope** – The FPPC contract will have a clear and specific scope that would outline
- **Solving Two Shortcomings of TINCUP**
 - TINCUP provides for no body providing advice or opinions on TINCUP
 - Only incumbents can get advice for TINCUP via County Counsel
 - Non-incumbents must hire private counsel
 - The FPPC has an advice division, and its formal advice can be used as an absolute defense in enforcement actions
 - TINCUP's sole enforcement mechanism is the District Attorney
 - The FPPC provides administrative enforcement

Chairman Wold warned that there are two critical questions that need to be asked:

- Are the rules necessary to address problems?
- Are the rules simply being created for the sake of creating rules?

He noted that there are 93 pages of rules in the FEC regulation book, and there are another 270 pages of interpretive rules in small dense type. He noted that having these voluminous rules and interpretations require candidates to hire elections attorneys like him. He stated that local campaigns cannot afford attorneys the way that better-funded federal campaigns can for FEC rules.

Chairman Wold warned that a new agency would cost a fortune. He sees no compelling need for a large bureaucracy.

Discussing the Grand Jury reports, Chairman Wold pointed out that virtually none of the criminal incidents cited by the Grand Jury report would have been covered by an Ethics Commission. He reminded the committee that those incidents became known because they were criminally prosecuted, and the perpetrators convicted.

In response to a question from the committee about whether the FPPC would need additional subpoena power, Chairman Wold stated that he believed it would not need any additional subpoena power.

Testimony from Assembly Member Matthew Harper

On August 11, Assembly Member Matthew Harper gave a broad discussion of AB 910, the bill he introduced after the passage of Measure E. Assembly Member Travis Allen and Senator Patricia Bates are coauthors of the bill. AB 910 in its current form would allow any city or county to contract with the FPPC for local enforcement if the City Council or County Board of Supervisors or the voters approved such a contract.

Assembly Member Harper stated his intention to amend AB 910 to narrow it to permit the County of Orange to contract with the FPPC for local enforcement, rather than attempting to give a blanket authorization to all cities and counties. He stated his belief that these amendments would enable passage of the bill, citing AB 1083 (Eggman), which would authorize the City of Stockton to contract with the FPPC for local enforcement.

AB 1083 (Eggman) was approved unanimously in the Senate and received only one dissenting vote in the Assembly, which happened to be Assembly Elections and Redistricting Committee Chairman Sebastian Ridley-Thomas.

(The day after Assembly Member Harper provided this testimony, Governor Brown signed AB 1083 into law.)

It is Assembly Member Harper's belief that narrowing AB 910 to cover only Orange County would enable the bill's passage.

Testimony from Proponents of an Orange County Campaign Finance and Ethics Commission (TINCUP Author Shirley Grindle and former Orange County Common Cause Chairman Bill Mitchell)

TINCUP Author Shirley Grindle and former Orange County Common Cause Chairman Bill Mitchell provided their testimony to the committee on August 18.

Ms. Grindle stated the FPPC does a good job if people are willing to wait 3-5 years. She feels the FPPC does an inadequate job of tracking donors. She stated that every ethics commission has subpoena powers, with the Los Angeles City Ethics Commission gaining their subpoena power via a City Charter amendment. She stated Supervisor Shawn Nelson went through their proposal line-by-line before the July 15 draft of the Ethics Commission proposal.

Mr. Mitchell stated that oversight and accountability is critical. He noted that while Ms. Grindle provides oversight of TINCUP, no one else does, and there is no enforcement of the other three County ethics ordinances (the Gift Ban, the Lobbyist Registration Ordinance, and the Code of Ethics). He stated their proposal had an appointment process of Ethics Commissioners similar to Measure M.

Their proposal has the Ethics Commission receiving reports, conducting investigations, and issuing subpoena powers, which Mr. Mitchell said is similar to other ethics commissions. He stated that there is a procedure that follows the steps of

- Complaints
- Investigations
- Confidential remedies
- Public hearings

Ms. Grindle stated there have been 600 violations of TINCUP since 1978, and 95% of them were inadvertent excess contributions that were resolved quietly.

Mr. Mitchell stated that perhaps “Orange County Elections and Officeholders Commission” may be a better name for the proposal.

In response to a question from the committee, Mr. Mitchell stated that enforcement of the four ordinances would be dependent on data and complaints.

In response to a question from the committee, Mr. Mitchell stated that there are five behaviors covered in the Code of Ethics that are not Human Resources issues, namely:

- Special consideration by officials
- Use of County property
- Financial conflicts of interests
- Political activity

- Revolving door

He stated specific exclusions could be built in to ensure the commission did not cross into Human Resources issues.

In response to a question from the committee, Ms. Grindle stated that there have been no examples of violations of the Lobbyist Registration Ordinance, three inadvertent violations of the Gift Ban, and numerous violations of TINCUP. She gave the example of a \$30,000 fine from the FPPC years later for unsuccessful supervisorial candidate Kermit Marsh not closing his committee or filing post-election Form 460s. She also stated that Supervisor Chris Norby's treasurer took six months to fill in occupation and employer information on his Form 460. She also stated that she reported money laundering by Sheriff-Coroner Mike Carona to the District Attorney's office but was ignored, and she states restitution has still not been made on the laundered money. Mr. Mitchell noted that without Ms. Grindle, those people would have gotten away with their violations.

In response to a question from the committee about the FPPC catching Mr. Marsh and the federal government catching Mr. Carona, along with candidates being investigated by opponents, Mr. Mitchell argued that it should not be left to opponents to investigate.

In response to a question from the committee about violations of the revolving door rule, Ms. Grindle cited that Supervisor Harriett Wieder violated the revolving door rule, but the County Supervisors Wieder attempted to lobby stopped her from lobbying them.

In response to a question from the committee, Mr. Mitchell stated that he was aware of one County Ethics Commission (San Francisco). He noted three cities with Ethics Commissions dominated their counties, name Los Angeles, San Diego, and San Jose. He stated that most counties do not have County campaign finance ordinances, gift bans, or lobbyist registration.

In response to a question from the committee, Ms. Grindle stated that the idea of the Grand Jurors Association screening applicants came from the Measure M Oversight Committee. She also stated the demographic breakdown of the association was irrelevant.

In response to a question from the committee, Ms. Grindle stated borrowing the State Redistricting Committee's structure of allowing elected officials to strike some applicants from the list of potential appointees was too cumbersome.

In response to a question from the committee, Mr. Mitchell confirmed that training, advice, and confidentiality were a part of the proposal. He stated that breaching confidentiality would be sufficient grounds for removal of an Ethics Commissioner or termination of an Ethics Commission employee.

In response to a question from the committee, Ms. Grindle stated the rationale of having the names randomly drawn from a pool was to prevent an accusation of partiality for the elected officials.

In response to a question from the committee, Mr. Mitchell stated the budget of the proposal is smaller than in other jurisdictions due to a reduced breadth of things covered. Ms. Grindle stated it would be approximately \$300,000 with a possible part-time Executive Director in the first year.

In response to a question from the committee, Mr. Mitchell stated that if a remedial measure were not possible for a violation, then the violation would go to the Ethics Commission.

In response to a question from the committee, Ms. Grindle and Mr. Mitchell stated that if a gift violation was discovered 31 days after the gift's receipt, the Executive Director would be able to offer a remedial measure of returning the gift within 15 days of notification of the remedial measure.

Testimony from former State Fair Political Practices Commission Chairman Dan Schnur

Former California Fair Political Practices Commission (FPPC) Chairman Dan Schnur provided his testimony on August 18 as both a former FPPC Chairman and as a political practitioner.

Chairman Schnur stated that people are more cynical of government and that discussions are not over whether but rather over how to oversee ethics. He stated it was unfair to politicians to ask them to oversee campaign finance.

Chairman Schnur stated that the primary focus of ethics oversight discussions has generally focused on enforcement, but warned that enforcement only is the wrong way to handle ethics oversight. He pointed to the structure of the FPPC's divisions to show all the key areas of ethics oversight:

- Enforcement
- Legislative
- Technical Assistance (Guidance/Advice/Training)

Chairman Schnur also discussed the areas of ethics oversight that fall under the FPPC's jurisdiction:

- Gifts
- Lobbying
- Outside employment
- Form 700/Financial disclosures
- Campaign finance

In response to a question from the committee on his approach of publicizing investigations and allegations, Chairman Schnur responded that there were no proactive announcements at the beginning of investigations before Chairman Schnur took the helm of the FPPC. He said it could be weeks, months, or even years before an investigation was completed. As a campaign practitioner, he realized that there would be no repercussions until after the election if a campaign decided to violate ethics rules just a few weeks before the election. Chairman Schnur stated that by announcing investigations at their commencement, it would deter campaigns from committing late violations. He stated he disagreed that this violated the notion of innocent-until-proven-guilty, as the District Attorney publicly indicts criminals. (Chairman Schnur's approach was reversed by his successor as FPPC Chair, Ann Ravel, who has since left the FPPC to join the FEC, where she is now Chair).

In response to a question from the committee on how the FPPC decided to pursue investigations, Chairman Schnur stated that currently, staff investigations are not public, and they only become public after the staff escalates to the commissioners collectively. He stated the FPPC is obligated to investigate even when an opponent files a complaint. Chairman Schnur also said the FPPC

does acknowledge/confirm investigations; in a prior era, they did not. He felt this would level the playing field for those who follow ethics rules against those who break ethics rules.

In response to a question from the committee about what he was proudest of from his tenure at the FPPC and his greatest regret from his time there, Chairman Schnur said they were actually the same item. The California Political Reform Act had not had a comprehensive look since its creation in 1978, with amendments only coming piecemeal. During his tenure at the FPPC, Chairman Schnur formed a committee to examine the Political Reform Act. That committee recommended simplification of the Political Reform Act and better incorporation of modern technology that simply did not exist in 1978. He was proud of getting the amendments passed, but he regretted that he was not there to implement them, as he had been replaced by a new Chair, who was charged with implementation.

Chairman Schnur stated that County Clerks had been frustrated by Sacramento passing laws without consulting local governments, and Chairman Schnur tried to remind Sacramento that local governments were partners, not subjects, of the state government.

In response to a question from the committee about San Bernardino County, Chairman Schnur believes San Bernardino County made the right choice for San Bernardino County in pursuing a contract with the FPPC. San Bernardino County had consulted with Chairman Schnur when deciding on whether to form a local ethics commission or to contract with the FPPC, including advising them on how to set up a model.

In response to a question from the committee about accidental versus intentional violations, Chairman Schnur stated that the strength of both the FPPC and the Los Angeles City Ethics Commission is that they speak to both complainants and complainees to ascertain whether a violation was accidental or intentional.

In response to a question from the committee about the role of social media in campaigns, Chairman Schnur stated that social media had not been contemplated by the Political Reform Act when it was crafted in 1978.

In response to a question from the committee about the composition of the FPPC, Chairman Schnur responded that the Political Reform Act lays out a 3-2 partisan split. He noted that Governor Jerry Brown (the present Governor and also the author of the original Political Reform Act) appointed Commissioners who were not as aggressive as those appointed by Governor Arnold Schwarzenegger.

In response to a question from the committee about the effect of party affiliation on the commissioners, Chairman Schnur said that each commissioner must answer for himself or herself, but he always left his party affiliation out of the room.

Testimony from former Federal Election Commission Chairman Darryl Wold

Former Federal Election Commission (FEC) Chairman Darryl Wold provided his testimony on August 18 based on his experiences as a former FEC Chairman and a current elections law attorney. He noted that Chairman Schnur had stolen his thunder while describing the functions of the FPPC.

Chairman Wold stated that the best improvement to TINCUP would be to include an advice function to allow those who want to comply with TINCUP the ability to obtain information on how to do so. He stated the next best improvement would be consistent improvement of TINCUP.

Chairman Wold urged the County to contract with the FPPC, which the voters approved via Measure E less than one year ago. He urged the County to strongly back AB 910 (Harper), the enabling legislation for a contract between the FPPC and the County, as desired by Measure E.

Chairman Wold asked why a new commission should be set up when an FPPC contract would be able to perform the same functions. He warned that a new commission could grow, just like every government agency. He stated the County gift ban and lobbyist registration ordinances could both be rolled into an FPPC contract since the FPPC has the expertise to perform these functions, as State gift limitations and State lobbyist registration both exist currently in the Political Reform Act.

Chairman Wold said that ultimately, ethics is the responsibility of the voters, and that turning ethics rules into detailed regulations would give a false sense of complacency to voters. He stated that voter vigilance is best combined with criminal prosecution.

In response to a question from the committee about enforcement timelines, Chairman Wold said enforcement timelines at any agency would vary greatly depending on the complexity of the allegation being investigated. There are various procedural steps related to notification, investigation, and hearings. He stated it was critical to protect due process rights.

In response to a question from the committee about confidentiality of complaints at the FEC as compared to the FPPC, Chairman Wold stated that confidentiality is protected at the FEC, and while there was still a strong penalty for violating confidentiality, it is not as harsh as the penalty by the Los Angeles City Ethics Commission (termination from the commission).

In response to a question from the committee about the appointment process, Chairman Wold explained that the FEC has six commissioners, and no more than three members of any political party could be on the commission. Each commissioner is appointed by the President of the United States with the consent of the United States Senate. The President has traditionally consulted with the other party's leader in the Senate when nominating an appointee of the

opposite party. For example, Chairman Wold was appointed by President Bill Clinton on recommendation of Senate Majority Leader Trent Lott.

In response to a question from the committee about whether having an even number of commissioners drove consensus, Chairman Wold said it very much did so, encouraging discussion. He stated when he was Chairman, only 5% of votes deadlocked in a tie, though that figure is now 15%. He also noted that a tie was a decision in and of itself.

Testimony from Los Angeles City Ethics Commission Executive Director Heather Holt and Deputy Executive Director David Tristan

Los Angeles City Ethics Commission Executive Director Heather Holt and Deputy Executive Director David Tristan provided their testimony to the committee on September 3. (Their PowerPoint is included.) Mr. Tristan was the second employee hired upon creation of the Los Angeles City Ethics Commission in 1990.

Ms. Holt and Mr. Tristan stated that the process of appointment for the Los Angeles City Ethics Commission works well, with five different elected officials each only getting one appointee, and the five appointees have staggered, five-year terms. (The five appointing authorities are the Mayor, City Council President, City Council President Pro Tem, City Attorney, and City Controller). No one elected official or elected body is able to gain control due to this appointment structure. Ms. Holt and Mr. Tristan noted this process provides transparency and accountability. Since each Ethics Commissioner has a clear appointer, it is clear to the public and the media who made the appointment, and the Ethics Commissioners felt obligated to hold their appointers to the highest standards.

Ms. Holt and Mr. Tristan stated that the Los Angeles City Ethics Commission had 31 full-time employees at its peak, but even at 31, there were still not enough to do all the work of their mandate (there are currently 23). They also stated that having Ethics Commission employees be exempt from civil service is vital.

The current operating budget of the Los Angeles City Ethics Commission is \$2.9 million for FY 2015-16; the budget is approved annually by the Mayor and City Council. There is also \$250,000 in mandatory funding for a special prosecutor.

Part of the duties of the Los Angeles City Ethics Commission includes administering public matching funds for campaigns (i.e. taxpayer money is provided to campaigns that meet certain thresholds), and the Matching Funds Trust Fund balance is currently at \$8.3 million.

Lobbying entities, bidders/subcontractors of \$100,000+, and ethics commissioners themselves are prohibited from contributing to campaigns under the Ethics Commission's jurisdiction.

Ms. Holt and Mr. Tristan stated that the Los Angeles City Ethics Commission has jurisdiction over City officeholder accounts, but they only have jurisdiction over Los Angeles Unified School District only during elections.

The Los Angeles City Ethics Commission provides training in person in group settings or online for individual settings. Ms. Holt and Mr. Tristan stated there are 20,000 advice contacts each year for the commission. Formal advice becomes public while informal advice remains confidential.

In addition to the state conflict of interest form, the Form 700, the Los Angeles City Ethics Commission also prescribes an additional form that goes into greater detail than the Form 700, which they call the Form 60.

Ms. Holt and Mr. Tristan stated that the Los Angeles City Ethics Commission conducts audits of campaign finance paperwork, and as of September 3, 2015, they were still auditing 2013 campaign finance filings (elections are in odd years in Los Angeles).

Ms. Holt and Mr. Tristan stated the statute of limitations for items under the Commission's jurisdiction is four years, but it is tolled in cases of concealment or deceit.

Ms. Holt and Mr. Tristan noted that while the Los Angeles City Ethics Commission has the power to go to court, they have never utilized it, instead opting to use the administrative route instead.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that Commissioners do recuse themselves when their appointer is involved, but actual investigations are led by the staff before they ever reach the Commission.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that audit results are not provided to Commissioners; when wrongdoing is found, then Commissioners are apprised.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that a stipend for an Ethics Commission could work, as could a volunteer commission. They suggested that a full-time Ethics Commission would have jurisdictional issues, though perhaps, the Chair could serve as Executive Director.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Council has the legal authority to largely defund the Commission, leaving in place only funding for the Executive Director and Director of Enforcement. Additionally, the Council must fund a special prosecutor.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that the size of their staff was necessary to act on its responsibilities in a timely fashion.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that the Los Angeles City Council decided to impose the \$100,000 contract threshold for bidders/subcontractors to be banned from making contributions. The Los Angeles City Commission did not pick the threshold.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that lobbyist registration fees totaled \$250,000 per year, but all of it goes to the General Fund, not the Los Angeles City Ethics Commission budget.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that the penalty for violating the Los Angeles City Ethics Commission's confidentiality rules is termination, but there had only been one violation ever. They said the exemption from civil service is critical in order to enforce this provision. They said people outside the Commission are often frustrated by the lack of transparency, but they stated it was necessary to protect the rights of the accused.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that persons making inquiries for advice have not led to investigations, as advice and investigations are on different tracks. However, in extraordinary circumstances, that could occur.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that certain documents can be made public, but most of the file remains confidential after an investigation. The summary of facts is the only document that becomes public in a stipulated case. If a public hearing is held, all relevant documents are made public.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that when the Los Angeles City Ethics Commission turns a matter over to law enforcement, the Ethics Commission still exercises joint jurisdiction with the law enforcement agency, and the Ethics Commission remains the lead agency in the investigations. Public disclosure in these cases occur only by court order. The Ethics Commission continues its administrative actions even if criminal charges are filed.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated in situations where the entire Ethics Commission has to recuse itself, such as when Ethics Commission Chair Gil Garcetti was subject to an enforcement action for making a campaign contribution to his son's mayoral campaign, then the Board of Reserved Powers acts. The Los Angeles City Board of Reserved Powers is a committee of five City Councilmembers.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that at one point due to budget cuts, the Los Angeles City Ethics Commission was reduced to 17 employees, which resulted in slower audits, and reduced analysis of regulatory changes. They stated that filings, advice, and outreach were the most critical. They increased the number of auditors to eight in order to comply with a request from Garcetti to complete audits within one year.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that audits begin August of each election year (i.e. after the primary election but before the general election).

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that the Los Angeles City Ethics Commission oversees 90 committee and 60 candidates, with independent expenditure committee audit separately.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the subpoena power is used to obtain records from banks if a candidate has claimed to have lost bank records. The subpoenas are used not just for campaigns, but also employee's conflicts of interests and lobbyist information. The subpoena power is used primarily to obtain records from banks.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission uses its own subpoena power, rather than utilizing the District Attorney or the Los Angeles Police Department's subpoena power because the Ethics Commission is often the lead agency, and having its own subpoena power gives it greater agility.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission has eight employees who work on providing advice, but they also conduct trainings, work on legislation, and handle filings. The Ethics Commission does a lot of cross-work. Even Mr. Tristan provides advice on a regular basis.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission has peak times for providing advice around elections, Form 700 filing deadlines, and the end of the Fiscal Year (when people leave and have questions about revolving door regulations).

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission requires disclosure in social media communications, including designation of official candidate social media accounts. They stated no one has ever failed to file intentionally, and all have quickly filed when asked to cure a violation.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission conducts investigations even when there is a frivolous or a false allegation from an opponent, but they neither confirm nor deny the existence of investigations, so there is little political gain from a scurrilous accusation.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated their audits have found a drastically reduced rate of errors due to better training. The vast majority of audits (in excess of 80%) are a clean bill of health. Typical errors involve excess contributions and failing to provide the Ethics Commission with copies of campaign contributions (mailings, commercials, etc.). The most interesting cases tend to be those surrounding those actors who attempt to push the envelope. They noted one instance where a \$50,000 fine was imposed on a person who faked invoices. A \$90,000 fine was imposed when a candidate claimed 150 false contributions (including from dead people) in order to reach the threshold necessary to obtain matching funds.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission has found that though there are challenges, there have been surprisingly high compliance rates in the digital age with few masking their identities. The Ethics

Commission has not had to shut down non-compliant web sites because the web sites have disappeared on their own once an investigation is initiated.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission staff was not responsible for the voter lottery proposal; it was a proposal of the Commission Chair. This proposal was outside the Commission's jurisdiction. The only tie-in was that some of the matching funds administered by the Commission would be used for the jackpot in the voter lottery.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated they recommend that the Charter and any other items that need voter approval be skeletal in regard to the Ethics Commission. They urged that the vast majority of the governing documents be in easily changed regulations and ordinances that could be changed by the Ethics Commission itself or the legislative body (i.e. the City Council or the County Board of Supervisors). With the frequency of their need to change items in the regulations and ordinances, they could have been hampered or even blocked by needing to go back to the voters.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission staff are in the unique state of being simultaneously at-will and unionized.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commissioners are eligible for reimbursement of expenses incurred in their duties, and they are eligible for \$50 meeting stipends, but the Ethics Commissioners have traditionally waived the reimbursements and stipends.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission can compel people to answer questions by subpoena. They did not recall an instance of someone declining to answer based on their Fifth Amendment right against self-incrimination. If someone took the Fifth, the Commission could theoretically fine them, but neither could recall an instance of someone taking the Fifth.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated advice provided by the Los Angeles City Ethics Commission was informal 99.5% of the time, with only an infinitesimally small 0.5% of advice being formal.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated audits by the Los Angeles City Ethics Commission include obtaining copies of expenditure, communications, and contribution documents.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Charter provisions relating to the Ethics Commission have had to be amended twice since its creation, once to modify lobbying rules and once to add the Los Angeles Unified School

District to the Ethics Commission's jurisdiction (unlike County charters, City charters can govern local school districts). They stated that the ordinances were changed very frequently.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission started off with 3 staff the first year, grew to 8 staff the second year, and then stabilized at 12 staff for a number of years.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission's thresholds for social media becoming activity within the Commission's jurisdiction were once distribution was sent to 200 or more people. They stated Internet Service Providers had to be subpoenaed by the Ethics Commission regarding Internet Protocol (IP) addresses, once each in 2013 and 2015.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission stated that sophistication of the communicator can be a mitigating factor for inadvertent violations of ethics rules, such as in the scenario of an enthusiastic supporter of a candidate who passes out a home-made flyer to 500 neighbors.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission has never had a challenge on constitutional grounds in court, though they did have one case dropped that was mooted by a change in federal law.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated there has never been an issue with a religious organization engaging in political activity, as all of these entities have complied with Los Angeles ethics rules.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission staff has 20 people dealing with issues involving elected officials and campaigns and 3 staff dealing with issues related to the 35,000 employees of the City of Los Angeles.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated they were unfamiliar with the 1995 United States Supreme Court case of *McIntyre v. Ohio Elections Commission*, in which the Court ruled that anonymous flyers could not be banned without violating the First Amendment to the United States Constitution.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission exercises jurisdiction over committees that spend \$200 or more dollars or have contributions of \$200 or more dollars while the state threshold is \$1,000. The threshold of distribution to 200 or more people was added by the Ethics Commission in recognition of the lower cost of technology.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the purpose of filing campaign communications at the Los Angeles City Ethics Commission is to have a central

repository of these materials and enhance/ensure compliance with the disclaimer requirement. Campaign communications of losing candidates is retained for seven years; campaign communications of winning candidates is retained indefinitely. All campaign contributions since 2001 are online. For changes of mail, substantial compliance is the standard in determining whether a subsequent piece of literature needs to be filed with the Ethics Commission (e.g. fixing a typo in a second mailing or changing “that” to “which” would not require a piece of literature to be filed while changing “Republican” to “Democrat” would require a piece to be filed).

In response to a question from the committee, Ms. Holt and Mr. Tristan stated that informal, oral advice does not provide safe harbor from an enforcement action of the Los Angeles City Ethics Commission; only formal, written advice provides safe harbor.

In response to a question from the committee, Ms. Holt and Mr. Tristan stated the Los Angeles City Ethics Commission has little overhead expenses outside of personnel costs and computer server fees, as there is no rent since they are housed in City Hall.

Testimony from Gary Winuk, former Chief of the Enforcement Division of the State Fair Political Practices Commission

Attorney Gary Winuk, former Chief of the Enforcement Division of the California Fair Political Practices Commission, provided his testimony on September 15.

Mr. Winuk said he has experience advising various entities about ethics oversight. He stated that he was working with the City of Sacramento on the creation of their ethics commission and that the City Council was due to vote on the proposal the evening of September 15 (the City Council did approve the creation of a Sacramento City Ethics Commission that evening).

Mr. Winuk stated that San Bernardino County was the first to approach the FPPC. He stated the legislation enabling a contract between the County of San Bernardino and the FPPC was permissive not mandatory. He stated the contract includes:

- Advice/training
- Investigation/enforcement
- Pre-election audits

Mr. Winuk stated the FPPC wants to tread lightly before elections because of false charges. Winuk decreased false charges by turning them around within 24-48 hours.

Mr. Winuk stated the audits in San Bernardino County found errors and more egregious items such as large cash donations. He stated the contract used fewer hours than expected due to the small number of campaigns involved. He stated the contract that has a minimum floor amount.

Mr. Winuk stated the FPPC has 9 investigations, 4 auditors, and 9 attorneys. He stated there are 1,800 complaints annually, with 1,300 investigations, resulting in 700 warnings and 200-250 convictions. He stated approximately 500,000 people fall under the jurisdiction of the California Political Reform Act.

Mr. Winuk stated the number of experts in the field of elections laws was minimal, giving the example of less than 50 attorneys in the audience at a speech he gave to the California Political Attorneys Association, and only a handful of them would be considered experts.

Mr. Winuk stated he has official contracts to consult with the ethics commissions of the Cities of Oakland and San Diego. He stated he unofficially works with all five local ethics commissions. He stated in San Diego, the City Council recommends nominations to the Mayor on appointments of ethics commissioners. He stated Chula Vista has a panel of city managers select ethics commissioners.

Mr. Winuk stated independence of any ethics oversight body is key, as is its investigatory power. He stated Los Angeles has very robust investigations. He stated San Francisco has a smaller investigative arm than Los Angeles. He stated San Diego has one investigator, one auditor, one

attorney, one advice person, and the executive director. He stated Chula Vista uses outside counsel for the ethics commission. He stated San Jose has no dedicated ethics commission staff, instead relying on staff of the City Clerk and outside investigators; he also stated San Jose has its Ethics Commissioners leading investigations, which he stated was concerning from a due process standpoint.

Mr. Winuk stated the Sacramento City Ethics Commission proposal has a five-member commission with one staff investigator.

Mr. Winuk stated the Oakland Ethics Commission had a ballot measure to expand its staff from one to three.

Mr. Winuk stated some commissions cover only campaign finance, but most include other governmental ethics items.

In response to a question from the committee, Mr. Winuk stated the San Bernardino County contract with the FPPC spent less than \$50,000 in its first year, making it difficult to pay staff, so the FPPC had to absorb further expenses, and the contract now has a floor.

In response to a question from the committee, Mr. Winuk stated the FPPC could require filing bank statements but does not do so on a regular basis due to a mountain of paperwork. As an aside, he noted there is a proposed statewide ballot measure to fund the Cal-Access, the Secretary of State's online campaign finance and lobbying database.

In response to a question from the committee, Mr. Winuk stated there is no problem for the FPPC having commissioners appointed by elected officials due to their fixed terms and the partisan affiliation requirements in the Political Reform Act. He stated there was no partisanship from the commissioners during his tenure at the FPPC. He stated having two constitutional law professors, one liberal and one conservative, on the commission at one point helped bring fresh perspectives and thorough analyses to the FPPC. He stated having non-qualified people on the commission was an occasional problem. He noted the importance of having qualified people serving on any ethics oversight body.

In response to a question from the committee, Mr. Winuk stated the FPPC regulated social media before the Los Angeles City Ethics Commission did. He stated the FPPC regulations recognized how the technology worked. As an example, he noted the FPPC did not require a disclaimer on tweets due to character limits since in some cases the disclaimer would take up the entire tweet, instead requiring links to disclaimers since the links would not eat up Twitter's character limits. He stated there was a struggle in balancing whether a blogger was a paid blogger or an individual exercising his or her First Amendment rights.

In response to a question from the committee, Mr. Winuk stated there has not necessarily been a decline in violations with new rules, and that rules are complicated due to bad actors seeking loopholes.

In response to a question from the committee, Mr. Winuk stated he was uncertain about the stalling of AB 910 (Harper), as the Legislature is a mysterious place. He stated the Legislature claimed it needed more information on the status of San Bernardino County's FPPC contract, yet at the same, AB 1083 (Eggman) was approved to allow a contract between the City of Stockton and the FPPC.

In response to a question from the committee, Mr. Winuk stated there were different levels of letters from the FPPC, such as advisory letters and warning letters. He stated warning letters could count as prior violations when enforcement actions were considered.

In response to a question from the committee, Mr. Winuk stated his tenure at the FPPC required more disclosure of complaints than in the past. He sought to quickly shut down false complaints, and his increased speed was effective in curtailing false complaints.

In response to a question from the committee, Mr. Winuk stated false complaints are easily disposed of as they are facially not violations or are easily verifiable. Before 2013, it was not possible to open an FPPC case on a candidate in the pre-election period, but legislation changed that effective in 2013. He stated until that legislative change, he did audits of candidates in pre-election periods as a temporary workaround.

In response to a question from the committee, Mr. Winuk stated that the FPPC's work was split about evenly between campaign finance issues and the Form 700 (financial conflicts of interest). He stated complex cases involved candidate coordination with independent expenditure committees.

In response to a question from the committee, Mr. Winuk stated there has been significant amounts of training and advice with San Bernardino County since enactment of their contract with the FPPC.

In response to a question from the committee, Mr. Winuk stated the FPPC could have enforced a different confidentiality standard with the San Bernardino County contract, but the County opted to adopt the same confidentiality standard as under the Political Reform Act.

Testimony from Grand Jurors Association of Orange County President John Moohr

Grand Jurors Association of Orange County President John Moohr provided his testimony on September 15.

Mr. Moohr stated the association is comprised of 125 former grand jurors who have quarterly lunches.

Mr. Moohr stated the association selects a five-person panel that vets applicants for the Measure M Oversight Committee. He stated the panel interviews and reads applications of applicants.

Mr. Moohr stated a straw poll of association members found 50% thought a hotline was needed.

In response to a question from the committee, Mr. Moohr stated that while association members are eligible for the Measure M oversight committee, none applied.

In response to a question from the committee, Mr. Moohr stated that instead of banning grand jurors from serving on an ethics commission, he suggested allowing grand jurors to be eligible after a certain period of time (perhaps 3-5 years) after leaving the grand jury.

In response to a question from the committee, Mr. Moohr stated that he joined the 2009-10 Grand Jury because wanted to help improve government and had heard about the experience from a friend who had served on a prior grand jury.

In response to a question from the committee, Mr. Moohr stated he only served on the Grand Jury once, but other grand jurors served multiple times.

In response to a question from the committee, Mr. Moohr stated that the first six months of membership in the Grand Jurors Association of Orange County are free, but dues are required after that.

In response to a question from the committee, Mr. Moohr stated the gender and age balance of the association is similar to the Grand Jury's: it is currently 60% men and 40% women as well as mostly senior citizens.

In response to a question from the committee, County Counsel Leon Page stated that the County compelling a private organization (like the Grand Jurors Association) to act could be challenged in Court.

In response to a question from the committee, County Counsel Leon Page stated that if the private organization backed out, the County could be in a jam; the organization would need to cooperate with the County.

In response to a question from the committee, Mr. Moohr stated that approximately 50% of former grand jurors join the Grand Jurors Association of Orange County. He stated it is a recruiting issue and hit nearly-crisis level the previous year.

In response to a question from the committee, Mr. Moohr stated the Grand Jurors Association Board is elected with a six-year term limit. The Board positions do not rotate, but many members are elected to new positions.

In response to a question from the committee, Mr. Moohr stated in addition to any criteria laid out by an Ethics Commission ordinance, the Grand Jurors Association would likely seek to ensure applicants have no hidden agenda, are independent, and have good moral character.

In response to a question from the committee, Mr. Moohr stated the Grand Jurors Association did not take demographic issues into account instead welcoming all former Grand Jurors.

Testimony from Orange County Registrar of Voters Neal Kelley

Orange County Registrar of Voters Neal Kelley provided his testimony on September 15.

Registrar Kelley stated that the California Elections Code, the California Political Reform Act, the California Government Code, FPPC Regulations, and the California Code of Regulations govern.

Registrar Kelley stated his office maintains a yearly log that tracks those required to file campaign finance reports, including candidates and ID numbers. He stated his office emails delinquent committees and candidates.

Registrar Kelley stated his office receives 30 forms on a regular basis, with 90% being one of the following four forms:

- Form 410 (Statement of Organization)
- Form 460 (Consolidated Campaign Disclosure Form)
- Form 470 (Officeholder/Candidate Campaign Statement)
- Form 501 (Candidate Intention Statement)

Registrar Kelley stated electronic PDFs have significantly helped efficiency, as people are able to download them and submit them, no longer needing to call his office to obtain them before filing. He said the most common use of Registrar campaign finance documents in the office now is people seeking to examine un-redacted documents. Documents are now online for County candidates dating back to 1968.

Registrar Kelley stated there are 25 mandatory electronic filers, as well as 15-20 optional electronic filers. He stated there are 500 total filers with his office, but he also serves as the filing officer for school districts and special districts, and these entities are not subject to County regulations.

Registrar Kelley stated his office issues two letters to those who are late, and if there is not compliance after two letters, then the issue is referred to the FPPC and District Attorney.

Registrar Kelley stated that there are chronic late filers. He stated his office's revenue from fines is \$2,500 per year. He stated he does have the ability to waive fines, which he does on a rare basis for financial hardship.

Registrar Kelley stated he can send requests for amendments to campaign finance forms but has no enforcement requirement.

Registrar Kelley stated his audits of campaign finance forms includes:

- Ensuring documents are filed
- Ensuring documents facially comply with filing requirements

- Ensuring there are no missing spots on forms

Registrar Kelley stated that under state law, his office is not allowed to check math or obtain outside documents as part of his office's audits of campaign finance forms.

Registrar Kelley stated his office finds 30-50 errors each election, which typically consist of numerical, date, or committee name errors.

Registrar Kelley stated approximately 80%-85% of campaigns comply with amendment requests. He stated under state law, he is the filing officer for the County, school districts, and special districts, but City Clerks are the filing officers for cities. Registrar Kelley stated there is permanent retention of County campaign finance reports and seven-year retention of school district campaign finance reports.

In response to a question from the committee, Registrar Kelley provided the following numbers for TINCUP candidates/committees:

Year	Contests	Candidates	Committees Filing Form 460s	Candidates Filing Form 470s
2006	11	22	14	8
2008	2	5	2	3
2010	11	26	22	4
2012	2	4	3	1
2014	11	27	25	2

In response to a question from the committee, Registrar Kelley provided the following numbers for all candidates/committees for which he is the filing officer:

Year	Committees Filing Form 460s	Candidates Filing Form 470s
2006	918	238
2008	901	321
2010	899	288
2012	767	316
2014	932	307

In response to a question from the committee, Registrar Kelley stated there would be no financial or resource savings for the Registrar.

In response to a question from the committee, Registrar Kelley stated that specific on-point case law limits the Registrar of Voters from seeking information to verify campaign finance reports or examine prior reports, so doing any of these would require amendments to state law. The Political Reform Act lists items that the filing officer is "not required" to do but has no specific authority to do either.

In response to a question from the committee, Registrar Kelley stated he has 1-2 full-time employees spending 98 hours to process Form 460s during filing periods, with an approximate cost of \$25,000-\$30,000.

In response to a question from the committee, Deputy County Counsel Angie Daftary stated that it was probably legal to require bank statements be filed with Form 460s, and Registrar Kelley said his office could handle the paperwork involved.

In response to a question from the committee, Registrar Kelley stated his office receives 10-12 complaints in every six-month period.

In response to a question from the committee, Registrar Kelley stated that the District Attorney enforcement actions are rare on these complaints.

**Testimony from International City/County Management Association Ethics Director
Martha Perego**

Martha Perego, Director of Ethics for the International City/County Management Association, provided her testimony on September 15.

Ms. Perego stated that the goal of her position and organization is to make local government ethical. She stated 86% of local governments have Codes of Ethics, and of those:

- 83% cover elected officials
- Approximately 65% cover appointed boards, commissions, and committees
- 79% cover staff
- 50% include training
- 51% have “as-needed” training (i.e. after a scandal)
- Most have enforcement from the city manager or the county administrative office
- 20% have local ethics commissions

Ms. Perego stated that ethics oversight needs to be broad and expansive. She stated it was important to create a culture of the highest ethical standards. She stated laws are very important, but the culture is more important. She stated elected officials, staff, and appointed boards, commissions, and committees need to be covered.

Ms. Perego stated that simply passing out a document on ethics is inadequate, as ethical values need to be set.

Ms. Perego stated training and good internal policies are necessary as are advice mechanisms. She stated California has strong ethics laws and a strong ethical culture.

Ms. Perego stated a whistleblowing/reporting needs to have confidentiality, multiple mechanisms, and safety/identity protection.

Ms. Perego stated that there needs to be compliance audits.

Ms. Perego stated that an Ethics Commission could be helpful by being separate from the internal function but it could be a negative because an Ethics Commission could be political.

In response to a question from the committee, Ms. Perego stated that there are four commonalities of most ethics oversight bodies:

- Appointment by elected officials
- Conflict of interest definitions (though she said this was less of an issue in California due to clear state laws on conflicts of interests)
- Gift laws/regulations
- Open meeting regulations

In response to a question from the committee, Ms. Perego stated advice is a critical and key part of compliance, as is confidential advice.

In response to a question from the committee, Ms. Perego stated there are several ways to avert frivolous complaints by opponents:

- Confidentiality
- Public censure
- Transparency to prevent disgruntled staff, elected officials, and the public
- Basic documentation requirements (blocks frivolous complaints)

In response to a question from the committee, Ms. Perego stated most ethics commissions are at the city level but did recall that Montgomery County, Maryland has a County ethics commission.

In response to a question from the committee, Ms. Perego pointed to the example of the Pittsburgh Ethics Commission as a politicized entity with poor funding for advice/training/investigations. She stated budgets can be cut and regulations curtailed if elected officials go after the Ethics Commission.

In response to a question from the committee, Ms. Perego stated mechanisms of enforcement for elected officials have been exclusively with fines, enforcement for employees are generally referral to human resources, and enforcement for appointed officials is typically removal.

	San Francisco City/County	Los Angeles City	San Diego City	San Jose City
Composition	5	5	7	5
Term	6 years Staggered Annually	5 years Staggered Annually	4 Years Staggered Biennially	4 Years Staggered Biennially
Term Limits	1 six- year term	1 five-year term	2 four-year terms	2 four-year terms
Selection process	Appointed by: Mayor Board of Supervisors City Attorney District Attorney Assessor	Appointed by: Mayor City Attorney Controller President of Council Pro Tem of Council	Appointed by 2/3rds vote of the City Council	Appointed by 2/3rds vote of the City Council
Qualification requirements	Mayor's appointee: Background in public records/public meetings City attorney's appointee: Background in public ethics law Assessor's appointee: Background in campaign finance law Two remaining appointees: Represent general public	Registered voter	Registered voter One member: Held elective public office in the past Two members: Lawyers No more than three from the same political party	Registered voter with familiarity with campaign laws One member: California attorney

	San Francisco City/County	Los Angeles City	San Diego City	San Jose City
Restrictions	<p>Can't hold public office or be an officer of a political party</p> <p>Can't be a city employee, registered lobbyist or campaign consultant</p> <p>Can't participate in a campaign for city office, a ballot measure or publicly endorse a candidate or ballot measure</p>	<p>Can't hold public office or participate in an election campaign</p> <p>Can't run for public office within two years of a commission decision concerning that office</p>	<p>Can't make a financial contribution to, or publicly support or oppose, a candidate for public office</p> <p>Must agree not to run for elective office for 12 months after serving as a commissioner</p>	<p>Can't have a direct and substantial financial interest in any business, work, or action by the city</p> <p>May not hold public office while a commissioner</p> <p>May not run for elective office for one year before or after serving on the commission</p> <p>May not endorse or work on behalf of any candidate while serving on the commission</p>
Enforcement procedures	<p>A comprehensive set of complaint procedures</p> <p>Investigations and preliminary consideration of complaints are confidential</p>	<p>A comprehensive set of complaint procedures</p> <p>Investigations and preliminary consideration of complaints are confidential</p> <p>Commission can request appointment of a special prosecutor for criminal enforcement if the city attorney is conflicted</p>	<p>A comprehensive set of complaint procedures</p> <p>Investigations and preliminary consideration of complaints are confidential</p>	<p>City council adopts by resolution the commission's complaint procedures</p>

	San Francisco City/County	Los Angeles City	San Diego City	San Jose City
Laws of jurisdiction	Campaign Finance Reform Ordinance; Campaign and Government Conduct Code; Prohibition of False Endorsement in Campaign Literature Ordinance; Lobbyist Registration Ordinance; Sunshine Ordinance (partial)	Campaign Finance Ordinance; Governmental Ethics Ordinance; Municipal Lobbying Ordinance; Post-Employment Ordinance	Election Campaign Control Ordinance; Citywide Ethics Ordinance; Municipal Lobbying Ordinance	Citywide Ethics Code (includes campaign finance, lobbying, revolving door and gift limitations)
Jurisdiction (Political offices)	Mayor Assessor-Recorder City Attorney District Attorney Public Defender Sheriff Treasurer Board of Supervisors (11) Board of Education (7) Community College Board (7) BART Board of Directors (3)	Mayor City Council (15) City Attorney City Controller Board of Education (7)	Mayor City Council (9) City Attorney	Mayor City Council (10)
Staffing	12	31	6	None
Annual budget (FY 2007)	\$1,382,441	\$2,600,000 This amount does not include employee benefits, rent and other operational costs.	\$1,021,106	No separate budget
Annual budget (Current FY)	\$3,927,460	\$2,703,856 This amount does not include employee benefits, rent and other operational costs.	\$991,862	No separate budget

	San Francisco City/County	Los Angeles City	San Diego City	San Jose City
Commission & Staff Relations	<p>Commission appoints and may remove the executive director at will</p> <p>Executive director has power to appoint and remove other commission employees</p> <p>City Attorney is the commission's legal advisor</p>	<p>Commission appoints and may remove the executive director at will</p> <p>Executive director has power to appoint and remove other commission employees</p> <p>City attorney is the commission's legal advisor; however, commission may employ or contract staff counsel on matters involving the conduct of the city attorney, his or her office, or his or her election campaign</p>	<p>Commission appoints the executive director, subject to confirmation by the city council</p> <p>Executive director serves at the pleasure of the commission</p>	<p>Committee meetings staffed by the office of the city clerk</p> <p>City council has authority to retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints filed with the commission. The city council must appropriate funds for this purpose</p> <p>City attorney provides legal advice but does not participate in investigations or review of complaints</p>
Duties and Responsibilities	Upon a 4/5 vote, commission may submit to voters any ordinance	Administers and implements laws concerning campaign finance,	Administers, monitors and enforces city-enacted laws	Monitors compliance with all city campaign and ethics laws
Subpoena Power	Yes	Yes	Yes	Yes
Advice Line with Safe Harbor	Yes	Yes	Yes	No
Confidentiality	Yes	Yes	No - the municipal code includes a prohibition against providing false evidence	Yes

Source: Institute for Local Government, sfcontroller.org, docs.sandiego.gov, ethics.lacity.org, and City of San Jose Resolution 76954

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 910

Introduced by Assembly Member Harper
(Coauthor: Assembly Member Travis Allen)
(Coauthor: Senator Bates)

February 26, 2015

An act to add and repeal Section 83123.7 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 910, as amended, Harper. Political Reform Act of 1974: local enforcement.

Existing law authorizes the Fair Political Practices Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance of the County of San Bernardino, as specified.

This bill would authorize the Commission and the ~~Board of Supervisors of the County of Orange~~ *governing body of any city, county, or city and county*, to also enter into such an agreement, ~~as specified. specified, if the governing body of the city, county, or city and county, or a majority of voters, approves the agreement.~~ The bill would require, if an agreement is entered into, that the Commission report specified information to the Legislature regarding the performance of that agreement on or before January 1, 2019. The bill would repeal its provisions on January 1, 2020.

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Orange.~~

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 83123.7 is added to the Government
2 Code, to read:
3 83123.7. (a) ~~(1)~~ *For purposes of this section, "local agency"*
4 *means a city, county, or city and county.*
5 (b) (1) Upon mutual agreement between the Commission and
6 ~~the Board of Supervisors of the County of Orange, governing body~~
7 *of a local agency*, the Commission is authorized to assume primary
8 responsibility for the impartial, effective administration,
9 implementation, and enforcement of a local campaign finance
10 ordinance ~~passed by the Board of Supervisors of the County of~~
11 ~~Orange. Upon agreement, of the local agency if the agreement has~~
12 *been approved by either of the following:*
13 (A) *The governing body of the local agency.*
14 (B) *A majority of the voters in the local agency who voted on*
15 *the agreement.*
16 (2) (A) *Upon approval of an agreement pursuant to paragraph*
17 *(1), the Commission shall be the civil prosecutor responsible for*
18 *the civil enforcement of that the local campaign finance ordinance*
19 *of the local agency in accordance with this title.*
20 ~~(2) (A)~~
21 (B) ~~As the civil prosecutor of the County of Orange's local~~
22 ~~agency's campaign finance ordinance, the Commission may do~~
23 ~~all of the following with respect to the local campaign finance~~
24 ~~ordinance:~~
25 (i) Provide advice.
26 (ii) Investigate possible violations.

1 (iii) Bring administrative actions in accordance with this title
2 and Chapter 5 (commencing with Section 11500) of Part 1 of
3 Division 3 of Title 2.

4 (iv) Bring civil actions.

5 ~~(B)~~

6 (C) The Commission shall not be required to obtain
7 authorization from the *city or* district attorney of the ~~County of~~
8 ~~Orange~~ *local agency* to bring an administrative or civil action
9 pursuant to subparagraph ~~(A)~~: (B).

10 ~~(b)~~

11 (c) A local campaign finance ordinance of the ~~County of Orange~~
12 *local agency* enforced by the Commission pursuant to this section
13 shall comply with this title.

14 ~~(e) The Board of Supervisors of the County of Orange~~

15 (d) *The governing body of the local agency* shall consult with
16 the Commission prior to adopting and amending any local
17 campaign finance ordinance that is subsequently enforced by the
18 Commission pursuant to this section.

19 ~~(d)~~

20 (e) (1) ~~The Board of Supervisors of the County of Orange~~ *The*
21 *governing body of the local agency* and the Commission may enter
22 into any agreements necessary and appropriate to carry out the
23 provisions of this section, including agreements pertaining to any
24 necessary reimbursement of state costs with county funds for costs
25 incurred by the Commission in administering, implementing, or
26 enforcing a local campaign finance ordinance pursuant to this
27 section.

28 (2) An agreement entered into pursuant to this subdivision shall
29 not contain any form of a cancellation fee, a liquidated damages
30 provision, or other financial disincentive to the exercise of the
31 right to terminate the agreement pursuant to subdivision ~~(e)~~: (f),
32 except that the Commission may require the ~~Board of Supervisors~~
33 ~~of the County of Orange~~ *governing body of the local agency* to
34 pay the Commission for services rendered and any other
35 expenditures reasonably made by the Commission in anticipation
36 of services to be rendered pursuant to the agreement in the event
37 that the ~~Board of Supervisors of the County of Orange~~ *governing*
38 *body of the local agency* terminates the agreement.

39 ~~(e) The Board of Supervisors of the County of Orange or the~~
40 ~~Commission~~

(f) *The governing body of the local agency* may, at any time, by ordinance or resolution, terminate ~~any~~ *an* agreement made pursuant to this section for the Commission to administer, implement, or enforce a local campaign finance ordinance or any provision thereof.

~~(f)~~

(g) If an agreement is entered into pursuant to this section, the Commission shall report to the Legislature regarding the performance of that agreement on or before January 1, 2019, and shall submit that report in compliance with Section 9795. The Commission shall develop the report in consultation with the ~~County of Orange~~ *local agency*. The report shall include, but not be limited to, all of the following:

(1) The status of the agreement.

(2) The estimated annual cost savings, if any, for the ~~County of Orange~~ *local agency*.

(3) A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction.

(4) Any public comments submitted to the Commission or the ~~County of Orange~~ *local agency* relative to the operation of the agreement.

(5) Any legislative recommendations.

~~(g)~~

(h) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

~~SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the necessity to ensure the integrity of the electoral process while reducing corruption, and the appearance of corruption, in the County of Orange.~~

~~SEC. 3.~~

~~SEC. 2.~~ The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

O

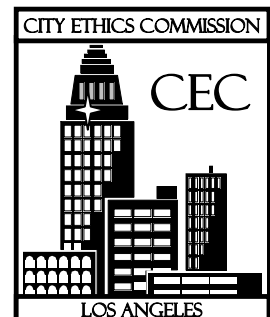
Governmental Ethics Ordinance



◆◆◆ Los Angeles Municipal Code Sections 49.5.1 *et seq.*

Effective August 4, 2015

Prepared by



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**Governmental Ethics Ordinance
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Governmental Ethics Ordinance

Los Angeles Municipal Code Chapter IV, Article 9.5

Added by Ordinance No.165618, effective 4/21/90.

Amended in its entirety by Ordinance No.182842, effective 2/10/14.

SEC. 49.5.1. TITLE, FINDINGS AND PURPOSE.

A. Title. This Article shall be known as the City of Los Angeles Governmental Ethics Ordinance.

B. Findings. The following findings are adopted in conjunction with the enactment of this Article:

1. As one of the great international cities of the world, Los Angeles will continue to confront great and complex opportunities and problems of both local and global significance.
2. One of the best ways to attract talented people to public service is to assure that the government is respected for its honesty and integrity; that its decisions are made on the merits, untainted by any consideration of private gain; and that the rules governing their conduct during and after leaving government service are as clear and complete as possible.
3. A governmental ethics ordinance that is as clear, tough, fair, comprehensive and effective as any in the nation is therefore needed.

C. Purposes. This Article is adopted to accomplish the following purposes:

1. To assure that individuals and interest groups in our society have a fair and equal opportunity to participate in the governmental process.
2. To assure that the governmental process itself promotes fairness and equity for all residents of the City regardless of race, color, creed, religion,

national origin, age, sex, marital status, sexual orientation or disability.

3. To require elected City officers and key City officials to disclose investments, interests in real property and income in order to prevent conflicts of interests.
4. To prevent elected City officers and key City officials from receiving outside earned income that creates a potential conflict of interests.
5. To prevent City officials from lobbying the City for certain periods of time after they leave City service.
6. To increase understanding of the City Charter and ordinances, the roles of elected City officers and other public officials, the roles of City agencies, and the City election process.
7. To help restore public trust in governmental and electoral institutions.
8. To assure that this Article is vigorously enforced.

SEC. 49.5.2. DEFINITIONS.

The following terms have the meanings identified below. Other terms used in this Article have the meanings identified in the state's Political Reform Act.

A. "Agency" means the City of Los Angeles or any City department, bureau, office, board, commission, or entity required to adopt a conflict of interests code subject to City Council approval. With respect to employees of a City Council member's staff and employees of the Chief Legislative Analyst's office, "agency"

means the City Council. The term does not include a governmental entity that is not within the City's control, even if the entity is required to adopt a conflict of interests code subject to City Council approval, unless the entity elects to be subject to this Article.

- B. **"Bidder"** means a person who bids on or submits a proposal or other response to a City contract solicitation including a request for proposals, request for bids, request for qualifications, or any other request for purposes of entering into a contract.
- C. **"City official"** means an elected City officer or an agency board member, officer, employee, commissioner, or consultant who, because of the individual's service to an agency, is required to file a statement of economic interests pursuant to the Political Reform Act.
- D. **"Confidential information"** means information that, if it were contained in a document, would not be subject to disclosure under the state's Public Records Act.
- E. **"Contract"** means an agreement, lease, right of entry, franchise, or concession, including but not limited to an agreement for the performance of work, the rendition of service, or the provision of materials, equipment, or supplies to the City or the public, which is let, awarded, or entered into with or on behalf of an agency.
- F. **"Elected City officer"** means a person who is a City Council member, City Attorney, Controller, or Mayor, whether appointed or elected.
- G. **"Matter pending"** means a matter in which a non-ministerial action is required to proceed with or resolve the matter but has not yet been taken.
- H. **"Political activity"** means activity directed at the success or failure of any ballot measure or candidate for elective office in a future election and includes but

is not limited to: endorsing a candidate; engaging in fundraising; developing, displaying, or distributing campaign materials; conducting research; or posting comments on social media or other Internet sites.

- I. **"Political Reform Act"** means the California Political Reform Act of 1974 (California Government Code Sections 81000 et seq.) and the related regulations of the California Fair Political Practices Commission as amended from time to time.
- J. **"Restricted source"** means the following:
 - 1. For elected City officers, a restricted source is the following:
 - a. A person who files as a lobbying firm or lobbyist or is required to file as a lobbying firm or lobbyist, as defined in Section 48.02.
 - b. A person who has entered into, performs under, or seeks a contract with the City. This does not include the following:
 - i. An individual who has entered into or performs under an agreement with the City regarding employment; or
 - ii. A person who receives or pays for services normally rendered by the City to residents and businesses, such as sewer service, water and power service, or street maintenance.
 - c. A person who, during the prior 12 months, attempted to influence the elected City officer in any City action that would have a material financial effect on the person. This does not include an individual who attempted to influence action regarding that individual's own City compensation, benefits, or retirement.

- d. A person who is or in the prior 12 months was a party to a proceeding involving a license, permit, or other entitlement for use that was pending before the elected City officer, the City Council, or a board, commission, committee, or other similar body of which the elected City officer is a voting member.
2. For all other City officials, a restricted source is the following:
- a. A person who seeks to influence decisions of the City official's agency and files as a lobbying firm or lobbyist, or is required to file as a lobbying firm or lobbyist as defined in Section 48.02;
 - b. A person who has entered into, performs under, or seeks a contract with the City official's agency. This does not include the following:
 - i. An individual who has entered into or performs under an agreement with the City official's agency regarding employment; or
 - ii. A person who receives or pays for services normally rendered by the City to residents and businesses, such as sewer service, water and power service, or street maintenance.
 - c. A person who, during the prior 12 months, attempted to influence the official in any City action that would have a material financial effect on the person. This does not include an individual who attempted to influence action regarding that individual's own City compensation, benefits, or retirement.
 - d. A person who is or in the prior 12 months was a party to a proceeding involving a license, permit, or other entitlement for use that was pending before the official or before a board, commission, committee, or

other similar body of which the official is a voting member.

History:

*Amended by Ord. 167949, effective 7/5/92.
 Amended by Ord. 168056, effective 8/8/92.
 Amended by Ord. 170655, effective 9/21/95.
 Amended by Ord. 172891, effective 12/11/99.
 Amended by Ord. 173363, effective 7/29/00.
 Amended by Ord. 176824, effective 8/27/05.
 Amended by Ord. 182842, effective 2/10/14.*

SEC. 49.5.3. CONFIDENTIAL INFORMATION.

A current or former City official or agency employee shall not misuse or disclose confidential information acquired as a result of City service.

History:

Amended by Ord. 182842, effective 2/10/14.

SEC. 49.5.4. PROTECTION AGAINST RETALIATION.

- A.** City officials and agency employees shall not use or threaten to use any official authority or influence to discourage, restrain, or interfere with another person's attempt to report possible violations of law to the Ethics Commission or another governmental entity.
- B.** City officials and agency employees shall not use or threaten to use any official authority or influence to effect any action as a reprisal against another person who reports a possible violation of law to the Ethics Commission or another governmental entity.
- C.** A person who believes that he or she has been subjected to an action prohibited by this Section may file a confidential complaint with the Ethics Commission.
- D.** The Ethics Commission may refer retaliation complaints to appropriate agencies for disciplinary purposes.

History:

*Amended by Ord. 168708, effective 5/13/93.
 Amended by Ord. 182842, effective 2/10/14.*

SEC. 49.5.5. MISUSE OF CITY POSITION OR RESOURCES.

- A.** City officials, agency employees, appointees awaiting confirmation by the City Council, and candidates for elected City office shall not misuse or attempt to misuse their positions or prospective positions to create or attempt to create a private advantage or disadvantage, financial or otherwise, for any person.
- B.** City officials and agency employees shall not engage in political activity in the following scenarios:
 - 1. While on duty for the City.
 - 2. In any manner that implies the City official or agency employee is speaking on behalf of the City or communicating a City position. This may include but is not limited to engaging in political activity in the following scenarios:
 - a. While wearing a uniform or official City insignia; or
 - b. Using a City title or position.
 - 3. In a room or building that is owned by the City or primarily paid for or used by the City and occupied by a City official or agency employee in the discharge of City duties. This does not include a City room or building that is available to the public for organized campaign activities as long as the City official or agency employee does not use the room or building during the official's or employee's City working hours and does not use other City resources for the activity.
 - 4. Using City equipment, vehicle, supplies, or resources, including but not limited to mailing and distribution lists, electronic mail, and electronic data.
- C.** A person shall not induce or coerce or attempt to induce or coerce another

person to engage in activity prohibited by Subsections A or B.

- D.** This Section does not prohibit the use of City resources to provide information to the public about the possible effects of a bond issue or ballot measure relating to City activities, operations, or policies when the use of public resources is otherwise legally authorized.

History:

Amended by Ord. 172891, effective 12/11/99.

Amended by Ord. 182842, effective 2/10/14.

SEC. 49.5.6. CONFLICTS OF INTERESTS.

- A.** City officials shall not make, participate in making, or attempt to use their official positions to influence City decisions in which they know or have reason to know they have a financial interest.
- B.** In the first 12 months of City service, a City official or agency employee shall not knowingly make, participate in making, or attempt to use his or her official position to influence a City decision directly relating to a contract when a party to the contract is a person by whom the individual was employed in the 12 months immediately prior to entering City service.
- C.** Statements of City-Related Business.
 - 1. An elected City officer, a candidate for elected City office, a member of a City board or commission, a general manager or chief administrative officer of an agency, and an individual holding an appointive office named in the Charter shall file a statement of City-related business with the Ethics Commission within ten calendar days after a City action, other than a ministerial action, affects the individual's personal financial interests.
 - 2. For purposes of the statement, a City action affects an individual's personal financial interests if it involves one or more of the following held by, required of, or sought by the individual, the

individual's spouse or registered domestic partner, or a business entity in which either the individual or the individual's spouse or registered domestic partner holds an ownership interest of five percent or more:

- a. The sale of real or personal property; or
 - b. The performance of services pursuant to a contract; or
 - c. A grant, loan, or forgiveness or payment of indebtedness; or
 - d. An application for a license, certificate, permit, franchise, change of zone, variance, credential, or other benefit or relief.
3. The statement shall be in sufficient detail as to dates, amounts, identifying numbers or symbols, locations, and subject matter to make the action identifiable by reference to City records.
 4. The statement shall be filed under penalty of perjury in a method prescribed by the Ethics Commission.
 5. The statement shall satisfy the requirements of Section 304 of the City Election Code.

D. Recusal Notification.

1. A member of a City board or commission who is required to file a statement of economic interests pursuant to the Political Reform Act shall file a recusal notification form each time the member recuses himself or herself in relation to an actual or apparent conflict of interests.
 - a. The member shall file a copy of the completed form with the executive secretary for the commission or board (or the person acting in that capacity) as soon as possible after the

posting of the agenda containing the item involving the member's conflict of interests.

- b. The member shall file the original form, along with a copy of the meeting agenda containing the item involving the conflict of interests, with the Ethics Commission within 15 calendar days after the date of the meeting at which the recusal occurred.
 - c. The member shall file the form even if the member is not present at the meeting.
2. The form shall be filed under penalty of perjury in a method prescribed by the Ethics Commission and shall include, at a minimum, the following:
 - a. The member's name;
 - b. The name of the member's board or commission;
 - c. The date of the meeting at which the recusal occurred or would have occurred;
 - d. The agenda item number, a brief description of the matter, and a statement of whether the matter concerns the making of a contract; and
 - e. The specific interest causing the recusal and a statement of whether the interest is financial.

- E. Every agency shall make every effort to avoid hiring or appointing City officials who hold and are unwilling or unable to sell assets that would present significant and continuing conflicts of interests.

History:

*Amended by Ord. 167949, effective 7/5/92.
Amended by Ord. 175344, effective 8/16/03.
Amended by Ord. 177190, effective 1/23/06.
Amended by Ord. 177853, effective 10/7/06.
Amended by Ord. 182842, effective 2/10/14.*

SEC. 49.5.7. HONORARIA AND OUTSIDE EMPLOYMENT.

- A.** City officials and agency employees shall not engage in outside employment during any hours they are paid to engage in City business. A person shall not induce or coerce or attempt to induce or coerce a City official or agency employee to engage in such outside employment.
- B.** Elected City officers shall not receive any payment, including honoraria, for their services other than that provided for by City Charter Section 218. However, they may receive compensation for serving on governmental entities where payment is authorized for other governmental officers or employees serving in such capacity.
- C.** City officials, other than elected City officers and part-time board and commission members, shall not accept a payment for honoraria or other outside earned income or employment without prior written approval.
 - 1. Prior written approval must first be obtained from the general manager or chief administrative officer of the City official's department.
 - a. General managers, chief administrative officers, and members of the Board of Public Works must obtain prior written approval from their appointing authorities.
 - b. City Council staff members must obtain prior written approval from their City Council members.
 - c. A City official who does not have an appointing authority must obtain prior written approval from the Ethics Commission.
 - 2. If the general manager, chief administrative officer, or appointing authority approves the payment, the City official must determine whether the source is a restricted source for the City official. If the source is a

restricted source, the City official shall not accept the payment without also obtaining prior written approval from the Ethics Commission.

- 3. The approval required by Subdivisions 1 and 2 shall be denied if the general manager, chief administrative officer, appointing authority, or Ethics Commission determines that receipt of the payment would be inconsistent, incompatible, in conflict with, or inimical to the City official's official duties, functions, or responsibilities. Such a determination must be made if one or more of the following factors applies:
 - a. The payment or the services for which the payment would be received would involve any of the following:
 - i. The actual use of or the appearance of the use of public office, employment, time, facilities, equipment, or supplies for private gain;
 - ii. The City official's performance of an act that could later be subject to the control, inspection, review, audit, or enforcement of the City official's agency; or
 - iii. Such time demands that the City official's performance of official City duties would be rendered less efficient.
 - b. The City official would be accepting payment from a person other than the City official's agency for performing an act that the City official would be required or expected to render in the regular course of performing City duties.
 - c. The City official is in a position to make, participate in making, or influence a City decision that could foreseeably have a material

financial effect on the source of the payment.

4. A request for approval from the Ethics Commission shall be treated as a request for written advice under Charter Section 705(b).

History:

Amended by Ord. 168056, effective 8/8/92.

Amended by Ord. 172942, effective 1/21/00.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.9).

SEC. 49.5.8. GIFTS.

- A.** A person shall not offer or make and a City official shall not solicit or accept a gift when it is reasonably foreseeable that the City official could be influenced by the gift in the performance of an official act.
- B.** City officials shall comply with the gift requirements and restrictions in the Political Reform Act and California Constitution. When the Political Reform Act's gift provisions, other than gift limits, refer to a lobbying entity, the reference shall include a City lobbying firm and lobbyist.
- C.** In addition to the state requirements and restrictions identified in Subsection B, City officials shall also comply with the following gift restrictions for restricted sources.
 1. A City official shall not solicit a gift from a restricted source. A City official shall not accept a gift that exceeds the applicable gift limit from a restricted source.
 2. A person who is a restricted source to a City official shall not offer or make a gift that exceeds the applicable gift limit to that City official.
 3. A restricted source shall not act as an agent or intermediary in or arrange for the making of a gift by another person to a City official that exceeds the applicable gift limit.

4. The applicable gift limits are as follows:
 - a. For restricted sources identified in Section 49.5.2(J)(1)(a) or Section 49.5.2(J)(2)(a), the applicable gift limit is zero.
 - b. For all other restricted sources, the applicable gift limit is one-hundred dollars (\$100) per calendar year.
5. The applicable gift limits for restricted sources do not apply to the following:
 - a. Items received by a City official from a union representing that City official.
 - b. Food and beverages received by a City official from a union representing a bargaining unit of City officials.
 - c. Items received by a City official acting in an official City capacity from an organization to which the City, the City official, or the City official's agency belongs as a member.
 - d. Nominal and routine office courtesies received by a City official in a restricted source's place of business, as long as the courtesies are available to any person who visits that place of business.
 - e. Payments for travel and meals that are made by an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, a bona fide educational institution as defined by Section 203 of the California Revenue and Taxation Code, or a governmental entity and where the payments are exempt from the gift limits in the Political Reform Act.
6. A City official has the duty to determine whether a person is a restricted source to him or her. A

person offering or making a gift to a City official has the duty to determine whether he or she is a restricted source to that City official.

a. For restricted sources identified in Sections 49.5.2(J)(1)(a) and 49.5.2(J)(2)(a), the following apply:

i. A City official may presume that a person is not a restricted source to him or her if the person is not identified in the electronic filing system for lobbying entities under Section 48.06(B) on the date the gift is offered or made, the City official has conducted a reasonable inquiry into whether the person is a restricted source between database updates, and the City official does not have personal knowledge that the person qualifies as a restricted source.

ii. The electronic filing system for lobbying entities is a reference for compliance and enforcement purposes for gifts offered or made as of the date the database was last updated.

b. For restricted sources identified in Sections 49.5.2(J)(1)(b) and 49.5.2(J)(2)(b), the following apply:

i. A City official may presume that a person is not a restricted source to him or her if the person is not identified in the database in Section 49.5.11(B) on the date the gift is offered or made, the City official has conducted a reasonable inquiry into whether the person is a restricted source between database updates, and the City official does not have personal knowledge that the person qualifies as a restricted source.

ii. The restricted source gift limit does not apply to sources that

are only identified in Section 49.5.2(J)(1)(b) or Section 49.5.2(J)(2)(b) until the Ethics Commission and the City Council initially certify that the database in Section 49.5.11(B) provides enough information for a City official to determine whether a person is a restricted source to him or her under Section 49.5.2(J)(1)(b) or 49.5.2(J)(2)(b).

iii. The database is a reference for compliance and enforcement purposes for gifts offered or made from the date the database is certified through the date the database was last updated.

c. For restricted sources identified in Sections 49.5.2(J)(1)(c), 49.5.2(J)(1)(d), 49.5.2(J)(2)(c), and 49.5.2(J)(2)(d), the following apply:

i. A City official may presume that a person is not a restricted source to him or her if the City official has conducted a reasonable inquiry into whether the person is a restricted source and does not have personal knowledge that the person qualifies as a restricted source.

ii. The Ethics Commission will not maintain a database.

d. A reasonable inquiry includes asking the source, asking a responsible employee in the relevant agency, and reviewing the City Clerk's council file management system.

D. A ticket or pass distributed by an agency to a City official in accordance with Chapter 5 of Los Angeles Administrative Code Division 24 is not a gift to the City official.

History:

Amended by Ord. 168056, effective 8/8/92.

Amended by Ord. 178064, effective 1/15/07.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5. 10).

Amended by Ord. 183731, effective 8/4/15.

SEC. 49.5.9. DISCLOSURE OF ECONOMIC INTERESTS.

A. A City official shall file a statement of economic interests pursuant to the Political Reform Act and this Section.

B. Whenever an elected City officer, a member of a City board or commission, or a general manager or chief administrative officer of an agency is required by the Political Reform Act to file a statement of economic interests, the individual also shall disclose financial interests associated with restricted sources.

1. The following financial interests shall be disclosed:
 - a. Interests in real property that were leased from or to, co-owned by, purchased from, or sold to a restricted source by the City official or the City official's spouse, registered domestic partner, or dependent child.
 - b. Investments that were co-owned by, purchased from, or sold to a restricted source by the City official or the City official's spouse, registered domestic partner, or dependent child.
 - c. Income other than gifts that was valued at \$500 or more and was received from a restricted source by the City official or the City official's spouse, registered domestic partner, or dependent child.

d. Gifts cumulatively valued at \$50 or more and that were received from a restricted source by the City official or the City official's spouse, registered domestic partner, or dependent child.

e. Positions held on the board of a restricted source by the City official or the City official's spouse, registered domestic partner, or dependent child.

2. The disclosure shall be verified under penalty of perjury.

3. The disclosure shall be made in a method prescribed by the Ethics Commission and may include additional information the Ethics Commission deems necessary.

4. The disclosure shall be filed on the same schedule and for the same reporting period as the statement required by the Political Reform Act.

5. A City official is not required to disclose the name of a person who paid fees or made payments to the City official or to a business entity in which the City official or the City official's spouse or registered domestic partner holds an interest if the executive director determines that disclosing the person's name would violate a legally recognized privilege.

C. The Ethics Commission may, by regulation, require the disclosure of specific types of financial interests, in addition to those interests required to be disclosed pursuant to this Section, if it is reasonably foreseeable that the interest could be materially affected by the City official's exercise of official City duties.

History:

Amended by Ord. 167949, effective 7/5/92.

Amended by Ord. 173101, effective 3/27/00.

Amended by Ord. 173138, effective 4/24/00.

Amended by Ord. 173870, effective 5/14/01.

Amended by Ord. 177190, effective 1/23/06.

Amended by Ord. 177853, effective 10/7/06.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.6(A-C)).

SEC. 49.5.10. DISCLOSURE BY NOMINEES.

- A.** Each person nominated to a position in an agency subject to a conflict of interests code, where appointment is subject to confirmation by the City Council, shall file a financial disclosure statement with the Ethics Commission in the method prescribed by the Ethics Commission. The financial disclosure statement shall be filed within 21 days of the appointing authority's transmission of the nominee's appointment to the City Council.
- B.** Within five business days of receiving a complete financial disclosure statement from the appointee, the Ethics Commission staff shall forward a copy of the financial disclosure statement to the appointing authority and the City Council or its committee confirming the appointment.

History:

Amended by Ord. 167949, effective 7/5/92.

Amended by Ord. 174613, effective 7/7/02.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.7).

SEC. 49.5.11. CONTRACTS GENERALLY.

- A.** Except at a public meeting, a member of a City board or commission shall not participate in the development, review, evaluation, or negotiation of or the recommendation process for bids, proposals, or any other requests for the award or termination of a contract, amendment, or change order involving that board, commission, or agency. This does not preclude individual members from reviewing documents and other information provided by agency staff when preparing for a public meeting at which the matter will be considered.
- B.** The Ethics Commission shall provide an official, electronic City database for restricted sources that are identified in Sections 49.5.2(J)(1)(b) and 49.5.2(J)(2)(b).

- 1. Each agency shall submit to the Ethics Commission information regarding every person who, during the relevant time period, was a party to an agency contract, was a bidder on an agency contract, or responded to a request for proposals for an agency contract. Submitting the information to the City Clerk or to another City database shall not be deemed compliance with this Section.
- 2. Agency information must include the name of the person, the date the bid or response was submitted, the date the contract was entered into, any contract or proposal number, a brief description of the contract, and any other information deemed necessary by the Ethics Commission.
- 3. Agency information must be submitted in a method prescribed by the Ethics Commission by the following dates:
 - a. Every January 31, covering the immediately preceding October 1 through December 31;
 - b. Every April 30, covering the immediately preceding January 1 through March 31;
 - c. Every July 31, covering the immediately preceding April 1 through June 30; and
 - d. Every October 31, covering the immediately preceding July 1 through September 30.
- 4. For each agency, the Ethics Commission shall update the database within 45 days after a quarterly filing deadline that is specified in paragraph 3 or the date the agency submits complete quarterly information, whichever is later. The database shall include a disclaimer noting the date of the last update for each agency.
- 5. If an agency fails to submit complete quarterly information within five

business [days] after a quarterly filing deadline specified in paragraph 3, the Ethics Commission staff shall notify every elected City officer and the agency's general manager or chief administrative officer of the delinquency. Failure to comply within 10 business days of the date of the notice will subject the agency's general manager, chief administrative officer, or responsible elected City officer to liability under Section 49.5.17.

6. For purposes of this Subsection, a City Council district is a distinct agency.
7. The City shall provide the Ethics Commission with adequate staffing and funding to create, maintain, and update the database.

History:

Amended by Ord. 176824, effective 8/27/05.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/140/14 (prev. 49.5.17).

SEC. 49.5.12. CONTRACTS AND MONEY LAUNDERING VIOLATIONS.

A. Competitively Bid Contracts.

1. An awarding authority shall not award a contract to a bidder if it finds the following:
 - a. The Ethics Commission has found that the bidder violated City Charter Section 470(k) in the previous four years; and
 - b. The bidder lacks integrity such that it is unfit to perform the work specified in the contract. The awarding authority shall make that finding unless there are specific facts brought to its attention in writing that indicate otherwise.
2. If the findings in paragraph 1 are made, the awarding authority shall deem the bidder to be not responsible.

3. Prior to making a finding that a bidder is not responsible, the awarding authority shall do the following:
 - a. Notify the bidder of its intention to consider making the finding.
 - b. Offer the bidder an opportunity to present evidence and argue that, despite the violation, the awarding authority should not have reason to question the bidder's integrity and fitness to perform the contract.
 - c. Hold an informal hearing at which the bidder and other interested parties may make presentations.
 - d. Consider the presentations of the bidder and other interested parties and be satisfied that the finding is merited.

B. Contracts Awarded on a Basis Other Than Competitive Bidding. The awarding authority shall not approve a contract with a party who has been found by the Ethics Commission to have violated City Charter Section 470(k) within the previous four years.

C. Fee Waivers. A discretionary fee waiver of more than \$1,000 shall not be granted for a person who has been found by the Ethics Commission to have violated City Charter Section 470(k) within the previous four years.

D. Notice of Violations.

1. The Ethics Commission shall provide a copy of every Commission enforcement decision relating to a violation of City Charter Section 470(k) to the general manager or other head of each agency.
2. A person who submits a bid or proposal or requests a fee waiver shall include with the submission or request a copy of the Ethics Commission's decision of violation.

3. A report that contains sufficient information to allow a decision-making body to comply with this Section shall be submitted to the decision-making body by the following:

- a. By the City Clerk, when the City Council is the decision-making body.
- b. By agency staff when a City board or commission is the decision-making body.

E. Reduction of Time Period. The Ethics Commission may reduce the time during which this Section applies to not less than one year if it finds that the contracting party has done either of the following:

1. Accepted responsibility for the violation by entering into a stipulation with the Ethics Commission in which the party admits the violation or otherwise exhibits evidence of having accepted responsibility; or
2. Mitigated the wrongdoing by taking prompt remedial or corrective action.

F. Waiver of Provisions. The City Council may waive any or all of the requirements in this Section if it finds that an overriding public policy consideration justifies doing so.

1. The finding must be approved in writing by a two-thirds vote of the City Council's entire membership.
2. The finding must identify the nature of the overriding public policy consideration and the reason why that consideration justifies the waiver. A waiver is justified if it would result in a significant community or financial benefit to the City or if it is necessary to preserve the health, safety, or welfare of the public.

G. Exception. This Section, excluding Subsection D(1), does not apply to the following proprietary City departments: Airports, City Employees Retirement System, Harbor, Library, Pensions, Recreation and Parks, and Water and Power.

History:

Added by Ord. 171142, effective 8/3/96.

Amended by Ord. 172942, effective 1/21/00.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.21).

SEC. 49.5.13. LOBBYING ACTIVITIES OF CURRENT AND FORMER CITY OFFICIALS.

A. A member of a City board or commission who is required to file statements of economic interests pursuant to the Political Reform Act shall not receive compensation to communicate, either personally or through an agent, with a City official for the purpose of attempting to influence action on a City matter on behalf of a person other than an agency. This Subsection does not prohibit a member of a City board or commission from appearing before an agency in the same manner as any other member of the general public solely to represent himself or herself in a matter related to his or her personal interests.

B. A former City official or agency employee who personally and substantially participated in a specific matter during City service shall not receive compensation to attempt to influence City action on that matter, either personally or through an agent, on behalf of a person other than an agency. Personal and substantial participation includes but is not limited to making or voting on a decision or making a recommendation, rendering advice, and conducting research or an investigation.

1. A former City official or agency employee shall not receive compensation to counsel or assist a person other than an agency regarding activity that is prohibited for the former City official or agency employee pursuant to this Subsection.
 2. This prohibition applies as long as the matter is still pending before an agency or an agency is a party to the matter.
 3. This prohibition does not apply when the former City official or agency employee participated in the matter in solely a ministerial capacity.
- C.** The following time-based restrictions on lobbying activities apply to former City officials.
1. For one year after leaving City service, a City official shall not receive compensation to attempt to influence, either personally or through an agent, City action on any matter pending before any agency on behalf of a person other than an agency if, during the 24 months preceding the official's departure from City service, the official held any of the following positions: elected City officer; Board of Public Works Commissioner; General Manager; Chief Administrative Officer; Mayor's Chief of Staff; Deputy Mayor; Mayoral Aide VII; Mayoral Aide VIII; Executive Assistant City Attorney; Chief Assistant City Attorney; Senior Assistant City Attorney; City Attorney Exempt Employee; Chief Deputy Controller; Administrative Deputy Controller; Principal Deputy Controller; Council Aide VI; or Council Aide VII.
 2. For one year after leaving City service, all other former City officials shall not receive compensation to attempt to influence, either personally or through an agent, City action on any matter pending before an agency in which the City official served during the 24 months preceding the official's departure from City service on behalf of a person other than an agency. Serving an agency means being directly employed by or being assigned or on loan to that agency.
- D.** This Section does not apply to the following:
1. Attempts to influence solely ministerial action on City matters.
 2. Attempts to influence made by former City officials who are officers or employees of a governmental entity and are solely representing that entity in an official capacity.
- E.** By July 31 of every year, the City Controller shall submit to the Ethics Commission the names of each individual who held a position identified in Subsection (C)(1) during the preceding 24 months. By July 31 of every year, the City Clerk shall submit to the Ethics Commission the names of each individual who held a City Attorney Exempt position as provided in City Charter Section 1050(d) during the preceding 24 months.
- F.** Upon the petition of an interested party, a court or presiding officer in a judicial, quasi-judicial, or other proceeding may exclude a person found to be in violation of this Section from further participating in or assisting another participant in a proceeding pending before that court or presiding officer. Notice and an opportunity to be heard must be provided.

History:

Amended by Ord. 168057, effective 8/8/92.

Amended by Ord. 172891, effective 12/11/99.

Amended by Ord. 176823, effective 8/27/05.

Amended by Ord. 178064, effective 1/15/07.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.11).

SEC. 49.5.14. FUTURE EMPLOYMENT.

A. The following limits on future employment apply to City officials.

1. The Mayor, the City Attorney, the City Controller, a general manager, and a chief administrative officer shall not directly or indirectly, knowingly or willfully negotiate the possibility of future employment or business opportunities with a person other than a governmental entity if the person has a matter that is currently pending before that City official or the City official's agency.
2. A member of the City Council, a City board or commission, or another voting body of an agency who is required to file statements of economic interests pursuant to the Political Reform Act shall not directly or indirectly, knowingly or willfully negotiate the possibility of future employment or business opportunities with a person other than a governmental entity if the person has a matter that is currently pending before that City official or a body of which the City official is a voting member.
3. A City official other than one identified in Subsection 1 or 2 above shall not directly or indirectly, knowingly or willfully negotiate the possibility of future employment or business opportunities with a person other than a governmental entity if the person has a matter that is currently pending before that City official.
4. City officials shall not make, participate in making, or use their official City positions to influence a decision involving the interests of a person with whom they have an agreement concerning future employment or business opportunities.

- B.** A person who has a matter pending before a City official or a body of which the City official is a voting member shall not directly or indirectly, knowingly or willfully negotiate the possibility of future employment of or business opportunities for that City official.
- C.** A person has a matter pending if the person is a party to or is compensated to represent a party to the matter.

History:

Amended by Ord. 168057, effective 8/8/92.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.12).

SEC. 49.5.15. ETHICS AND FRAUD AWARENESS TRAINING.

- A. Ethics Training.** All City officials are required to complete ethics training at the time of entering City service and once every two years thereafter. The training shall be developed by the Ethics Commission, in partnership with the Office of the City Attorney, and shall be structured to ensure that participants have knowledge to comply with all of the relevant ethics laws governing their service to the City.
- B. Fraud Awareness Training.** All full-time City employees are required to complete on-line training for fraud awareness at the time of entering City service and once every two years thereafter. The training shall be developed by the City Controller's Fraud, Waste and Abuse Unit and provided by the Personnel Department as described in the Los Angeles Administrative Code.

History:

Repealed by Ord. 172891, effective 12/11/99.

Added by Ord. 178064, effective 01/15/07.

Amended by Ord. 182478, effective 04/17/13.

Amended by Ord. 182842, effective 2/10/14.

Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.18).

SEC. 49.5.16. ENFORCEMENT.

A. Criminal Enforcement.

1. A person who does any of the following is guilty of a misdemeanor:
 - a. Knowingly or willfully violates a provision of this Article;
 - b. Knowingly or willfully causes another person to violate a provision of this Article; or
 - c. Aids and abets another person in violating a provision of this Article.
2. Prosecution shall be commenced within four years after the date of the violation.
3. A person convicted of a misdemeanor under this Article shall not act as a City lobbyist or contractor for four years following the date of the conviction, unless the court at the time of sentencing specifically determines that this provision shall not be applied.
4. For the purposes of this Section, a plea of nolo contendere shall be deemed a conviction.

B. Civil Actions.

1. A person who intentionally or negligently violates a provision of this Article shall be liable in a civil action brought by the City Attorney, the Ethics Commission, or a person residing within the City for an amount not more than the greater of \$5,000 per violation or three times the amount the person failed to report, properly or unlawfully contributed, expended, gave, or received.
2. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

3. A person other than the City Attorney, before filing a civil action pursuant to this Subsection, shall first file with the Ethics Commission a written request for the Ethics Commission to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Ethics Commission shall respond within 40 days after receipt of the request, indicating whether it intends to file a civil action. If the Ethics Commission indicates in the affirmative and files an action within 40 days thereafter, no other action may be brought unless the action brought by the Ethics Commission is dismissed without prejudice.
4. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action, a private plaintiff shall receive 50 percent of the amount recovered. The remaining 50 percent shall be deposited into the City's General Fund. In an action brought by the City Attorney or the Ethics Commission, the entire amount shall be paid to the General Fund.
5. An action alleging a violation of this article may not be filed more than four years after the date the violation occurred.
6. The court may award to a party other than an agency who prevails in a civil action that party's costs of litigation, including reasonable attorney fees. If the costs are awarded against the City, the payment of the award is the responsibility of the City, subject to City Council approval.

- C. Injunctive Relief.** A person residing within the City, including the City Attorney, may sue for injunctive relief to enjoin violations of or to compel compliance with this Article.

- D. Administrative Penalties.** The Commission may impose penalties and issue orders for violations of this Article pursuant to its authority under Charter Section 706(c).
- E. Discipline.** An appointed City official or agency employee who violates a provision of this Article shall be subject to administrative discipline by his or her appointing authority. Such discipline shall be administered in accordance with procedures prescribed by law or established by City policy. The Commission shall notify an agency when one of its City officials or employees is found to be in violation of this Article.
- F. Other Governmental Entities.** If a governmental entity that is required to adopt a conflict of interests code subject to City Council approval but is not otherwise within the City's control adopts governmental ethics regulations governing the conduct of its current or former officers or employees, violations of those regulations are subject to civil and administrative enforcement and discipline under Subsections B through E.

History:

*Amended by Ord. 168229, effective 10/11/92.
Amended by Ord. 170538, effective 7/13/95.
Amended by Ord. 172942, effective 1/21/00.
Amended by Ord. 175877, effective 5/5/04.
Amended by Ord. 182842, effective 2/10/14.
Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.19).*

SEC. 49.5.17. LATE FILING PENALTIES.

In addition to any other penalties, a person who files an original statement or report after a deadline imposed by this Article is liable to the Ethics Commission in the amount of \$25 per day after the deadline until the statement or report is filed, up to a maximum of \$500. Liability need not be enforced by the Ethics Commission if its executive officer determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the Article. Liability may not be waived if a statement or report is not filed within 30 days after receiving notice from the Ethics Commission staff that the statement or report is past due.

History:

*Amended by Ord. 168229, effective 10/11/92.
Amended by Ord. 170538, effective 7/13/95.
Amended by Ord. 182842, effective 2/10/14.
Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.20).*

SEC. 49.5.18. AUTHORITY TO ENACT.

This article is enacted pursuant to and under the authority of the City Charter, California Government Code Sections 1125 *et seq.*, California Government Code Section 81013, and California Constitution, Article XI, Section 5.

History:

*Renumbered by Ord. 171142, effective 8/3/96 (prev. 49.5.21).
Amended by Ord. 182842, effective 2/10/14.
Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.22).*

SEC. 49.5.19. RECORDKEEPING.

Persons subject to this Article shall keep records that demonstrate compliance with this Article and the related provisions of the Political Reform Act and the City Charter for four years.

History:

Added by Ord. 182842, effective 2/10/14.

SEC. 49.5.20. SEVERABILITY.

The provisions of this Article are severable. If any provision of this Article or its application to any person or circumstances is held invalid by a court, the remainder of this Article and the application of the provision to other persons or circumstances is not affected by that determination, to the extent that the provision or its application can be given effect.

History:

*Renumbered by Ord. 171142, effective 8/3/96 (prev. 49.5.23).
Amended by Ord. 182842, effective 2/10/14.
Renumbered by Ord. 182842, effective 2/10/14 (prev. 49.5.24).*

Article 7: Elections, Campaign Finance and Lobbying

Division 35: City of San Diego Ethics Ordinance

*(“City of San Diego Ethics Ordinance”
added 4-29-2002 by O-19055 N.S.)*

§27.3501 Purpose and Intent

It is the purpose and intent of the *City Council* of the City of San Diego in enacting this Division to assure that individuals and interest groups in our society have a fair and equal opportunity to participate in government; to embrace clear and unequivocal standards of disclosure and transparency in government so as to avoid conflicts of interest and the appearance of conflicts of interest; to increase understanding of the *City Charter*, ordinances, and the roles of *City Officials*; to help reinforce public trust in governmental institutions; and to assure that this Division is vigorously enforced.
(“Purpose and Intent” added 4-29-2002 by O-19055 N.S.)

§27.3502 Citation

This Division shall be cited as the City of San Diego Ethics Ordinance.
(“Citation” added 4-29-2002 by O-19055 N.S.)

§27.3503 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. Except as otherwise provided herein, the terms and provisions of this Division shall have the meanings and shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (California Government Code sections 81000 through 91014) and the regulations of the California Fair Political Practices Commission, as amended. For purposes of this Division, the following definitions shall apply:

Benefit means any *honorarium*, *gift*, *travel expense*, or *loan* made to, or in the interest of, an individual or a member of the individual’s *immediate family*.

Campaign Control Ordinance means the San Diego Municipal Election Campaign Control Ordinance, codified at Chapter 2, Article 7, Chapter 29 of the San Diego Municipal Code.

City means the City of San Diego or any of its organizational subdivisions, agencies, offices, or boards.

City Board includes the boards of directors of all *City* agencies, and any board, commission, committee, or task force of the *City* established by action of the *City* Council under authority of the *City* Charter, Municipal Code, or Council resolution, whose members are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

City Official includes:

- (a) any elected or appointed *City* officeholder, including any *City* officeholder elected but not yet sworn in; and
- (b) any *City Board* member; and
- (c) any employee of the *City*, except for classified employees as that term is defined in San Diego Charter section 117, who is required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended; and
- (d) *City* Council members acting in their capacity as Housing Authority and Redevelopment Agency officers; and
- (e) any consultants of the *City* who are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

Compensation means the receipt of any monetary or non-monetary payment, except a stipend paid to a board member of a public non-profit corporation to which the *City* is the sole member, for the services or time of a *person*. *Compensation* includes, but is not limited to, salary, wages, fees, and any discount or economic opportunity not made available in the regular course of business to members of the public.

Confidential information means information to which any of the following apply:

- (a) At the time of the use or disclosure of the information, the disclosure is prohibited by a statute, regulation, or rule which applies to the *City*; or
- (b) the information is not general public knowledge and will have, or could reasonably be expected to have, a material financial effect on any source of income, investment, or interest in the real property of a *City Official*; or
- (c) the information pertains to pending contract, labor, or real property negotiations and disclosing the information could reasonably be expected to compromise the bargaining position of the *City*; or

- (d) the information pertains to pending or anticipated litigation and disclosing the information could reasonably be expected to compromise the ability of the *City* to successfully defend, prevail in, or resolve the litigation.

Direct Communication means:

- (a) talking to a *person*, either by telephone or in person; or
- (b) corresponding with a *person*, either in writing, by electronic transmission, or by facsimile machine.

Direct Communication does not include:

- (a) solely responding to questions from any *City Official*; or
- (b) a direct response to an enforcement proceeding with the *City*.

Doing business with the City means entering into or performing pursuant to a contract with the *City*. *Doing business with the City* includes soliciting, entering into, or performing contracts for goods, equipment, services or financial assistance but does not include the receipt of or payment for services normally rendered by the *City* to residents and businesses such as sewer service, water service, street maintenance, and similar services.

Ethics Commission means the City of San Diego Ethics Commission created by City of San Diego Ordinance O-18945, codified in Chapter 2, Article 6, Division 4, of the San Diego Municipal Code.

Filer means a *High Level Filer* or a *Local Code Filer*.

Filing Officer means the Clerk of the City of San Diego charged with the duties and responsibilities prescribed in title 2, sections 18110 and 18115 of the California Code of Regulations.

Gift means any *payment* that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. Any *person*, other than a defendant in a criminal action, who claims that a *payment* is not a *gift* by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The value of a *gift* shall be as determined by title 2, section 18946 of the California Code of Regulations.

High Level Filer means the Mayor, the members of the *City Council*, the *City Attorney*, the *City Manager* (Chief Operating Officer), the *City Treasurer*, the *City Comptroller*, the Chief Financial Officer, the Chief Investment Officer, Investment Officers, members of the Planning Commission, members of the Funds Commission, members of the Retirement Board, members of the Defined Contribution Plan Board, any candidate for an elective office of the *City*, and any other individual whose position is specified in California Government Code section 87200.

Honorarium means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

- (a) A “speech given” means a public address, oration, or other form of oral presentation, including participation in a panel, seminar, or debate.
- (b) An “article published” means a nonfictional written work:
 - (1) that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and
 - (2) that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.
- (c) “Attendance” means being present during, making an appearance at, or serving as host or master of ceremonies for any public or private conference, convention, meeting, social event, meal, or like gathering.

Immediate family means an individual’s spouse and dependent children.

Influencing a municipal decision means affecting or attempting to affect any action by a *City Official* on one or more *municipal decisions* by any method, including promoting, supporting, opposing, participating in, or seeking to modify or delay such action. *Influencing a municipal decision* also includes providing information, statistics, analysis or studies to a *City Official*.

Loan means the temporary transfer of money or goods for the personal use of an individual with the expectation that the money or goods will be returned.

Lobbying means *Direct Communication* with a *City Official* for the purpose of *influencing a municipal decision* on behalf of any other *person*.

Lobbying firm means any entity defined as a “lobbying firm” in San Diego Municipal Code section 27.4002.

Lobbyist means any individual defined as a “lobbyist” in San Diego Municipal Code section 27.4002.

Local Code Filer means any *City Board* member, any consultant, and any employee of the *City*, except for classified employees, who is required to file a statement of economic interests pursuant to a conflict of interest code adopted by the *City Council*.

Ministerial act means an act that does not require a *City Official* to exercise discretion concerning any outcome or course of action.

Municipal decision means any governmental decision that is not a *ministerial act*.

Organization lobbyist means any entity defined as an “organization lobbyist” in San Diego Municipal Code section 27.4002.

Party means any *person* who files an application for, or is the subject of, or participates in a *municipal decision*.

Payment means a distribution, transfer, *loan*, advance, deposit, or other rendering of money, property, services, or anything else of value, whether tangible or intangible.

Pecuniary Gain means any monetary benefit to a *person* or to a member of the *person’s immediate family*.

Person means any individual, business entity, trust, corporation, association, committee, or any other organization or group of *persons* acting in concert.

Private business means any organization, partnership, corporation, or entity that is not a *Public Agency*.

Public Agency means the United States or any of its agencies; the State of California; the *City*; any political subdivision of the State, including counties and districts; or any public corporation, agency, or commission.

Public Hearing means any meeting as defined by the Ralph M. Brown Act where a public record is kept of who spoke and who was represented by a *Lobbyist* testifying at that hearing.

Restricted source includes:

- (a) a *lobbyist*, *lobbying firm*, or *organization lobbyist*, seeking to influence a *municipal decision*;
- (b) a *person doing business with the City*; and

- (c) a *person* who, during the reporting period, *directly communicated* with a *City Official* pertaining to a *municipal decision* which would have a material financial effect on such *person*; or
- (d) a *person* who is a party to a *municipal decision* which within the prior nine months was pending before the *City Official*, and for nine months following the date a final decision is rendered in the proceeding.

A *restricted source* does not include an individual (other than a *lobbyist*) who is employed by a *restricted source*.

Travel expenses means reasonable payments, advances, or reimbursements for travel, including actual transportation and related lodging, food, and beverages.

(“Definitions” added 4-29-2002 by O-19055 N.S.)
(Amended 12-5-2005 by O-19448 N.S.; effective 1-11-2006.)
(Amended 9-19-2006 by O-19538 N.S.; effective 10-19-2006.)
(Amended 8-3-2007 by O-19656 N.S. effective 1-1-2008)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3510 Disclosure of Economic Interests

- (a) All *High Level Filers* shall file a statement of economic interests with the *Filing Officer* of the City of San Diego pursuant to the Political Reform Act of 1974, as amended.
- (b) All *Local Code Filers* shall file a statement of economic interests with the *Filing Officer* of the City of San Diego pursuant to the applicable Conflict of Interest Code adopted by the *City Council*.
- (c) On or before April 1 of each calendar year, all individuals referred to in subsections (a) and (b) shall file a statement of economic interests covering a disclosure period of January 1 through December 31 of the previous calendar year, except that any such individual who assumed a *City* office between October 1 and December 31 of the previous year and files a statement of economic interests pursuant to subsection (e) need not file a statement of economic interests until the following year.
- (d) In addition to the requirements set forth in subsection (c), on or before July 31 of each calendar year, all *High Level Filers* elected to office by the electors of the City of San Diego shall, on a form provided by the *Ethics Commission*, either certify that they have not received any reportable *gifts* during the period of January 1 through June 30, or disclose any reportable *gifts* received during that period.

- (e) Every *Filer* assuming office shall file a statement of economic interests within 30 calendar days after assuming office, unless the *City Official* is beginning a new term in the same office.
- (f) Every *Filer* who leaves office shall file a statement of economic interests within 30 calendar days of leaving office, unless that *City Official* is assuming another office with the *City*.
- (g) The information and amounts required to be disclosed with respect to each financial interest, and the manner of disclosing that information, shall be the same as required by Article 2 of Chapter 7 of the Political Reform Act of 1974, as amended, or by the Conflict of Interest Code adopted by the Council of the City of San Diego and applicable to the *Filer*.
(“*Disclosure of Economic Interests*” added 4-29-2002 by O-19055 N.S.)

§27.3515 Disclosure of Behested Payments

- (a) A *City Official* who is an elected *High Level Filer* shall file a Fair Political Practices Commission Form 803 Behested Payment Report if any *person* makes one or more *payments* totaling \$5,000 or more for a legislative, governmental, or charitable purpose at the behest of the official. A *payment* is made at the behest of an official if it is requested, solicited, or suggested by the official, or otherwise made in cooperation, consultation, coordination with, or at the consent of, the official.
- (b) The *City Official* shall file the Form 803 with the *City Clerk* within thirty calendar days following the date on which a *payment* causes the total *payments* made by that *person* at the behest of the official to reach or exceed \$5,000 in the same calendar year.
- (c) Once a *person* has reached the \$5,000 threshold during a calendar year, each subsequent behested *payment* by that *person* in any amount during the same calendar year must be reported to the *City Clerk* on a Form 803 within thirty calendar days.
- (d) A *payment* behested by a *City Official* includes a *payment* behested by his or her agent or employee on behalf of the official.
- (e) This section shall be interpreted in a manner consistent with the provisions of California Government Code section 82015(b)(2)(B)(iii) and title 2, section 18215.3 of the California Code of Regulations.

(“*Disclosure of Behested Payments*” added 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3520 Restrictions on Benefits to Filers

For the purposes of this section, a *benefit* offered to, solicited by, or accepted by, a *Filer* includes any *benefit* offered to, solicited by, or accepted by any member of a *Filer's immediate family*, except as provided in section 27.3525. Subject to the exceptions set forth in section 27.3525, *Filers* are subject to the following restrictions with regard to their acceptance of *benefits*:

- (a) It is unlawful for a *High Level Filer* to accept *gifts* from a single source in any calendar year with a total value of more than \$440. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.
- (b) It is unlawful for a *High Level Filer* to accept an *honorarium*.
- (c) It is unlawful for a *High Level Filer* to accept a *loan* that exceeds \$250 at any given time from a *City Official* or *City* employee.
- (d) It is unlawful for a *High Level Filer* to accept a *loan* that exceeds \$250 at any given time from a *restricted source*.
- (e) It is unlawful for an elected *High Level Filer* to accept a *loan* that exceeds \$500 unless:
 - (1) The *loan* is made in writing and clearly states the terms of the *loan*; and
 - (2) The *loan* document includes the names of the parties to the *loan* agreement, as well as the date, amount, interest rate, and term of the *loan*; and
 - (3) The *loan* document includes the date or dates when payments are due and the amount of the payments.
- (f) It is unlawful for a *Local Code Filer* to accept *gifts* from any single source in any calendar year with a total value of more than \$440 if the *Local Code Filer* would be required to report the receipt of the *gift* from that source on his or her statement of economic interests. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.
- (g) It is unlawful for a *Local Code Filer* to accept an *honorarium* from any source if that individual would be required to report the receipt of income or *gifts* from the source of the *honorarium* on his or her statement of economic interests.
- (h) It is unlawful for any *person* to offer, or for any *Filer* to solicit or accept, any *benefit* with the intent that the *Filer* will be influenced thereby in the performance of any official act.

(“Restrictions on Benefits to Filers” added 4-29-2002 by O-19055 N.S.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3521 Adjustment of Gift Limitations

The *gift* limitation amounts set forth in section 27.3520(a) and (f) are intended to be consistent with the California gift limitation amount amended biannually by the California Fair Political Practices Commission. Notwithstanding the dollar amounts set forth in section 27.3520(a) and (f), the *gift* limitation amount for this Division shall be the same as set forth in title 2, section 18940.2 of the California Code of Regulations.

(“Adjustment of Gift Limitations” added 4-29-2002 by O-19055 N.S.)

(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3522 Acceptance of Benefits

- (a) A *benefit* is “accepted” when the recipient knows that he or she has either actual possession of the *benefit* or takes any action exercising direction or control over the *benefit*.
- (b) In the case of a rebate or discount, a *benefit* is “accepted” when the recipient knows that the rebate or discount is not made in the regular course of business to members of the public.
- (c) Discarding a *benefit* does not negate receipt or acceptance of the *benefit*, except when the *benefit* is a pass or ticket that has not been used or transferred to another *person*.
- (d) Turning a *benefit* over to another *person* does not negate receipt or acceptance of the *benefit*.

(“Acceptance of Benefits” added 4-29-2002 by O-19055 N.S.)

(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3525 Exceptions to Restrictions on Benefits

- (a) All exceptions relating to *gifts, loans, honoraria, and travel expenses* contained in the Political Reform Act of 1974, as amended, including but not limited to California Government Code sections 82028 and 89501 through 89506, and the regulations of the California Fair Political Practices Commission, as amended, including but not limited to Regulations 18930 through 18961, are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.
- (b) For purposes of subsection (a), any exception not applicable to a *gift, loan, honorarium, or travel expense* from a lobbyist, lobbying firm, or lobbyist employer registered with the State of California shall also not apply to a *gift, loan, honorarium, or travel expense* from a *lobbyist, lobbying firm, or organization lobbyist* registered with the City.

(“*Exceptions to Restrictions on Benefits*” added 4-29-2002 by O-19055 N.S.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3530 Loans as Gifts

- (a) A *loan* received by a *City Official* may become a *gift* and subject to the *gift* reporting and limitations set forth in section 27.3520, as follows:
 - (1) If the *loan* has a defined date or dates for repayment and has not been repaid, the *loan* will become a *gift* when the statute of limitations for filing an action for default has expired; or
 - (2) If the *loan* has no defined date or dates for repayment, the *loan* will become a *gift* if it remains unpaid when one year has elapsed from the later of:
 - A. The date the *loan* was made; or
 - B. The date the last payment of \$100 or more was made on the *loan*; or
 - C. The date upon which the *City Official* has made payments aggregating to less than \$250 during the previous twelve months.
- (b) The following *loans* will not become *gifts* to a *City Official*:
 - (1) A *loan* described above on which the creditor has taken reasonable action to collect the balance due; and

- (2) A *loan* described above on which the creditor, based on reasonable business considerations, has not undertaken collection action.
(However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)
- (3) A *loan* made to a *City Official* who has filed for bankruptcy and the *loan* is ultimately discharged in bankruptcy.

(“*Loans as Gifts*” added 4-29-2002 by O-19055 N.S.)

§27.3550 Lobbying Activities of Former City Officials

- (a) It is unlawful for any former *City Official* who received *compensation* from the *City* to work on a particular project during his or her *City* service to engage in *direct communication* with the *City*, for *compensation*, with regard to any pending application for discretionary funding or discretionary entitlements before the *City* relating to that particular project on behalf of any *person* other than a *Public Agency* for a one year period immediately following termination of service with the *City*.
 - (1) For purposes of this section, “work on a particular project” means to take part personally and substantially in the project by rendering a decision, approval, or disapproval; by making a formal written recommendation; by conducting an investigation; by rendering advice on a significant basis; or by using *confidential information*.
 - (2) For purposes of this section, “project” means any matter where a *private business* has made an application to the *City* for discretionary funding or discretionary entitlements, or where the *City* exercises discretion to enter into a lease, agreement, or contract with a *private business*.
- (b) It is unlawful for any former *City Official*, for *compensation*, to knowingly counsel or assist any *person* other than a *Public Agency* in connection with an appearance or communication in which the former *City Official* is prohibited from engaging pursuant to subsection (a) for a one year period immediately following termination of service with the *City*.
- (c) As a means of facilitating compliance with subsections (a) and (b) in instances where long-term projects may change in character and scope over time and where large projects have discrete components or phases, any former *City Official* may seek a written determination from the *Ethics Commission* regarding whether prospective *direct communication* on a particular project would constitute a violation of this section.

- (d) It is unlawful for any former *City Official* to engage in *direct communication* for the purpose of *lobbying* the *City* if all of the following circumstances apply:
 - (1) the former *City Official* served as a *City Official* within the previous twelve months; and
 - (2) the former *City Official* received *compensation* from the *City* for his or her service as a *City Official*; and
 - (3) the former *City Official* is receiving *compensation* from a *private business* to engage in the *direct communication* with the *City*.
- (e) The prohibitions contained in subsections (a), (b), and (d) shall not apply:
 - (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;
 - (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
 - (3) to the activities of any former *City Official* who is an elected or appointed *officer* or employee of any *Public Agency*, or a consultant of any *Public Agency*, when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or consultant of the agency;
 - (4) to any *ministerial act*;
 - (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or
 - (6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.

- (f) The exceptions in subsections (e)(1), (5), and (6) do not apply to any former *City Official* who, within one year of terminating *City* employment, was an elected *City Official* or served as the *City's* City Manager (Chief Operating Officer).

("Lobbying Activities of Former City Officials" added 4-29-2002 by O-19055 N.S.)
(Amended 9-19-2006 by O-19538 N.S.; effective 10-19-2006.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3551 Future Employment of City Officials

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom the *City Official*, or a member of the *City Official's* immediate family, is seeking, negotiating, or securing an agreement concerning future employment.
- (b) It is unlawful for any *person* who has a matter pending before the *City* to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a *City Official*, or a member of the *City Official's* immediate family, if that *City Official* is making, participating in making, or using his or her official position to influence, a decision concerning that matter.
- (c) The prohibitions set forth in subsections (a) and (b) do not apply to a *City Official's* prospective employment with a *public agency*.

("Future Employment of City Officials" added 4-29-2002 by O-19055 N.S.)
(Amended 4-23-2008 by O-19737 N.S.; effective 5-23-2008.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3560 Financial Interest in Contract

- (a) It is unlawful for any *City Official* to be financially interested in any contract made by them in their official capacity.
- (b) It is unlawful for any contract to be made by the *City Council* or any board or commission established by the *City Council* if any individual member of the body has a financial interest in the contract.

- (c) Any *City Official* with a remote interest in a prospective contract of the *City* must disclose the existence of the remote interest to the body of the board which the *City Official* is a member if that board has any role in creating, negotiating, reviewing, or approving the contract; and the *City Official* must abstain from influencing or participating in the creation, negotiation, review, or approval of the contract.
- (d) This section shall be interpreted in a manner that is consistent with California Government Code sections 1090 through 1099. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.
(“*Financial Interest in Contract*” added 4-29-2002 by O-19055 N.S.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3561 Disqualification of City Officials in Municipal Decisions Affecting Economic Interests

- (a) It is unlawful for a *City Official* to make, participate in making, or in any way use his or her official position to influence a *municipal decision* in which he or she knows or has reason to know he or she has a disqualifying financial interest.
- (b) A *City Official* has a disqualifying financial interest in a *municipal decision* if that *municipal decision* will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the *City Official* or his or her *immediate family*, or on any of their economic interests in business entities, real property, sources of income, sources of gifts, or their own personal finances.
- (c) This section shall be interpreted in a manner that is consistent with the provisions of California Government Code sections 87100 through 87105 and title 2, sections 18700 through 18709 of the California Code of Regulations. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.
(“*Disqualification of City Officials in Municipal Decisions Affecting Economic Interests*” added 4-29-2002 by O-19055 N.S.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3562 Disqualification of City Officials in Municipal Decisions Involving Benefactors

- (a) It is unlawful for any *City Official* to participate in any *municipal decision* where a *party* to the *municipal decision* has, within the previous twelve months, given the *City Official*, promised to give the *City Official*, or acted as an intermediary for the *City Official* to have, an opportunity for *compensation*.
- (b) For purposes of this section, opportunities for *compensation* provided to a *City Official* include opportunities for *compensation* provided to the *City Official's immediate family*. When such an opportunity for *compensation* is provided to a member of the *City Official's immediate family*, the *City Official* shall not participate in a *municipal decision* involving a *party* to the *municipal decision* unless the *City Official* had no knowledge or involvement in securing the opportunity for *compensation*.
- (c) This section does not apply to opportunities for *compensation* provided by a *public agency*.

(“Disqualification of City Officials in Municipal Decisions Involving Benefactors”
added 4-29-2002 by O-19055 N.S.)

(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)

§27.3563 Incompatible Activities

It is unlawful for any *City Official* who receives *compensation* from the *City* to engage in any employment, activity, or enterprise for *compensation* which is inconsistent with, incompatible with, in conflict with, or inimical to, his or her duties as a *City Official*. Specifically, it is unlawful for any *City Official* to receive *compensation* for performing any work, service, activity, or enterprise for private gain or advantage if it involves:

- (a) the consumption of time for which the *City Official* is receiving *compensation* by the *City*; or
- (b) the facilities, equipment, or supplies of the *City*; or
- (c) the *City Official's* use of his or her badge, uniform, prestige, or the influence of his or her position with the *City*; or
- (d) *compensation* received or accepted by the *City Official* from anyone other than the *City* for the performance of an act which the *City Official* would be required or expected to render in the regular course or hours of his or her *City* employment or as a part of his or her duties as a *City Official*; or

- (e) the performance of an act in other than his or her capacity as a *City Official* which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other *City Official*; or
 - (f) a consumption of time that would render the performance of his or her duties as a *City Official* less efficient.
- (“*Incompatible Activities*” added 4-29-2002 by O-19055 N.S.)

§27.3564 Misuse of City Position or Resources

- (a) It is unlawful for any *City Official* to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any *person* to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the *City Official* or his or her *immediate family*. As used in this section, the term “private advantage, benefit, or economic gain” means any advantage, benefit, or economic gain, distinct from that enjoyed by members of the public without regard to official status or not resulting naturally from lawful and proper performance of duties. A *City Official* engages in a prohibited use of his or her official position or prospective position when he or she engages in activities other than in the lawful and proper performance of his or her *City* duties.
- (b) It is unlawful for any *City Official* to engage in campaign-related activities, such as fund-raising, the development of electronic or written materials, or research, for a campaign for any elective office using *City* facilities, equipment, supplies, or other *City* resources.
- (c) It is unlawful for any *City Official* to induce or coerce, or attempt to induce or coerce any other *person* to engage in any activity prohibited by subsections (a) and (b).
- (d) It is unlawful for any *City Official* to engage in outside employment during any hours he or she is receiving *compensation* to engage in *City* business.
- (e) It is unlawful for any current or former *City Official* to use or disclose to any *person* any *confidential information* he or she acquired in the course of his or her official duties, except when such disclosure is a necessary function of his or her official duties.
- (f) Nothing in this section shall prohibit the use of *City* resources to provide information to the public about the possible effects of any bond issue or other ballot measure relating to *City* activities, operations, or policies, provided that:

- (1) the use of public resources is otherwise legally authorized; and
- (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

*(“Misuse of City Position or Resources” added 4-29-2002 by O-19055 N.S.)
(Amended 10-15-2013 by O-20302 N.S.; effective 11-14-2013.)*

§27.3570 Political Influence Prohibited

It is unlawful for any *City Official* to use or promise to use his influence or official authority to secure any appointment or prospective appointment, to any position in the service of the *City* as a reward or return for personal or partisan political service.
(“Political Influence Prohibited” added 4-29-2002 by O-19055 N.S.)

§27.3571 Solicitation of Political Campaign Contributions

- (a) It is unlawful for any *City Official* to solicit, directly or indirectly, a political campaign contribution from any *City* employee with knowledge that the *person* from whom the contribution is solicited is a *City* employee.
- (b) It is unlawful for any candidate for elective office of the *City* to solicit, directly or indirectly, a political campaign contribution from a *City* employee with knowledge that the *person* from whom the contribution is solicited is a *City* employee.
- (c) Notwithstanding subsections (a) and (b), this section shall not prohibit a *City Official* or a candidate for elective office of the *City* from soliciting political campaign contributions from *City* employees if the solicitation is part of a solicitation made to a significant segment of the public which may include *City* employees, and the solicitation does not otherwise violate the provisions of the *Campaign Control Ordinance*.
- (d) Nothing in this section prohibits a *City* employee from making a political campaign contribution to a *City Official* or candidate for elective office, and nothing in this section prohibits a *City Official* or candidate for elective office from accepting a political campaign contribution from a *City* employee.

(“Solicitation of Political Campaign Contributions” added 4-29-2002 by O-19055 N.S.)

§27.3572 No Payment for Office

It is unlawful for any *City Official* to give or promise to give to any *person* any portion of his or her *compensation* or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for, or elected to any office or employment.

(“*No Payment for Office*” added 4-29-2002 by O-19055 N.S.)

§27.3573 Protection of Employees Against Retaliation for Reporting Violations

- (a) It is unlawful for any *City Official* to use or threaten to use any official authority or influence to discourage, restrain, or interfere with any other *person* for the purpose of preventing such *person* from acting in good faith to report or otherwise bring to the attention of the *Ethics Commission* or other appropriate agency, office, or department any information which, if true, would constitute:
- (1) a work-related violation by a *City Official* of any law or regulation; or
 - (2) a gross waste of *City* funds; or
 - (3) a gross abuse of authority; or
 - (4) a conflict of interest of a *City Official*; or
 - (5) a specific and substantial danger to public health or safety due to an act or omission of a *City Official*, use of a *City* office or position, or use of *City* resources for personal gain.
- (b) It is unlawful for any *City Official* to use or threaten to use any official authority or influence to effect any action as a reprisal against a *City Official* who reports or otherwise brings to the attention of the *Ethics Commission* or other appropriate agency, office, or department any information regarding the subjects described in subsection (a).
- (c) Any *person* who believes that he or she has been subjected to any action prohibited by this section may file a complaint with the *Ethics Commission*. The *Ethics Commission* shall thereupon investigate the complaint in accordance with the provisions of Chapter 2, Article 6, Division 4, of this Municipal Code. Upon the conclusion of its investigation, the *Ethics Commission* may take appropriate action as allowed under its enforcement authority.
- (d) In the event the *Ethics Commission* determines that it has a conflict of interest in an investigation of a retaliation complaint, the *Ethics Commission* staff shall refer the investigation of the retaliation complaint to the *City Attorney* who shall take appropriate action as otherwise provided by law.

(“*Protection of Employees Against Retaliation for Reporting Violations*” added 4-29-2002 by O-19055 N.S.)

§27.3580 Ethics Commission Advice

Any *City Official* or *Filer* may request that the *Ethics Commission* provide written advice concerning the legality of accepting any specific *benefit*, or concerning the legality of any other activity discussed in this Division. Such request shall contain sufficient information to allow the *Ethics Commission* or its staff to properly consider the matter.

(“*Ethics Commission Advice*” added 4-29-2002 by O-19055 N.S.)

§27.3581 Enforcement

- (a) Any *person* who believes that a violation of any portion of this Division has occurred may file a complaint with the *Ethics Commission*.
- (b) The *Ethics Commission* may elect to enforce the provisions of this Division administratively pursuant to Chapter 2, Article 6, Division 4, or may otherwise recommend or refer enforcement actions to the *City Attorney* or other law enforcement agency with jurisdiction.
- (c) Nothing in this Division limits the authority of the *City Attorney*, any law enforcement authority, or any prosecuting attorney to enforce the provisions of this Division under any circumstances where the *City Attorney*, law enforcement agency, or prosecuting attorney otherwise has lawful authority to do so.

(“*Enforcement*” added 4-29-2002 by O-19055 N.S.)

§ 27.3582 Application of Requirements

The requirements imposed by this Division on *City Officials* shall not apply to any *City Official* who terminated his or her *City* service or whose term of office expired prior to the effective date of this Division; provided, however, that a *person* who returns to *City* service on or after the effective date of this Division shall be subject to the requirements of this Division.

(“*Application of Requirements*” added 4-29-2002 by O-19055 N.S.)

§27.3583 Penalties

- (a) Any *person* who violates any part of this Division, or who counsels, aids, abets, advises, or participates with another to commit any such violation, is guilty of a misdemeanor and is subject to the penalties set forth in Chapter 1 of this Municipal Code.
- (b) Any *person* who violates any part of this Division, or who counsels, aids, abets, advises, or participates with another to commit any such violation is subject to the administrative enforcement process and penalties set forth in Chapter 2, Article 6, Division 4, of this Municipal Code.
- (c) Any *person* criminally convicted in a court of law of a violation of any provision of this Division shall be ineligible to hold a *City* elective office for a period of five years from and after the date of the conviction.
(“Penalties” added 4-29-2002 by O-19055 N.S.)

§27.3588 Late Filing Penalties

If any *Filer* files a statement of economic interests after any deadline imposed by this Division, he or she shall, in addition to any other penalties or remedies established by the Division, be liable to the *City* in the amount of ten dollars (\$10) per day after the deadline until the statement is filed. Liability need not be enforced by the *City* if the *Filing Officer* or the *Ethics Commission* determines, on an impartial basis, that the late filing was not willful and that enforcement of the liability will not further the purposes of this Division, except that no liability shall be waived if a statement or report is not filed within 30 calendar days after the *Filing Officer* has sent such *Filer* specific written notice of the filing requirement.
(“Late Filing Penalties” added 4-29-2002 by O-19055 N.S.)

§27.3595 Applicability of Other Laws

Nothing in this Division shall exempt any *person* from complying with applicable provisions of any other laws.
(“Applicability of Other Laws” added 4-29-2002 by O-19055 N.S.)

San Francisco Charter

ARTICLE XV: ETHICS

Sec. 15.100.	Ethics Commission.
Sec. 15.101.	Executive Director and Commission Staff.
Sec. 15.102.	Rules and Regulations.
Sec. 15.103.	Conflict of Interest.
Sec. 15.105.	Suspension and Removal.
Sec. 15.107.	Reporting of Campaign Financing.

SEC. 15.100. ETHICS COMMISSION.

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointments shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such

date, the sitting member shall continue to serve until replaced the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

(a) Restrictions on Holding Office. No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(Amended November 2001; November 2002; November 2003)

SEC. 15.101. EXECUTIVE DIRECTOR AND COMMISSION STAFF.

The Commission shall appoint and may remove an Executive Director. The Executive Director shall have a background in campaign finance, public information and public meetings and the law as it relates to governmental ethics. The Executive Director shall be the chief executive of the department and shall have all the powers provided for department heads. Subject to the civil service provisions of this Charter, the Executive Director shall have the power to appoint and remove other employees of the Commission. In addition to any other conflict of interest provisions applicable to City employees, the Executive Director and all other employees of the Commission shall be subject to the conflict of interest provisions in Section 15.100, except that the post-employment restrictions contained therein shall apply only to the Executive Director and management-level employees.

(Amended November 2001)

SEC. 15.102. RULES AND REGULATIONS.

The Commission may adopt, amend and rescind rules and regulations consistent with and related to carrying out the purposes and provisions of this Charter and ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics and to govern procedures of the Commission. In addition, the Commission may adopt rules and regulations relating to carrying out the purposes and provisions of ordinances regarding open meetings and public records. The Commission shall transmit to the Board of Supervisors rules and regulations

adopted by the Commission within 24 hours of their adoption. A rule or regulation adopted by the Commission shall become effective 60 days after the date of its adoption unless before the expiration of this 60- day period two-thirds of all members of the Board of Supervisors vote to veto the rule or regulation.

The City Attorney shall be the legal advisor of the Commission.

Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members.

(Amended November 2001)

SEC. 15.103. CONFLICT OF INTEREST.

Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.

(Amended November 2003)

SEC. 15.104.

(Repealed November 2003)

SEC. 15.105. SUSPENSION AND REMOVAL.

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so

sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, AND ENTERTAINMENT COMMISSION. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission, and the Entertainment Commission may be suspended and removed pursuant to the provisions of subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

(Amended November 2001; March 2002; November 2003)

SEC. 15.106.

(Repealed November 2003)

SEC. 15.107. REPORTING OF CAMPAIGN FINANCING.

The Board of Supervisors shall, by ordinance, prescribe requirements for campaign contributions and expenditures and any limitations thereon with respect to candidates for elective office and ballot measures in the City and County.

SEC. 15.108.

(Repealed November 2003)

- **Chapter 12.04 - SAN JOSÉ ETHICS COMMISSION**

- **Part 1 - DUTIES AND RESPONSIBILITIES**

- **12.04.025 - San José Ethics Commission.**

"San José Ethics Commission", also referred to in this title as "ethics commission" or "commission" shall mean the established pursuant to the provisions of Part 16 of [Chapter 2.08](#).

(Ords. 25209, 26440, 26976, 29398.)

- **12.04.050 - Meetings.**

A.

The commission shall meet no less than two times during the year of a municipal election. At least one meeting shall be held before the primary election and one meeting shall be held before the general election.

B.

The commission shall meet at other times as set forth in the resolution of bylaws of the commission or as called by the chair. Deliberations and meetings of the commission shall be open to the public in accordance with the Ralph M. Brown Act (Gov. Code, section 54950 et seq.)

C.

The office of the city clerk shall staff such meetings.

(Ords. 24499, 25525, 26440, 26976.)

- **12.04.060 - Quorum.**

A.

Three members constitute a quorum of the commission, and the votes of at least three members are required to take any action.

B.

The votes of at least three members of the commission are required to impose any order or penalty for a violation of this title. Each member voting to impose any order or penalty for a violation of this title, must certify that he or she has heard (either in person or by listening to a recording) or has read a transcript of the testimony at the hearing on the complaint and has reviewed all the evidence in the record.

(Ords. 24499, 25525, 26440, 26976, 28624.)

- **12.04.070 - Duties and responsibilities.**

The commission shall have the following duties and responsibilities:

- A.
Monitor compliance with all campaign and ethics ordinances in this title.
- B.
Review and investigate allegations of violations of this title and take enforcement action where appropriate.
- C.
Make recommendations to the city council with regard to campaign and ethics regulations and policies.
- D.
Settle challenges to commission decisions in accordance with [Section 4.24.050](#) of [Title 4](#) of this code.

(Ords. 24499, 25525, 26440, 26976.)

- **12.04.080 - Investigations.**

- A.
The city council shall adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the commission.
- B.
The commission has the authority to investigate complaints alleging violations of this title, in accordance with the regulations and procedures adopted by resolution of the city council.
- C.
A complaint filed with the commission may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation.
- D.
The council shall retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints and to make recommendations to the commission. The council shall appropriate funds anticipated to be needed to fund the evaluator for a period of four years.
- E.
No complaint, investigative file or information contained therein may be disclosed by a city official, city employee, the evaluator or investigator to any person other than a respondent or

respondent's representative, the city attorney or district attorney, a court, a law enforcement agency or otherwise as necessary to the conduct of an investigation before the evaluator presents the report and recommendations to the commission.

F.

Except as provided in this section, the evaluator must refer any complaint where the respondent is a classified or unclassified employee appointed by a city council appointee to the appointing authority for investigation and action. The ethics commission must not take any further action on the complaint with regard to the employee.

G.

Any city employee who is a candidate for city office must be treated as any other candidate for purposes of [Chapter 12.06](#).

H.

The city attorney's office may provide legal advice to the commission related to noncomplaint matters or general interpretations of the municipal code or relevant state or federal law, but must not participate in investigations or reviews of complaints.

(Ords. 24499, 25525, 26440, 26976, 28624, 29398.)

- **12.04.085 - Subpoena power.**

A.

The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items.

B.

The chair of the commission, after consultation with the evaluator, shall have the power to subpoena witnesses and to compel their attendance and testimony, administer oaths and affirmations at a scheduled commission hearing or meeting, and to require by subpoena the production of any books, papers, records or other items.

C.

The subpoena power shall be used only after a finding by the chair of the commission that the information or testimony is essential for a determination and material to its duties and/or exercise of its powers and that good faith efforts to acquire relevant information have failed.

(Ords. 25525, 26440, 26976, 27339, 29398.)

- **Part 2 - ENFORCEMENT**

- **12.04.100 - Findings.**

A.

The commission, by resolution, shall issue formal findings based on a preponderance of the evidence from the entire record of the commission's proceedings.

B.

No finding of violation shall be made unless the person alleged to have committed the violation has been notified of the alleged violation and provided a copy of the regulations and procedures of the commission.

C.

If the ethics commission finds a violation of this title, the commission may:

1.

Find mitigating circumstances and take no further action;

2.

Issue a public statement or reprimand; or

3.

Impose a civil penalty in accordance with this title.

(Ords. 24499, 25525, 26440, 26976, 29398.)

- **12.04.110 - Civil penalties.**

A.

Civil penalties shall be imposed by resolution of the commission.

B.

Except as otherwise specified in [Title 12](#), the commission may impose penalties of up to five thousand dollars (\$5,000) for each violation or three times the amount which a person or respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

C.

If any civil penalty imposed by the commission is not timely paid, the city clerk shall refer the debt to the director of finance for collection.

(Ords. 25525, 26440, 26976, 27291, 28213.)

- **12.04.120 - Campaign contribution violations.**

A.

In determining if penalties should be imposed for violations of [Chapter 12.06](#) and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case, including:

1.

- The severity of the violation;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent or inadvertent;
4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this chapter;
5. Whether the respondent has a prior record of violations of city law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
6. The degree to which the respondent cooperated with the investigation;
7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this chapter.

B.

A candidate or committee failing to file a late contribution report pursuant to [Section 12.06.910](#) shall be required to pay a penalty in an amount imposed by the commission pursuant to [Section 12.04.110](#), but not less than one thousand dollars (\$1,000).

C.

The city clerk or city attorney may put persons on notice of a potential violation of the requirements of [Chapter 12.06](#), whether or not a complaint is filed with the commission.

(Ords. 24499, 24733, 25525, 26440, 26976, 27291, 28213.)

- **12.04.130 - Excess contributions - Candidate.**

No person shall be found in violation of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed by said sections, provided that such excess contribution was made, solicited or accepted at a time when the person was a candidate for the elective city office subject to the limitation, and as soon as reasonably possible and in no event more than thirty days after his or her discovery of the excess contribution either:

A.

The amount of contribution in excess of the prescribed limitation was refunded to the donor; or

B.

The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 25134, 26440.)

- **12.04.140 - Excess contributions - Officeholder.**

No person shall be found in violation of this chapter for having made or accepted any contribution in excess of the limits prescribed by such sections, provided that:

A.

The amount of contribution in excess of the prescribed limitations shall have been refunded to the donor within thirty days of receipt by the committee; or

B.

The amount of contribution in excess of the prescribed limits shall have been donated to the general fund of the City of San José within thirty days of receipt.

(Ords. 25134, 26440.)

- **12.04.150 - Precandidacy contributions.**

No person shall be found in violation of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed herein, provided that the excess contribution was made, solicited or accepted at a time when the person was not a candidate for the elective city office subject to the limitation, and within thirty days of his or her becoming a candidate either:

A.

The amount of contribution in excess of the prescribed limitation was refunded to the donor; or

B.

The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24577, 26440.)

- **12.04.160 - Violations of this title.**

Enforcement of this title shall not be governed by [Section 1.08.010](#) of this code unless such violation constitutes a separate violation of another section or provision of this code or of another applicable provision of law.

(Ords. 24499, 25525, 26440, 28985.)

- **12.04.170 - Subject to discipline.**

Any violation of this title by an officer or employee of the city or successor agency to the redevelopment agency may be deemed a failure to perform the duties under or observe the rules

and regulations of the department, office, board or commission of such officer or employee within the meaning of the civil service ordinance and other city and agency rules and regulations.

(Ords. 24499, 26440, 29398.)

- **12.04.180 - Additional sanctions - Revolving door violations.**

In addition to any other remedy provided in this code, the following sanctions shall also apply to any violations of [Chapter 12.10](#) where appropriate:

A.

Upon the petition of any interested person or party, a court or the presiding officer of any proceeding described in [Section 12.10.020](#) may, after notice and an opportunity for hearing, exclude any person found to be in violation of [Chapter 12.10](#) from further participation, or from assisting or counseling any other participant in the matter then pending before such court or presiding officer.

B.

City shall be entitled to recover from any former city or successor agency to the redevelopment agency officer or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of [Chapter 12.10](#).

(Ords. 24499, 26440, 29398.)

Source:

https://www.municode.com/library/ca/san_jose/codes/code_of_ordinances?nodeId=TIT12ETOPGOPR_CH12.04SAJOETCO

RESOLUTION NO. 76954

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING REGULATIONS AND PROCEDURES FOR THE SAN JOSE ETHICS COMMISSION INVESTIGATIONS AND HEARINGS, AND REPEALING RESOLUTION 75640

WHEREAS, the San José Ethics Commission (Commission), is charged under Chapter 12.04 of the San José Municipal Code to investigate complaints alleging violations of Title 12 of the San José Municipal Code and take enforcement action where appropriate; and

WHEREAS, formal regulations are required to ensure that all interested parties are apprised of and understand the procedures by which a fair hearing will be conducted; and

WHEREAS, the City Council desires to amend the current regulations and procedures for Commission investigations and hearings contained in Resolution No. 75640 to correct process deficiencies as discovered in the conduct of investigations and hearings, to improve efficiencies, to account for the name change of the Commission and to reflect the current practice of the Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The following Regulations and Procedures as amended are hereby adopted and shall govern all proceedings before the San José Ethics Commission (Ethics Commission or Commission).

REGULATIONS AND PROCEDURES FOR SAN JOSE ETHICS COMMISSION INVESTIGATIONS AND HEARINGS

A. PREAMBLE

These Regulations and Procedures of the San José Ethics Commission are promulgated in order to ensure the fair, just, and timely resolution of complaints presented to the Commission that allege violations of City ordinances relating to the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 of the San José Municipal Code, by:

1. Setting and maintaining objective standards for the investigation and determination of matters brought before the Commission;

2. Eliminating any improper influence in the investigation of and determinations relating to persons alleged to have committed ethics violations;
3. Assuring reasonable time frames within which enforcement proceedings should be completed.

B. DEFINITION OF TERMS

For purposes of these Regulations and Procedures, the following definitions shall apply:

1. "Candidate" means a person who is running for City Office or is a City elected officeholder.
2. "Chair" means the elected Chair of the San José Ethics Commission. If the Chair is not available, the elected Vice-Chair may temporarily assume the duties and responsibilities of the Chair.
3. "Code Enforcement" means the Code Enforcement Division of the Planning, Building, and Code Enforcement Department which provides citywide enforcement service for all reported concerns and violations relating to neighborhood residential properties as well as commercially and industrially zoned properties.
4. "Complainant" means a person or entity that files a complaint.
5. "Complaint" means the Ethics Commission Complaint Form, completed and signed by the Complainant, which is on file with the City Clerk.
6. "Day" means calendar day, unless otherwise specifically indicated.
7. "Ethics Commission" or "Commission" means the San José Ethics Commission.
8. "Ethics Ordinances" means all ordinances found in Title 12 of the San José Municipal Code.
9. "Evaluator" means a person who is neutral and impartial, meets the qualifications in Section C and has been retained as provided herein.
10. "Exculpatory information" means information tending to show that the Respondent is not guilty of the alleged violations.
11. "Hearing" means a formal meeting of the San José Ethics Commission convened for the purpose of making determinations regarding a Complaint and conducted in accordance with the requirements in Section G.

12. "Investigator" means a person who is neutral and impartial, meets the qualifications in Section D and has been retained as provided herein.
13. "Mitigating information or circumstances" means information or circumstances tending to excuse or reduce the significance of the Respondent's conduct.
14. "Preliminary Investigation" is that investigation conducted by the Evaluator prior to any presentation to the Commission.
15. "Respondent" means a person or entity that is alleged in a complaint to have violated an Ethics Ordinance.

C. HIRING OF THE EVALUATOR

1. The City Clerk shall submit a budget request which will enable the City Council to appropriate funds anticipated for the Evaluator for a contract period of up to four (4) years.
2. The Commission shall prepare and issue a Request for Qualifications/Quotes for an Evaluator at least six months before the existing contract expires.
3. The Evaluator shall have a legal background and experience with ethics, election or political law.
4. The Evaluator shall be neutral and impartial and shall not have or appear to have any bias or favoritism toward any person or entity involved in any way with any complaint or investigation.
5. The Commission shall select the Evaluator and present the contract with the selected candidate to the Council for approval of the contract on a public agenda.
6. The contract shall have up to a four (4) year term and shall end on June 30 of an odd numbered year.
7. The contract with the Evaluator shall be subject to termination at the pleasure of the Commission.
8. The contract shall be terminated if any circumstances arise which in the judgment of the Commission would compromise the appearance of neutrality.

D. HIRING OF AN INVESTIGATOR

1. In addition to the Evaluator, if necessary, the Ethics Commission is authorized to hire an independent Investigator by contract executed by the City Clerk.

2. The Commission shall prepare and issue a Request for Qualifications/Quotes for the Investigator to conduct investigations or assist with investigations of complaints which are assigned by the Ethics Commission and to monitor compliance with the requirements of Title 12 of the San José Municipal Code as requested by the Ethics Commission.
3. The Investigator shall have experience in conducting investigations such as law enforcement, ethics or employment related investigations. Familiarity with conflict of interest, campaign finance, and lobbying laws is desirable.
4. The Investigator shall be neutral and impartial and must not have or appear to have any bias or favoritism towards any person or entity involved in any way with any complaint or investigation.
5. The contract with the Investigator shall be subject to termination at the pleasure of the Commission.
6. The contract shall be terminated if any circumstances arise which in the judgment of the Commission would compromise the appearance of neutrality.
7. The contract with the Investigator shall be administered by the City Clerk.
8. For purposes of the investigation of complaints by the Investigator, the provisions of these Regulations and Procedures which are applicable to the Evaluator shall also apply to the Investigator.

E. COMPLAINTS OF ALLEGED VIOLATIONS

1. Any person may file a complaint alleging possible violations of the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 of the San José Municipal Code.
2. Complaints shall only be filed with the City Clerk who shall act as the Secretary to the Commission.
3. Complaints may be filed on the complaint form that is approved by the Commission and available in the Office of the City Clerk or from the City Clerk's website. In addition, the City Clerk may accept complaints, which provide the specificity and detail, including the identity of the Complainant, as required in this Section, by letter or electronic mail.
4. Complaints shall be filed with the City Clerk in person during business hours, by mail, by electronic mail or by facsimile on a complaint form.
5. A complaint shall provide as much specificity and detail as possible, including facts constituting the alleged violations, the name and address of the person who

- is alleged to have violated an ordinance and the names and addresses of potential witnesses.
6. Written complaints which provide specificity and detail, including the identity of the Complainant, and which are filed with the City Clerk, shall be forwarded promptly to the Evaluator by the City Clerk.
 7. The following types of complaints are outside the jurisdiction of the Ethics Commission, and no action can or will be taken by the Commission regarding these types of complaints:
 - a. Complaints against the Ethics Commission, and/or its members;
 - b. Complaints against the City Clerk; and/or
 - c. Complaints alleging political sign placement or size violation which shall be forwarded promptly to Code Enforcement by the City Clerk; and/or
 - d. Complaints alleging violations other than the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 of the San José Municipal Code
 8. A complaint may be submitted anonymously only by calling the "Ethics Commission Anonymous Complaint Hotline" at 408-975-ANON (2666). The Complainant shall state good cause for anonymity, which is limited to (a) an employee of the City or the Successor Agency to the Redevelopment Agency who is not protected by the Civil Service system making a complaint about a supervisor in his or her chain of command; or (b) a private sector employee making a complaint about his or her employer. The Chair of the Commission shall assess whether there is good cause for anonymity. It is recommended, but not required, that the Complainant provide a telephone number or other contact information for the Chair to contact the Complainant to gather additional information about the cause for anonymity. If the Chair determines the Complainant has good cause for anonymity, the complaint shall be forwarded promptly to the Evaluator by the City Clerk. If the Chair determines that the Complainant does not have good cause for anonymity, the complaint shall not be forwarded to the Evaluator.
 9. The City Clerk shall notify the Commission members promptly that a complaint has been filed, the date the complaint was filed and the general nature of the complaint.
 10. If a member of the Commission files a complaint, that member's right to participate in the complaint process is the same as any other complaining party. However, that member shall not participate in deliberations or vote on a matter concerning such complaint.

11. Under the circumstances described in Subsection F.8., the Evaluator may file a complaint with the City Clerk as provided in this Section E alleging possible violations of the Ethics Ordinance.

F. REVIEW OF COMPLAINTS BY EVALUATOR

1. The Evaluator shall notify the Respondent of the allegations and provide the Respondent with a complete copy of the complaint immediately upon the receipt of the complaint, unless the Evaluator determines that it is necessary to delay the notification in order not to compromise the investigation.
2. The Evaluator shall review every complaint to determine whether sufficient cause exists to conduct a preliminary investigation. Sufficient cause shall exist when a complaint identifies specific facts, which if proven, would be a violation of Title 12 of the San José Municipal Code. No investigation shall be conducted if the complaint does not contain sufficient facts to demonstrate a potential violation, if the facts would not amount to a violation of law or if identical allegations have already been addressed in a prior investigation.
3. Complaints which allege violations which have occurred more than four years prior to the date of filing shall not be considered by the Commission.
4. Any City employee who is a Candidate for City office shall be treated as any other Candidate for purposes of Chapter 12.06 of the San José Municipal Code. The Evaluator shall refer any complaint where the Respondent is a classified or unclassified employee appointed by a City Council Appointee to the appointing authority for investigation and action. The Commission shall take no further action on the complaint with regard to the employee.
5. If the Complaint, on its face, does not warrant a preliminary investigation, the Evaluator shall advise the Chair. The Chair shall schedule a Hearing for consideration of the Evaluator's Report and Recommendations.
6. If the Commission, upon reviewing the Evaluator's determination of lack of sufficient cause, determines that the complaint identifies specific facts which if proven would be a violation of the Municipal Code, the Commission shall direct the Evaluator to commence an investigation.
7. If sufficient cause is found by the Evaluator, or on review by the Commission, the Evaluator shall conduct an investigation. Such investigation must include an interview with the Respondent. The investigation may also include, but shall not be limited to, the interview of the Complainant and any witnesses, as well as the review of documents and other evidence.

8. In the event the Evaluator uncovers facts and information in the course of an investigation that may implicate possible violations of the Ethics Ordinances by one or more persons or entities who are not identified as Respondents in a complaint under investigation, the Evaluator shall notify the Chair of this discovery and shall file a complaint against the new Respondent(s) with the City Clerk using the form established for such purpose. To the extent the information giving rise to the complaint relates to the circumstances of another complaint under investigation, the Evaluator shall reference this in the complaint and indicate that the complaint should be treated as an amendment of the existing complaint. In this event, the Evaluator shall notify the new Respondent(s) as well as the Complainant and Respondent(s) of the existing complaint of the new allegations and provide copies of the subject complaints to all parties. If the information giving rise to the new complaint is not related to another complaint and deserves a separate and independent investigation, the Evaluator will notify the Respondent(s) of the allegations and provide a complete copy of the complaint, unless the Evaluator determines that it is necessary to delay the notification in order not to compromise the investigation."
9. When the Evaluator concludes an investigation, the Evaluator shall prepare a written Report and Recommendation. The Report shall contain a summary of law and evidence gathered through the investigation, including any exculpatory and mitigating information. The Evaluator may consider all relevant facts and evidence including, but not limited to hearsay evidence, and shall include in the Report all facts bearing on the weight accorded the evidence. The Report shall state whether the Evaluator concludes that a Respondent did or did not violate City law. Recommendations may include actions to be taken by the Commission or further investigation to be conducted by the Evaluator.
10. No complaint, investigative file or information contained therein, shall be disclosed to any person other than a Respondent or Respondent's representative, the City Attorney, District Attorney, a court, a law enforcement agency, or otherwise as necessary to the conduct of an investigation, prior to the presentation of the Report and Recommendations to the Commission. The Evaluator, however, may communicate with the Chair of the Commission during the course of the investigation of a pending complaint in the following circumstances:
 - a. On procedural matters; or
 - b. As required for a determination that a subpoena is essential under the provisions of Section G.
11. When a complaint, investigative file or information contained therein has been released to the public by any person or entity prior to presentation of the Report and Recommendations to the Commission, the City Clerk may acknowledge receipt of the complaint and issue a statement noting that:

- a. Any given complaint may or may not actually fall within the purview of the Commission;
 - b. A complaint merely represents unsubstantiated allegations pending the results of an investigation and Hearing; and
 - c. Early release of a complaint to the public is a violation of the San Jose Municipal Code.
12. After presentation of the Report and Recommendations, complaints, related documents, and investigative files shall not be disclosed except as required by the California Public Records Act (Government Code §§ 6250 et seq.).

G. COMMISSION HEARING

1. The Evaluator shall advise the Chair of the Commission to set a Hearing at the earliest practicable date based on the projected schedule for submittal and distribution of the Evaluator's Report and Recommendations.
2. The City Clerk shall notify the Complainant and the Respondent of the date and time of the Hearing at which the complaint will be reviewed by the Commission.
3. The Evaluator's Report and Recommendations shall be delivered to the Commission, the Complainant, the Respondent and all interested parties who request the Report, three (3) business days in advance of the Commission Hearing.
4. The Commission shall consider the Report and Recommendation of the Evaluator as well as any other evidence presented at the Hearing.
5. The Respondent may, but need not, submit a written response to the Report and Recommendations. The response may contain legal arguments, a summary of evidence and any mitigating or exculpatory information.
6. The Respondent who chooses to submit a response shall deliver the response 24 hours in advance of the Commission Hearing, if possible. The Respondent shall deliver a total of eight copies of the response to the City Clerk for distribution to the Commission and the Evaluator.
7. The Respondent may appear before the Commission personally or be represented by counsel or any other person.
8. The formal Rules of Evidence shall not apply to the Hearing.
9. All testimony presented to the Commission shall be under oath or affirmation.

10. Commission members may ask questions of the Complainant, Respondent, witnesses or the Evaluator when recognized by the Chair.
11. The Commission, if necessary, may compel the testimony of witnesses and may compel the production of relevant documents to the Evaluator by subpoena, but this power may be used only as a last resort, after good faith efforts to acquire the relevant information have failed and upon a finding that the information or testimony is essential for a determination in the matter.
12. The Chair of the Commission, after consultation with the Evaluator, may subpoena witnesses and compel their attendance and testimony and require by subpoena the production of any books, papers, records or other items at a scheduled Commission Hearing. Use of the subpoena power by the Chair shall be used only after a written determination that the information or testimony is essential for a determination in the matter and material to the duties and/or exercise of the powers of the Commission and that good faith efforts to acquire relevant information have failed. The City Clerk shall notify the Commission members promptly that subpoena power has been used and shall describe the general basis for the written determination without reference to specific details of the complaint, investigative file or information contained therein.
13. Except as otherwise provided above, individual members of the Commission may not investigate complaints nor discuss pending complaints with anyone except during the course of a Hearing.
14. The Complainant is to be treated like any other witness in providing evidence. Any interested person can submit a brief to the Commission or any written argument 24 hours before the Commission Hearing, if possible. The brief or written argument must be simultaneously provided to the Respondent.
15. The Hearing shall be recorded by the City Clerk.
16. The Hearing shall be open to the public except that witnesses may be excluded at the discretion of the Commission.
17. Prior to a final determination on the merits of a complaint, there shall be no oral or written communications regarding the merits of a complaint with any person or entity unless the communication is necessary for the conduct of the investigation or except as otherwise provided above. After the final determination, the Chair shall be the sole contact with the public and media.

H. SCHEDULING

1. This process is to be completed at the earliest possible time. While timelines cannot be precise because of the nature of an investigation, timeliness is

paramount, particularly when an elections-related complaint is filed within two weeks of an election. In all cases, the Evaluator's Report and Recommendations must be submitted to the City Clerk within 30 calendar days after the Evaluator receives the complaint unless an extension has been requested and granted as provided in this section.

2. Whenever an action is required to be completed by a particular time pursuant to these Regulations or an order of the Commission, the Evaluator or Respondent may request an extension of time by filing a written request with the City Clerk. The Clerk shall promptly forward the request for an extension to the Chair of the Commission and the City Attorney's Office. In consultation with the City Clerk and the City Attorney's Office, the Chair may grant the request only upon a showing of good cause. The extension granted by the Chair shall be in writing and must specify the amount of additional time that has been granted.
3. If an extension has been granted to the Evaluator, the Evaluator shall submit a progress report on the status of the Evaluator's Report and Recommendations at each regularly scheduled meeting of the Commission until the Report has been delivered. The progress report should explain, generally, the status of the Report and Recommendations without divulging details about the Complaint or the investigation.
4. If the Chair has denied the Evaluator's request for an extension, the Evaluator shall deliver, within three (3) business days, a Report that summarizes the law and evidence gathered through the investigation up to that point, including any exculpatory and mitigating information.

I. ROLE OF THE CHAIR

1. The Chair shall make procedural determinations including but not limited to the scheduling of Hearings, time extensions and order of witnesses.
2. The Chair is free to consult with the Evaluator and the City Attorney on procedural matters. The Chair may also discuss procedural matters ex parte with the Respondent.
3. The Chair shall serve as the sole Commission contact and/or spokesperson for interactions with the public, the City Council and the media. Except for routine administrative matters within their individual areas of responsibility, the City Clerk, City Attorney, Evaluator and Investigator shall refer all inquiries to the Chair.

J. COMMISSION - FINDINGS

1. If the Commission concludes that further investigation is necessary, it shall direct the Evaluator to conduct further investigation and to report back to the Commission.
2. Upon conclusion of the final Hearing, the Commission shall issue a decision by Resolution.
3. If the Commission decides that there is sufficient evidence to establish that no violation has occurred, the Commission shall publicly announce this fact.
4. If the Commission decides that that there is insufficient evidence to establish that a violation has occurred the Commission shall publicly announce this fact.
5. A decision that a violation has occurred shall be based on a preponderance of the evidence from the entire record of the proceedings.
6. The votes of at least three members of the Commission are required to decide that a violation of Title 12 of the San José Municipal Code has occurred. Each Commission member voting on the decision of the Commission shall certify on the record that he or she has heard (either in person or by listening to a recording) or read the transcript of the testimony at the Hearing on the complaint and reviewed all the evidence in the record.
7. The Commission may refer the allegations and any information gathered in the investigation to an appropriate enforcement agency.
8. The Commission shall not impose a penalty if it is presented with clear and convincing evidence that, prior to the alleged violation:
 - a. The Respondent had requested and obtained a written opinion from the City Attorney or the California Fair Political Practices Commission (FPPC); and
 - b. The Respondent, in requesting the opinion, disclosed truthfully all the material facts pertinent to the case; and
 - c. The Respondent committed the acts or violations alleged in the complaint in good faith reliance upon the formal, written opinion of the City Attorney or the FPPC.
9. The City Clerk shall provide a copy of the Resolution of the Commission's determination to the Respondent and Complainant. A copy of the Resolution shall be posted on the Ethics Commission website.
10. The decision of the Commission shall be the final administrative determination of the City, unless the Commission makes another decision by Resolution to

impose penalties under Section K, in which case that decision shall be the final administrative determination of the City.

K. ADMINISTRATIVE ORDERS AND PENALTIES

1. If the Commission finds a violation, the Commission may:
 - a. Find mitigating circumstances and take no further action;
 - b. Issue a public statement or reprimand;
 - c. Require corrective action by a particular deadline; and/or
 - d. Impose a penalty in accordance with Chapter 12.04 of the San José Municipal Code.
2. The votes of at least three members of the Commission are required to impose any order and/or penalty for a violation of Title 12 of the San José Municipal Code. Each Commission member voting to impose any order and/or penalty for a violation must certify on the record that he or she has heard (either in person or by listening to a recording) or read the transcript of the testimony at the Hearing on the complaint and reviewed all the evidence in the record.
3. In determining if penalties should be imposed for violations of Title 12 of the San José Municipal Code and the amount of any such penalties, the Commission shall consider all the relevant circumstances surrounding the case including:
 - a. The severity of the violation;
 - b. The presence or absence of any intention to conceal, deceive, or mislead;
 - c. Whether the violation was deliberate, negligent or inadvertent;
 - d. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for Chapter 12.04 of the San José Municipal Code;
 - e. Whether the Respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
 - f. The degree to which the Respondent cooperated with the investigation;

- g. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of Chapter 12.04 of the San José Municipal Code.
4. Civil penalties shall be imposed by Resolution of the Commission.
5. The City Clerk shall provide a copy of the Resolution imposing a penalty to the Respondent and Complainant. A copy of the Resolution shall be posted to the Ethics Commission website.

L. REFERRALS TO OTHER ENFORCEMENT AGENCIES

At any time, the Evaluator or the Commission may refer the matter to another government agency or official if the Commission determines that the agency or official may more appropriately resolve the allegations in the complaint or enforce the applicable provisions of law. A copy of all information gathered must be sent by the City Clerk's Office or City Attorney's Office to the agency or official together with the referral.

M. JUDICIAL REVIEW

1. The Resolution shall advise the Respondent that he or she can seek judicial review of the Commission decision in accordance with Chapter 1.16 of the San José Municipal Code.
2. Upon receipt of any complaint filed which challenges any decision of the Commission, the City Attorney shall decide whether or not that Office has a conflict of interest which precludes the City Attorney from representing the Commission in the action.
3. If the City Attorney determines that conflict exists, the City Attorney shall retain conflicts counsel to defend the lawsuit.

N. COLLECTION OF FINES

1. Fines imposed by the Commission shall be paid within 100 days of the date of the Resolution. A cashier's check for the specified amount shall be remitted to the City Clerk.
2. If the civil penalties are not paid within the time specified, the Clerk shall refer the debt to the Director of Finance for submission to the City's collection agency.

O. ROLE OF THE CITY ATTORNEY

1. The City Attorney may provide legal advice to the Commission related to non-complaint matters or general interpretations of the San José Municipal Code or

relevant state or federal law, but shall not participate in investigations or reviews of complaints. (SJMC § 12.04.080)

2. The Chair or the Evaluator may consult with the City Attorney at any time with regard to procedure or an interpretation of the Code, in general, and not as it applies to facts that are the subject of a pending complaint.

SECTION 2. Resolution No. 75640 is hereby repealed.


ADOPTED this 15th day of April, 2014, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
KHAMIS, LICCARDO, NGUYEN, OLIVERIO, ROCHA;
REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.


CHUCK REED
Mayor

ATTEST 

TONI J. TABER, CMC
City Clerk

- **Chapter 2.130 - KERN COUNTY CAMPAIGN FINANCE REFORM ORDINANCE**

Sections:

- **2.130.010 - Name.**

[Chapter 2.130](#) shall be known and may be cited as the "Kern County Campaign Finance Reform."

(Ord. A-341 § 2 (part), 2003)

- **2.130.020 - Purpose.**

The purpose of this ordinance is to promote public trust in governmental institutions and the electoral process, to negate the appearance of corruption, and to curtail the financial strength of certain individuals or organizations from permitting them to exercise a disproportionate or controlling influence on the election of Kern County candidates. To further these purposes, this ordinance is designed to protect individual voters by reducing the potential influence and appearance of influence resulting from large campaign contributions and, thereby, promote the integrity of the process of electing Kern County candidates and the integrity of Kern County government.

(Ord. A-341 § 2 (part), 2003)

- **2.130.030 - Relation to the Political Reform Act of 1974.**

This ordinance is intended to supplement the Political Reform Act of 1974 as amended. Unless a word or term is specifically defined in this ordinance or the contrary is stated or clearly appears from the context, words and terms shall have the same meaning as when they are used in Title 9 of the California Government Code, in which the Political Reform Act of 1974 is codified, and as supplemented by the Regulations of the Fair Political Practices Commission as set forth in Title 2, Division 6 of the California Code of Regulations, as the same may be from time to time amended.

(Ord. A-341 § 2 (part), 2003)

- **2.130.040 - Definitions.**

A.

"Carry-over" means the carry-over of contributions raised in connection with one election for county office to pay expenditures incurred in connection with a subsequent election for the same elective county office.

B.

"County candidate" means any individual who is a candidate for supervisor, sheriff-coroner-public administrator, district attorney, auditor-controller-county clerk, assessor-recorder, treasurer-tax collector, or superintendent of schools or, in the event any of the listed consolidated county offices are separated, any of the separated offices.

C.

"Intra-candidate transfer" means the transfer of contributions for a subsequent election of the same candidate seeking a different office.

D.

"Inter-candidate transfer" means the transfer of contributions from the controlled committee of one candidate to a committee supporting or opposing any other county candidate or elective county officer.

E.

"Elective county officer" means any individual who is a supervisor, sheriff-coroner-public administrator, district attorney, auditor-controller-county clerk, assessor-recorder, treasurer-tax collector, or superintendent of schools, whether appointed or elected or, in the event any of the listed consolidated county offices are separated, any individual occupying a separated office.

F.

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee and any other organization or group of persons acting in concert.

(Ord. G-7065 § 2, 2004: Ord. A-341 § 2 (part), 2003)

• **2.130.050 - Contribution limitations**

A.

Except as provided in [Section 2.130.120](#), no person, other than political committees, shall contribute to any county candidate or to an elective county officer or to the controlled committee of such a candidate or elective county officer, as defined in Government Code Section 82016, and no such county candidate, elective county officer or candidate-controlled committee shall accept from any such person, amounts totaling more than five hundred dollars (\$500.00) for each of the following elections for which the individual is a candidate: a primary election, a general (runoff) election, a special election, a special runoff election, a recall election, or a recall replacement election.

B.

Except as provided in [Section 2.130.120](#), no political committee of two or more persons, as defined in Section 82013 of the Government Code, shall make a contribution or contributions to

any county candidate or to an elective county officer or to the controlled committee of such a county candidate or elective county officer, and no such candidate, elective county officer or controlled committee shall accept from any such committee, a contribution or contributions totaling more than one thousand five hundred dollars (\$1,500.00) for each of the following elections for which the individual is a candidate: a primary election, a general (runoff) election, a special election, a special runoff election, a recall election, or a recall replacement election.

C.

Any person supporting or opposing a county candidate or candidates at a primary election, a general (runoff) election, a special election, a special runoff election, or a recall election, or a recall replacement election shall do so in accordance with this ordinance and any related regulation.

D.

The contribution limit provisions of this section shall not apply to a county candidate's contribution of his or her personal funds to his or her own campaign committee, but shall apply to contributions from a spouse.

(Ord. A-341 § 2 (part), 2003)

- **2.130.060 - Aggregation of contributions.**

For purposes of the limitations in this ordinance, the following shall apply:

A.

All contributions made by a sponsored committee to a county candidate or an elective county officer (or to a committee controlled by such candidate or officer) shall be combined with those contributions made by the sponsor(s) of the committee, and the combined amount shall not exceed the limits established in [Section 2.130.050](#).

B.

Two (2) or more entities shall be treated as one (1) person when any of the following circumstances apply:

1.

The entities share the majority of members of their boards of directors;

2.

The entities share two (2) or more officers;

3.

The entities are owned or controlled by the same majority shareholder or shareholders; and

4.

The entities are in a parent-subsidary relationship.

C.

An individual and any general or limited partnership in which the individual has a fifty percent (50%) or more share, or an individual and any corporation in which the individual owns a controlling interest (fifty percent (50%) or more), shall be treated as one (1) person.

D.

No committee that supports or opposes a county candidate shall have as a majority of its officers individuals who serve as the majority of officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit, or make contributions on behalf of any other committee. This provision shall not apply to treasurers of committees if these treasurers do not recommend or control in any way a decision on whether the candidate or candidates receive contributions.

E.

Contributions by a husband and wife shall not be aggregated.

F.

Contributions by children under eighteen (18) years of age shall be treated as contributions made by their parents or legal guardians, one-half (½) by each parent or one-half (½) by each legal guardian as applicable.

(Ord. A-341 § 2 (part), 2003)

- **2.130.070 - Election cycles.**

A.

Primary and general (runoff) elections. For purposes of the limits of the ordinance codified in this chapter and reporting procedures, contributions and expenditures made at any time between the final date for making contributions to the last election for that same elective county office and June 30 of the present election year (or March 31 of the present election year if the primary is held in March) shall be considered primary election contributions. If there is a general (runoff) election, then contributions made from July 1 through December 31 of the election year (or April 1 through December 31 of the election year if the primary is held in March) shall be considered general (runoff) election contributions. Contributions made after the end of such periods may be attributed to debt reduction for such elections, provided they are within the contributor's contribution limits as set forth in [Section 2.130.050](#).

B.

Special and special runoff elections. For purposes of the limits applicable to special elections and special runoff elections, contributions made between the date on which a vacancy occurs in the office for which a special election is called and the date of the special election shall be considered special election contributions. Contributions between the day after the special election and the date of the special runoff election shall be considered special runoff election contributions. Contributions made after the date of such elections may be attributed to debt reduction for such elections, provided they are within the contributor's contribution limits as set forth in [Section 2.130.050](#).

C.

Recall and recall replacement elections. For purposes of the limits applicable to recall and recall replacement elections, contributions made between the date on which a notice of intent to circulate recall petition is served on the elective county officer subject to the recall and the date of the recall election shall be considered recall election and recall replacement election contributions. Contributions made after the date of such election may be attributed to debt reduction for such elections, provided they are within the contribution limits set forth in [Section 2.130.050](#).

D.

Contributions made or attributed to a primary, general (runoff), special, special runoff, recall or recall replacement election may be made at any time to the county candidate or elective officer to pay for:

1.

Attorney's fees for litigation or administrative action which arises directly out of a candidate's or elected officer's alleged violation of state or local campaign, disclosure, or election laws;

2.

For a fine or assessment imposed by any governmental agency for violations of this ordinance or the Political Reform Act of 1974;

3.

For a recount or contest of the validity of an election; or

4.

For any expense directly associated with an external audit or unresolved tax liability of the campaign by the county candidate or the candidate's controlled committee.

(Ord. A-342 § 2, 2003; Ord. A-341 § 2 (part), 2003)

- **2.130.080 - Prohibition on multiple campaign committees.**

A county candidate or an elective county officer shall have no more than one (1) controlled campaign committee for election to a county office. Such a committee shall have only one (1) bank account out of which all qualified campaign and office holder expenses related to that county office shall be made. This section does not prevent a county candidate or an elective county officer from establishing another committee solely for the purpose of running for a state, federal, city, special district, or other county office or for opposing his or her recall, or primarily formed to support or oppose a ballot measure.

(Ord. A-341 § 2 (part), 2003)

- **2.130.090 - Inter-candidate transfers.**

A.

No committee controlled by a county candidate or elective county officer shall make any contributions to any other committee supporting or opposing any other county candidate or elective county officer that exceed the contribution limits of [Section 2.130.050\(A\)](#).

B.

No contributions shall be accepted by any county candidate or elective county officer, or by any committee controlled by such county candidate or elective county officer, from any other committee controlled by any other federal, state, or local candidate or officeholder that exceed the contribution limits of [Section 2.130.050\(A\)](#).

C.

No county candidate or elective county officer shall make any contributions from his or her own personal funds to the candidacy of any other candidate for elective county office that exceed the contribution limits of [Section 2.130.050\(A\)](#).

(Ord. 7065 § 3, 2004: Ord. G-7065 § 3, 2004: Ord. A-341 § 2 (part), 2003)

- **2.130.095 - Intra-candidate transfers and carry-overs.**

A.

A county candidate or elective county officer may transfer campaign funds from one controlled committee ("transferor committee") to a controlled committee for a subsequent election of the same candidate or officer ("transferee committee"). Contributions transferred shall be attributed to specific contributors using a "last in, first out" or "first in, first out" accounting methods and these attributed contributions, when aggregated with other contributions from the same contributor may not exceed the limits set forth in [Section 2.130.050\(A\)](#). Transferred contributions shall be deemed contributions made to the transferee committee in the election cycle in which such contributions are received by the transferee committee.

Any transfer of funds must be accompanied by a report disclosing the name, address, occupation and employer, and amount of contribution being transferred, for each person whose contributions are being transferred (the "transfer reports"). Said transfer report shall be prepared by the treasurer of the transferor committee and a copy thereof shall be submitted to the treasurer of the transferee committee at the time such contributions are transferred. A copy of the transfer report shall be filed with the campaign statement required to be filed by such transferee committee under the provisions of the Political Reform Act which campaign statement covers the period during which the transferred funds were received by the transferee committee.

The standard Form 460 Campaign Statement forms may be used to compile the transfer report as long as it is noted that it is the transfer report.

B.

Notwithstanding subsection (A) of this section, a county candidate or elective county officer may carry over contributions raised in connection with one election for an elective county office to pay campaign expenditures incurred in connection with a subsequent election for the same elective county office.

C.

This section shall not prohibit a county candidate from making a contribution from his or her own personal funds to his or her own candidacy.

(Ord. A-343 § 2, 2003)

- **2.130.100 - Loans to county candidates and elective county officers and their controlled committees.**

A.

A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this ordinance. This section does not apply to loans made by a county candidate or elective county officer to his or her controlled committee for elective county office.

B.

Every loan to a county candidate or elective county officer or his or her controlled committees shall be by written agreement which shall be reported on the campaign statement after which the loan is first made. Each county candidate or elective county officer shall maintain in his or her committee's records a copy of the written loan agreement.

C.

The proceeds of a loan made to a county candidate or elective county officer by a commercial lending institution in the regular course of business on the same terms available to members of the public shall not be subject to the contribution limitations of this ordinance if the loan is made directly to the county candidate or elective county officer or his or her controlled committee. The guarantors of such a loan shall remain subject to the contribution limits of this ordinance.

D.

Extensions of credit (other than loans pursuant to subsection (C) of this section) for a period of more than thirty (30) days are subject to the contribution limitations of this ordinance. Provided, however, an ordinary account is stated as of the due date thereof, and an extension of credit shall not become a contribution if the vendor makes commercially reasonable efforts to collect on the obligation for which credit was extended.

E.

This section shall apply only to loans and extensions of credit used or intended for use for campaign purposes or which are otherwise connected with the holding of public office.

(Ord. A-341 § 2 (part), 2003)

- **2.130.110 - Money, goods, or services received by officials treated as contributions.**

Any funds, property, goods, or services other than government funds, received by elective county officers which are used, or intended by the donor or by the recipient to be used, for campaign expenses (including legal expenses) or expenses related to holding public office, as described in [Article 4](#) of [Chapter 9](#) of the Government Code, commencing with Section 89510, shall be considered campaign contributions and shall be subject to the limitations of this ordinance. However, the contribution limits of [Section 2.130.050](#) shall not apply to the county candidate or elective county officer's reimbursement for reasonable travel expenses related to holding public office.

(Ord. A-341 § 2 (part), 2003)

- **2.130.120 - Voluntary expenditure ceilings.**

A.

In order to reduce the appearance of a corrupting influence from campaign contributions by reducing the demand for raising private money, the county of Kern hereby establishes voluntary expenditure ceilings for candidates for elective office.

B.

For candidates for the office of board of supervisors and for the controlled committees of candidates for the board of supervisors, a voluntary expenditure ceiling is established in the amount of one hundred thousand dollars (\$100,000.00) of expenditures for the primary election and one hundred fifty thousand dollars (\$150,000.00) of expenditures for the general election (if applicable). These ceilings shall also apply to any special, special runoff, recalls and recall replacement election.

C.

For candidates for the office of district attorney, county sheriff-coroner, public administrator, and county assessor-recorder, auditor-controller-county clerk, treasurer-tax collector, superintendent of schools, and for the controlled committees of such candidates, a voluntary expenditure ceiling is established in the amount of two hundred thousand dollars (\$200,000.00) of expenditures for the primary election and two hundred fifty thousand dollars (\$250,000.00) of expenditures for the general election (if applicable). These ceilings shall also apply to any special, special runoff, recall, and recall replacement election. In the event any of the listed consolidated offices are separated, the voluntary expenditure ceilings established above shall apply to the candidates for the separated offices.

D.

Each candidate for such office shall file with the registrar of voters of the county a written statement of acceptance or rejection of the voluntary expenditure ceilings before accepting any contributions.

1.

Candidates who accept the expenditure ceilings set forth in this section shall not be subject to the contribution limits of subsections (A) and (B) of [Section 2.130.050](#), but such candidate and their controlled committee shall be subject to a contribution limit of one thousand dollars (\$1,000.00) from any person and three thousand dollars (\$3,000.00) from any political committee for each election for which the person is a candidate.

2.

Candidates who decline to accept the voluntary expenditure ceilings set forth above shall be subject to the contribution limits established in [Section 2.130.050](#).

3.

Any candidate who declined to accept the voluntary expenditure ceilings in this section but who nevertheless did not exceed the recommended spending limits in the primary, or special election, may file a statement of acceptance of the expenditure ceilings for the remainder of the election within fourteen (14) days following the primary or special election.

4.

Once a candidate exceeds the expenditure ceilings specified in this section, the other candidates for that office are no longer bound by their voluntary acceptance of the expenditure ceilings. Candidates must notify the registrar in writing, by personal delivery, guaranteed overnight delivery, telegram, mailgram, or facsimile within twenty-four (24) hours of exceeding the expenditure ceilings of this section. The registrar must notify the other candidates for that office in writing, by personal delivery, guaranteed overnight delivery, telegram, mailgram, or facsimile, of the notice given by the candidate exceeding the voluntary expenditure ceiling within the next twenty-four (24) hours.

E.

The registrar of voters shall issue a press release to be distributed to all general circulation newspapers in the county in a timely fashion, notifying the public of those candidates who have and have not accepted the voluntary expenditure ceilings.

F.

The registrar of voters shall waive the fee for publishing a ballot statement for each candidate for elective county office who accepts the voluntary expenditure ceilings, except for candidates running unopposed. The registrar of voters shall provide unopposed candidates the option to withdraw their ballot statements. Any unopposed candidate that does not withdraw will be charged the rate published by the registrar. In any event, all candidates' ballot statements will be posted on the registrar's website.

G.

The registrar of votes shall designate in the ballot pamphlet those candidates for elective county office who have voluntarily agreed to the expenditure ceilings.

(Ord. A-341 § 2 (part), 2003)

(Ord. No. A-354, § 2, 12-10-13)

- **2.130.130 - Reporting of cumulative contributions**

Contributions received from any contributor during a reporting period which have a cumulative total of one hundred dollars (\$100.00) or more when added to all other contributions received from such contributor during the same election cycle shall be itemized and reported, both as to individual contribution amounts received during the current reporting period and the total cumulative amount received during the election cycle. Such amounts shall be reported on the required form as provided by the Fair Political Practices Commission, or shall be reported on a separate schedule appended to the required campaign statement. The term "election cycle" as used in this section shall mean the applicable period described in [Section 2.130.070](#).

(Ord. A-341 § 2 (part), 2003)

- **2.130.140 - Kern County local campaign finance hearing panel.**

A.

There is created and established the Kern County local campaign finance hearing panel.

B.

The panel shall consist of five (5) members.

C.

The board of supervisors shall appoint the members of the panel. Each member of the board of supervisors shall nominate a member for appointment to the panel.

D.

Two (2) members shall either be an attorney-at-law who has been admitted to practice before the courts of this state for at least five (5) years prior to appointment or a retired attorney or judge. One of those members shall act as chairman of the Kern County local campaign finance hearing panel. all members shall be residents of the county of Kern.

E.

Each member shall serve for a term of three (3) years. If a panel member is unable to serve out his term, the member of the board of supervisors who nominated that member shall nominate a replacement to serve out the remainder of the unexpired term. Any member whose term has expired shall continue to serve as a member until a successor has been appointed and qualified.

F.

Members shall be compensated and reimbursed for expenses incurred in the performance of their duties in such amounts as provided by resolution adopted by the board of supervisors. The compensation provided shall be no less than one hundred dollars (\$100.00) per hearing day or partial hearing day.

G.

The panel may transact business, provided that three (3) members are present, including one of the members who is an attorney, retired attorney or judge.

H.

The clerk of the board of supervisors shall keep written minutes of its meetings, a copy of which shall be filed with the county clerk.

I.

The county clerk shall furnish the panel with such clerical, administrative and other personnel necessary to perform its duties and responsibilities.

J.

All meetings of the panel shall be subject to the Brown Act.

K.

The panel shall hear administrative actions arising out of alleged violations of this ordinance and conduct other business incidental or necessary to that duty.

(Ord. A-346 § 2, 2006: Ord. A-341 § 2 (part), 2003)

- **2.130.150 - Administrative actions**

A.

Any person who intentionally or negligently violates any provision of this ordinance shall be subject to an administrative penalty, as described in [Section 2.130.160](#), in an administrative action brought by a person registered to vote in Kern County.

B.

If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable. Any person who purposely causes any other person to violate any provision of this ordinance or who aids and abets any other person in a violation is subject to the penalties in [Section 2.130.160](#).

C.

Any person, before filing an accusation in accordance with this ordinance, must first file with the district attorney a written request for the district attorney's office to investigate the propriety of commencing a criminal proceeding. The district attorney shall respond within forty (40) days after receipt of the request indicating whether the district attorney will commence the criminal proceeding. If the district attorney answers in the affirmative, negotiates a stipulation agreement or initiates a criminal proceeding within fifty-five (55) days after notice of his decision to proceed, no further action may be brought unless the proceeding by the district attorney is dismissed without prejudice or the stipulated agreement is declared void by a court of competent jurisdiction.

D.

A hearing to determine whether to impose an administrative fine under this ordinance shall be initiated by filing an accusation with the county clerk. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or

omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the portion of the ordinance which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of the ordinance. The accusation shall be verified. The verification may be on information and belief. Following the filing of an accusation, upon written request of the party filing the accusation, the respondent or the panel, the district attorney shall, to the extent permitted by law, provide both parties and the panel with a copy of all unprivileged documents relating to the request to investigate the propriety of commencing a criminal action.

E.

Upon receipt of the accusation, the county clerk shall provide a copy of the accusation to the respondent along with a notice of a prehearing. The respondent may, but is not required to file a written response to the accusation no later than ten (10) days prior to the prehearing date.

F.

The county clerk shall set a prehearing to be heard by the panel and shall provide notice of that prehearing to all parties at least twenty (20) days prior to the prehearing. The notice shall be written and shall be either personally delivered or sent by United States mail, registered, postage pre-paid.

G.

The parties shall attend the prehearing conference. At such conferences, the issues may be reviewed and the parties may be required to submit all documentary evidence and to designate which items may be introduced without objection. The parties may also be required to enter into a stipulation into the record as to those matters upon which they agree. At the prehearing, the chairman of the panel may issue orders relating to exchanges of information and other requirements necessary to ensure a fair hearing in compliance with the constitutional mandate of due process. At the prehearing, or any time thereafter, the panel may dismiss the accusation upon a finding that it is frivolous.

H.

Upon instruction by the chairman of the panel, the county clerk shall set a time and place of hearing. The county clerk shall provide notice of that hearing to all parties at least twenty (20) days prior to the hearing. The notice shall be written and shall be either personally delivered or sent by United States mail, registered, postage pre-paid.

I.

Notwithstanding any other term or condition of this ordinance, the panel may set a hearing on an expedited basis provided that it finds that an expedited hearing is reasonably necessary to enforce the terms of this chapter or to accomplish its purpose.

J.

At the hearing, the party filing the accusation shall have the burden of establishing the violation by a preponderance of the evidence. The respondent may present evidence in rebuttal or in mitigation of fines or penalties.

K.

All oral testimony shall be taken under oath or affirmation. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any sort of relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Failure to enter timely objection to the evidence constitutes a waiver of the objection. Panel members may act only upon the basis of evidence properly admitted into the record.

Panel members may not act or make a decision based upon information presented outside of the hearing or personal research. A full and fair hearing shall be accorded the accusation. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses, for argument and rebuttal.

L.

All hearings of the panel shall be recorded. Any party may, at his or her own expense, have the hearing reported by a stenographer. Only the clerk of the board may certify that the transcript or record of the hearing is accurate and complete. If a stenographic reporter is present, the clerk of the board may designate the reporter's transcript as the official record.

M.

Following the hearing, the panel shall issue a written decision within ninety (90) days and shall issue an order consistent with its findings and determinations. The order shall indicate whether the respondent violated the ordinance and, if so, what penalty shall be imposed. The order may require the respondent to file or amend any report, refund any money received or spent in excess of the contribution or expenditure limits of this chapter, or to cease and desist from further violations of this ordinance.

N.

An appeal of the order shall be pursuant to Government Code Section 53069.4.

(Ord. A-341 § 2 (part), 2003)

- **2.130.160 - Penalties.**

Any person who intentionally or negligently violates any provision of this ordinance shall be subject to an administrative penalty of up to three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, or five thousand dollars (\$5,000.00) per violation, whichever is greater.

(Ord. A-341 § 2 (part), 2003)

- **2.130.170 - Statutes of limitations.**

Actions for violations of any provision of this ordinance shall be commenced within four (4) years after the date on which the violation occurred.

(Ord. A-341 § 2 (part), 2003)

- **2.130.180 - Payment and collection.**

A.

Any person against whom an administrative penalty has been imposed shall pay the penalty immediately upon the order becoming final.

B.

In the event the person fails to pay the administrative penalty when due, the county may take any actions permitted by law or ordinance to collect the unpaid penalty, which shall accrue interest at a rate of ten percent (10%) per annum.

C.

In the event a civil action is commenced to collect the administrative penalty, the county shall be entitled to recover all costs associated with the collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure Section 685.010 et seq. and Section 1033.5.

D.

All amounts recovered under this ordinance shall be deposited with the county clerk to help defer the cost of administering this ordinance.

(Ord. A-341 § 2 (part), 2003)

- **2.130.190 - Applicability of other laws.**

Nothing in this ordinance shall exempt any persons from applicable provisions of any other laws of this state or jurisdiction.

(Ord. A-341 § 2 (part), 2003)

- **2.130.200 - Severability.**

If any provision of the ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this ordinance are severable.

(Ord. A-341 § 2 (part), 2003)

- **2.130.210 - Interpretation of chapter.**

This ordinance should be liberally construed to accomplish its purposes.

(Ord. A-341 § 2 (part), 2003)

- **2.130.220 - Amendments and additional requirements.**

A.

The board of supervisors may by ordinance adjust the contribution limitations periodically to reflect any cumulative increase or decrease in the Consumer Price Index as announced by the United States Department of Labor since the last adjustment. Such adjustments shall be rounded off to the nearest hundred dollars (\$100.00) for the limitations on contributions and one thousand dollars (\$1,000.00) for limitations on expenditures.

B.

Except as specified in subsection (A) and (C) of this section, no amendment or repeal of any provision of this ordinance shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the county and approved by a majority vote.

C.

Nothing in this ordinance prevents the Kern County Board of Supervisors from imposing additional filing and other requirements or otherwise modifying this ordinance provided that the additional requirements and modifications do not lessen the requirements and limitations imposed on any person, county candidate or elective county officer under the ordinance as enacted. The Kern County Board Of Supervisors may also adopt regulations to carry out the intent of this ordinance.

(Ord. A-341 § 2 (part), 2003)

- **2.130.230 - Effective date.**

This act shall become effective on January 1, 2003.

(Ord. A-341 § 2 (part), 2003)

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ORDINANCE NO. 4471
AMENDMENTS TO AN ORDINANCE OF THE VENTURA
COUNTY BOARD OF SUPERVISORS, REPEALING AND
REENACTING ARTICLE 6, CHAPTER 2, DIVISION 1 OF THE
VENTURA COUNTY ORDINANCE CODE, SECTION 1261 ET
SEQ., REGARDING LOCAL CAMPAIGN FINANCE REFORM

The Board of Supervisors of the County of Ventura ordains as follows:

Section 1. Repeal of Existing Ventura County Campaign Finance Reform Ordinance

Section 2 of Ordinance No. 4453 of the County of Ventura, which amended and reenacted section 1261 through 1304 of Article 6 of Chapter 2 of Division 1 of the Ventura County Ordinance Code, is hereby repealed.

Section 2. Enactment of Ventura County Campaign Finance Reform Ordinance

Sections 1261 through 1306 of Article 6 of Chapter 2 of Division 1 of the Ventura County Ordinance Code are hereby amended and reenacted as follows:

Section 1261. Name of Ordinance

This ordinance shall be known and cited as the "Ventura County Campaign Finance Reform Ordinance."

Section 1262. Purpose of the Ordinance

The purpose of this ordinance is to promote public trust in governmental institutions and the electoral process, and to eliminate the possibility of quid pro quo corruption or the appearance of quid pro quo corruption in which money is exchanged for official acts. The purpose of this ordinance is also to promote the timely and accurate release of appropriate campaign finance information before an election so that the public has knowledge of this information before voting.

To further these purposes, this ordinance is written to reduce the potential for quid pro quo corruption or the appearance of quid pro quo corruption resulting from large campaign contributions to candidates, committees supporting candidates, or independent expenditure committees that contribute to (or coordinate expenditures with or on behalf of) candidates and thus to promote the integrity of the process of electing Ventura County candidates and the integrity of Ventura County government. To further these purposes, this ordinance assigns duties and responsibilities that pertain to the timely release and publishing of campaign finance information. Finally, to further these purposes, this ordinance provides full and fair enforcement of all its provisions.

The above stated purposes are furthered by limiting contributions passed through intermediaries, "bundling," or, through contributions to multiple committees. Intermediaries who could potentially bundle multiple contributions into aggregate amounts exceeding the contribution limits of this ordinance would pose the appearance of quid pro quo corruption resulting from large contributions, whereas the contribution limits of this ordinance could be functionally evaded by contributing to multiple committees which then contribute to a candidate. The above stated purposes are furthered by requiring the timely reporting of appropriate campaign information and the timely investigation of allegations of campaign violations.

The Board of Supervisors finds that online or electronic filing of required reports and the posting of reports is necessary to properly inform the public, the press, and candidates and is herein approved by the Board. The Board further finds that the online or electronic filing system will operate securely and effectively and would not unduly burden filers.

Section 1263. Relationship to the Political Reform Act of 1974

This ordinance is intended to supplement the Political Reform Act as amended. Unless a word or term is specifically defined in this ordinance or the contrary is stated or clearly appears from the context, words and terms shall have the same meaning as when they are used in Title 9 of the California Government Code, in which the Political Reform Act is codified, and as supplemented by the Regulations of the Fair Political Practices Commission as set forth in Title 2, Division 6 of the California Code of Regulations, as well as any amendments to the Act or to the Regulations of the Fair Political Practices Commission. If any provision of this ordinance is in conflict with provisions of the Act or its Regulations, the terms of the Act and its Regulations control and preempt the terms of this ordinance to the extent necessary to bring this ordinance into full compliance therewith.

The Political Reform Act is applicable to local campaigns, and violations of the Act may be criminally prosecuted by the District Attorney's office, including such violations as failing to report contributions or expenditures, laundering contributions, or failing to make required disclosures or file required forms or reports.

Section 1264. Definitions

(a) "County candidate" or "candidate" means, as required by the context of its use, any individual who is a candidate for Supervisor, Sheriff, District Attorney, County Clerk, Treasurer-Tax Collector, Auditor, County Superintendent of Schools, or Assessor. The provisions of Government Code Section 82007 shall also apply to such individuals.

(b) "Elective county officer" means any individual who is a Supervisor, Sheriff, District Attorney, County Clerk, Treasurer-Tax Collector, Auditor, County Superintendent of Schools, or Assessor.

(c) "County-wide office" means the office of Sheriff, District Attorney, County Clerk, Treasurer-Tax Collector, Auditor, County Superintendent of Schools, or Assessor.

(d) "Participating candidate" means a candidate who has agreed to limit his or her expenditures pursuant to Section 1265.

(e) "Non-participating candidate" means a candidate who has not agreed to limit his or her expenditures pursuant to Section 1265.

(f) "Clerk" means the Office of the County Clerk.

(g) "Independent Expenditure Committee" means any committee not controlled by the candidate that contributes to or expends funds for or against a candidate, including a multipurpose organization that qualifies as a committee pursuant to Government Code Section 84222,

(h) "Non-benefiting participating candidate" means a candidate who has agreed to limit his or her expenditures pursuant to Section 1265 and who has been opposed by independent expenditures, or whose opponent has been supported by independent expenditures.

(i) "Primary Election Cycle" is the period of time that starts one year before the primary election for a County Candidate and ends the day before the primary election, unless there is no general (run-off) election for that candidate, in which case the Primary Election Cycle ends 90 days after the primary election.

(j) "General Election Cycle" is the period of time that starts the day of the primary election for a County Candidate and ends 90 days after the general (run-off) election (if there is a general election for that candidate).

(k) "Violator" means any person, committee, group of people, agency, department, office or other entity that violates any provision of this ordinance.

Section 1265. Expenditure Limits

(a) No candidate for the office of Supervisor who voluntarily accepts expenditure limits and no controlled committee of such a candidate shall make campaign expenditures of more than two hundred thousand dollars (\$200,000) per primary election and two hundred and fifty thousand dollars (\$250,000) for general elections

(b) No candidate for countywide office who voluntarily accepts expenditure limits and no controlled committee of such a candidate shall make campaign expenditures of more than six hundred and fifty five thousand dollars (\$655,000) per primary election and seven hundred and fifty five thousand dollars (\$755,000) for general elections.

(c) The Clerk shall adjust the expenditure limits in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. These adjustments shall be rounded off to the nearest five thousand dollars (\$5,000) for limitations on expenditures.

Section 1266. Acceptance of Expenditure Limits

Each county candidate shall file with the Clerk a statement of acceptance or rejection of the voluntary expenditure limits set forth in Section 1265 before accepting any contributions. If he or she agrees to the spending limits, the candidate shall not be subject to the contribution limitations in Section 1267, but shall be subject to the contribution limitations in Section 1268.

Section 1267. Contribution Limitations for Non-Participating Candidates

(a) Except as provided in Section 1268, no person shall make to any county candidate, or the controlled committee of such a candidate or elective county officer, and no such county candidate, or controlled committee of such candidate shall accept from a person any contribution totaling more than three hundred and seventy five dollars (\$375) for each of the following elections for which the individual is a candidate: a primary election or a general (runoff) election.

(b) The provisions of this section do not apply to a candidate's contributions of personal and community property funds to the candidate's own campaign, but shall apply to contributions from the candidate's spouse or registered domestic partner of the spouse's or registered domestic partner's separate property.

Section 1268. Contribution Limitations for Participating Candidates

(a) No person shall make to any participating candidate for elective county office or the controlled committee of such a candidate, and no such participating candidate for elective county office, or controlled committee of such a candidate shall accept from a person any contribution totaling more than seven hundred and fifty dollars (\$750) per election for each of the following elections for which the individual is a candidate: a primary election, or a general (runoff) election.

(b) The provisions of this section do not apply to a participating candidate's contributions of personal and community property funds to the candidate's own campaign, but shall apply to contributions from the candidate's spouse or registered domestic partner of the spouse's or registered domestic partner's separate property

Section 1269. Contributions to Candidates and Committees that Contribute to Candidates

(a) The combined total amount a person is allowed to contribute to a candidate's election committee and all other committees that contribute to or

coordinate expenditures with or on behalf of that candidate shall be no more than seven hundred and fifty dollar (\$750) over the election cycle. A willful or knowing violation of this subdivision shall violate the Ordinance and section 1294 shall apply.

(b) No committee shall knowingly accept a contribution in excess of fifty dollars (\$50) that will cause this seven hundred and fifty dollar (\$750) limit to be exceeded by any individual contributor.

(c) If a committee discovers that it has accepted a contribution in excess of fifty dollars (\$50) that has caused a contributor's seven hundred and fifty dollar (\$750) limit to be exceeded, the committee shall return the contribution within 5 business days of the discovery.

(d) An aggregate contribution over the election cycle to a committee that is not controlled by the candidate which is under fifty dollars (\$50) shall be exempted from the seven hundred and fifty dollar (\$750) limit referred to in this section only.

Section 1270 Reporting of Contributions Made to Independent Expenditure Committees

On the same dates and in the same manner as required by the Political Reform Act, Article 2 of Chapter 4 of Title 9 of the Government Code (Section 84200 et seq.), any Independent Expenditure Committee that contributes to or expends funds for or against a County Candidate shall disclose each contribution made to it that individually or cumulatively totals fifty dollars (\$50) or more per contributor. This Section shall apply only to independent expenditure committees that are County General Purpose Committees or that are formed or exist primarily to support or oppose a County Candidate or to support or oppose the qualification of, or passage of, a ballot measure that will be voted on exclusively in Ventura County.

A Committee is not excused from complying with this ordinance because it files as a State General Purpose Committee where the Committee does not meet the qualifications of a State General Purpose Committee. Any such Committee shall be governed by this ordinance for all time periods as if the Committee were not a State General Purpose Committee, and shall be subject to the penalties and other enforcement measures provided for in this ordinance.

Section 1271. Disclosure of Spending by Non-Participating Candidates

(a) If a non-participating candidate's total expenditures are twenty percent (20%) or more of the expenditure limits, the candidate shall notify and declare to the Clerk and opposing candidates within twenty-four (24) hours of the time such a total is reached.

(b) The Clerk or a candidate may make their own determination as to whether such expenditures have been made by non-participating candidates.

(c) Upon receiving a declaration or accurately determining that a non-participating candidate has spent twenty percent (20%) or more of the expenditure limits, any non-benefiting participating candidate(s) shall thereafter no longer be bound by the voluntary expenditure limits. Upon making (or verifying) any such determination, the Clerk shall inform within one (1) working day the opposing participating candidate(s) that they are no longer bound by the voluntary expenditure limits.

(d) Nothing in this section shall affect or change the contribution limits set forth in Sections 1267 and 1268.

Section 1272. Election Cycles

(a) For purposes of the limits of this ordinance and reporting procedures, if there is a general (runoff) election, contributions or expenditures made at any time from the beginning date a candidate may commence receiving contributions pursuant to Section 1280 to the day before the primary election shall be considered primary election contributions. For the general (runoff) election, contributions made from the date of the primary election through 90 days after the general (runoff) election shall be considered general (runoff) election contributions.

(b) For purposes of the limits of this ordinance and reporting procedures if there is not a general (runoff) election, contributions or expenditures made at any time from the beginning date a candidate may commence receiving contributions pursuant to Section 1280 through 90 days after the date of the primary election shall be considered primary election contributions.

Section 1273. Loans

(a) The provisions of this ordinance regarding loans apply to extensions of credit, including accrued expenses, but do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable.

(b) If a candidate makes a loan to his or her campaign or controlled committee, the outstanding loan balance may not exceed twenty thousand dollars (\$20,000) after the election. Any excess above twenty thousand dollars (\$20,000), which remains outstanding after the election, shall be deemed a non-recoverable contribution made on the date the loan was made. A candidate may not charge interest on any loan made by the candidate to the candidate's campaign.

(c) Extensions of credit, other than candidate loans and loans by commercial lending institutions to a candidate pursuant to subsection (a), for a period of more than 30 days are subject to the contribution limits of this ordinance.

(d) Every loan to a county candidate or elective county officer or his or her

controlled committees shall be by written agreement. Each county candidate or elective county officer shall maintain in his or her committee's records a copy of the written loan agreement.

(e) This section shall apply only to loans and extensions of credit used or intended for use for campaign purposes or which are otherwise connected with the holding of public office.

Section 1274. Family Contributions

(a) Contributions made by a husband and wife or by registered domestic partners shall not be aggregated and shall be attributed to each individual as required by the Political Reform Act and regulations of the Fair Political Practices Commission.

(b) A contribution of fifty dollars (\$50) or more made by a child less than eighteen (18) years of age is presumed to be a contribution from the parent or guardian of the child. For donation tracking purposes, if the parents or guardians of the child are married or have joint legal custody of child, the contribution shall be divided equally between them; if one parent or guardian has primary or sole legal custody of the child, then the contribution shall be attributed to that parent or guardian. The committee or candidate accepting a contribution from a child under the age of eighteen (18) shall obtain the information concerning parental attribution.

Section 1275. Independent Expenditures, Independent Expenditure Committees

(a) At the same time and in the same manner as required by the Political Reform Act, each Independent Expenditure Committee shall file electronically/online the same Statement of Organization with the Clerk, unless the Statement of Organization has been filed electronically with the Secretary of State.

(b) In addition to any other report required by the Political Reform Act, a committee that makes independent expenditures of one thousand dollars (\$1,000) or more during an election cycle for or against a candidate for elective county office shall file a report with the Clerk disclosing the making of each such independent expenditure. The report shall include the name and full street address of the committee, the Secretary of State identification number of the committee, the name of the treasurer of the committee, the names of committee officers with authority to make expenditures, the names, addresses and occupations of the three largest contributors to the Independent Expenditure Committee during the election cycle, and shall identify the candidate supported or opposed by the expenditure. The report shall state the cumulative total amount expended during the election cycle. This report shall disclose the same information required by subdivision (b) of Government Code Section 84204 and shall be filed within twenty-four (24) hours of the time the independent expenditure is made. A full, accurate, and readable copy or transcript of any material published or broadcast shall also be included. This Section shall apply only to Independent Expenditure Committees that are County

General Purpose Committees or that are formed or exist primarily to support or oppose a County Candidate or to support or oppose the qualification of, or passage of, a ballot measure that will be voted on exclusively in Ventura County.

(c) Each report to the Clerk shall include a signed statement under penalty of perjury by the person or persons making the independent expenditure identifying the candidate or candidates whom the independent expenditure is intended to help elect or defeat and affirming that the expenditure is independent and that it is not coordinated with a county candidate. The statement may be on a separate form from the remainder of the report as provided by the Clerk, and will be considered timely if postmarked by the date required for filing the report to the Clerk.

(d) Any individual or organization that fails to file the required report(s) with the Clerk within the timeframe set forth in subsection (a) or (b) or (c) or provides materially false information in a report filed pursuant to subdivisions (a), (b) or (c) may be fined up to three times the amount of the independent expenditure.

(e) If a single independent expenditure committee spends in support or opposition to a candidate more than twenty percent (20%) of the amount of the voluntary expenditure limit pertaining to the candidate, the committee must report that fact to the Clerk within twenty-four (24) hours.

(f) Upon independently and accurately determining, or receiving a report from the Clerk to the effect, that the aggregate total of any and all expenditures made (1) by any committee or committees not controlled by the candidate and/or (2) by any political party(s) spent in support of or opposition to a candidate is more than twenty-percent (20%) of the voluntary expenditure limit in that race, any non-benefitting participating candidate(s) shall thereafter no longer be bound by the voluntary expenditure limits. Upon receipt of one or more reports that establish that more than twenty percent (20%) of the voluntary expenditure limit in a race has been spent in support of or opposition to any candidate, the Clerk shall inform any non-benefitting participating candidate(s) of that fact within one (1) working day. For the purposes of this subdivision, the costs of a political party's direct mail and other membership communications shall be included in the total of such expenditures if spent in support of or opposition to a county candidate regardless of whether or not such funds were spent for general public advertising such as broadcasting, billboards, or newspaper advertisements.

(g) A controlled committee of a county candidate may not make independent expenditures and may not contribute funds to another committee for the purpose of making independent expenditures to support or oppose other county candidates.

Section 1276. Notice and Posting of Reports of Independent Expenditures

Upon receiving any official report that an independent expenditure has been made or obligated to be made, the Clerk shall inform within one (1) working day all other candidates in the race and shall cause the report to be posted online within

three working days of receipt.

Section 1277. Multiple Campaign Committees and Bank Accounts Prohibited

A county candidate or elective county officer shall have no more than one (1) controlled campaign committee for election to county office. Such a committee shall have only one (1) bank account out of which all qualified campaign expenses shall be made. This section does not prevent a county candidate or elective county officer from establishing another committee solely for the purpose of running for a state, federal, city, special district or other office, or solely formed to support or oppose a ballot measure.

Section 1278. Legal Defense Account

(a) A candidate for elective county office or an elected county officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney's fees and other related legal costs.

(b) A candidate for an elective county office or an elected county officer may receive contributions of up to three hundred dollars (\$300) per person per calendar year in the aggregate for accounts in subdivision (a). All contributions shall be reported in a manner prescribed by the Clerk. Contributions to such funds shall not be considered campaign contributions.

(c) In regards to the legal defense accounts, once the legal dispute is resolved, the candidate shall dispose of any funds remaining after all expenses associated with the disputes are discharged, for one or more the of purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Government Code Section 89519.

Section 1279. Electronic Filing of Campaign Statements, Posting by Clerk

(a) Any county candidate and the candidate's controlled committee that raises or spends at least one thousand dollars (\$1,000), or any independent expenditure committee that raises or spends at least one thousand dollars (\$1,000) in any county election in support of or opposition to a county candidate, shall file all campaign statements in a format that is approved by the Clerk for electronic filing, including direct online/electronic filing if available. In any instance in which the original of a statement, report or other document is required to be filed with the Secretary of State, and a copy of that statement, report, or other document is required to be filed with the Clerk, the filer may file that statement, report, or other document with the Clerk online/electronically.

(b) The Clerk shall cause to be placed on the County's web site a copy of each campaign statement required by subdivision (a) within three working days of the statement's filing with the Clerk, unless the statement has already been filed online and posted on the County website

(c) If the Clerk becomes aware that a committee has not filed online when it has met the threshold for online filing, the Clerk shall notify both the committee and the County Executive Office of this responsibility within one working day of becoming aware of this failure to file online.

Section 1280. When Contributions May Be Collected

Neither a county candidate, elected county officials, nor any committee controlled by the candidate may receive any contributions more than one year before and 90 days after an election on which the candidate is on the ballot except for contributions of the candidate's own money to the candidate's controlled committee account.

Section 1281. Deposit of ns

A county candidate, elective county officer, or the controlled committee of such a candidate or elective county officer, shall not deposit and shall return within 20 days of receipt any contribution of twenty-five dollars (\$25) or more for which the candidate, elective county officer, or controlled committee does not have on file in the records of the candidate, elective county officer or controlled committee the name, address, occupation, and employer of the contributor.

Section 1282. Return of Contributions

(a) A county candidate may return all or part of any contribution to the donor who made the contribution at any time, whether or not other contributions are returned. Such contributions, if deposited, shall be reported and the return of the contribution shall be reported.

(b) A county candidate, elective county officer, or committee may return a contribution pursuant to subdivision (a) after the date that the candidate, elective county officer, or committee has reported the contribution.

Section 1283. Contributions Funneled Through Intermediary

All contributions by a person made to a county candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate. A person may not make any contribution to any person on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed pursuant to Government Code Section 84302. Such a contribution shall be subject to all the provisions of this ordinance.

Section 1284. Laundered Contributions

Any county candidate or committee that intentionally or negligently makes or receives a contribution in violation of Government Code Section 84301 shall pay to the General Fund of the County up to three times the amount of the contribution. Payment to the County for violation of this provision shall be made as long as the person responsible or the committee controlled by such person has any funds sufficient to pay the fine.

Section 1285. Bundling of Contributions

Contributions made directly or indirectly to a particular county candidate through an intermediary or conduit shall be treated as contributions from both the contributor and the intermediary or conduit to the candidate for the purposes of this limitation. This limitation does not apply to an intermediary or conduit who is one of the following:

(a) The candidate's campaign treasurer, provided the candidate has only one officially recorded treasurer.

(b) A volunteer, presenting contributions raised by hosting a single fundraising event per election cycle outside the volunteer's place of business wherein guests are invited to a specified place at a specified time.

Provided, however, that a volunteer as set forth in (b), above, does not include the following:

(1) An officer, employee or agent of another political action committee acting on behalf of the committee;

(2) A person registered as a lobbyist with the government agency for which the candidate is running or is an officeholder;

(3) An officer, employee or agent of a corporation or labor union acting on behalf of the corporation or labor union.

Section 1286. Disclosure of Contributions

(a) On the same dates and in the same manner as required by the Political Reform Act, Article 2 of Chapter 4 of Title 9 of the Government Code (Section 84200 et seq.), County Candidates or the controlled committees of such candidates shall disclose each contribution that individually or cumulatively totals \$50 or more per contributor.

(b) Contributions to a committee from each contributor shall be totaled over the election cycle and reported in a manner prescribed by the Clerk. The term "election cycle" as used in this section shall mean the applicable period described in

Section 1272

(c) Contributions of goods and services shall be reported at the fair market value of the contribution and covered by the contribution limits of this ordinance.

(d) Contributions received between the final filing period prior to an election and the election day, in excess of two hundred fifty dollars (\$250), must be reported to the Clerk within twenty-four (24) hours of receipt of the contribution but shall not be deposited until the committee has the name, address, occupation and employer of the contributor.

Section 1287. Cash Contributions

Notwithstanding Government Code Section 84300, all contributions of twenty-five dollars (\$25) or more, other than in-kind contributions, made to any county candidate, or the controlled committee of such a candidate, shall be made in the form of a written instrument containing the name of the donor and the name of the payee.

Section 1288. Anonymous Contributions

Notwithstanding Government Code Section 84304, the total amount of anonymous contributions that may be accepted by any county candidate, or the controlled committee of such a candidate or elective county officer, shall not exceed a total of five hundred dollars (\$500) over the election cycle.

Section 1289. Aggregation of Contributions

(a) All contributions made by a sponsored committee to a county candidate or to a committee controlled by such a candidate or elective county officer shall be combined with those contributions made by the sponsor or sponsors of the committee.

(b) For purposes of the contribution limits contained in this ordinance, two or more entities shall be treated as one person when any of the following circumstances apply:

- (1) The entities share the majority of their boards of directors;
- (2) The entities share two or more officers;
- (3) The entities are owned or controlled by the same majority shareholder or shareholders;
- (4) The entities are in a parent-subsidary relationship;

(5) Any individual and any partnership in which the individual is a general partner or an individual and any corporation in which the individual owns a controlling interest [fifty percent (50%) or more], or an individual and any entity in which the individual has the authority to direct and control the contribution decisions of the entity;

(6) Any contributions made by a committee in support of or in opposition to a county candidate shall be aggregated with the contributions made by any other committee in support of or in opposition to the same county candidate if a majority of the officers of such committees are the same individuals.

(c) Candidates and candidate controlled committees shall provide, upon request by the Clerk, information sufficient to allow the Clerk to determine whether any of the circumstances set forth in subsections (b)(1) – (6) exist.

Section 1290. Campaign Advertisements

(a) All broadcast and print advertisements placed by county candidates or their controlled committees shall include a clear written or spoken statement indicating that the candidate has approved of the contents of the advertisement.

(b) Any advertisement (including mailers) supporting or opposing a county candidate that is paid for by an independent expenditure shall include a disclosure statement that identifies both of the following:

1. The name of the committee or person making the independent expenditure.

2. For committees, the names of the persons from whom the committee making the independent expenditure has received the three highest cumulative contributions over the election cycle of three thousand dollars (\$3,000) or more. If the committee can show, on the basis that contributions are spent in the order they are received, that contributions received from the three highest contributors have been used for expenditures unrelated to the candidate featured in the communication, the committee shall disclose the contributors making the next largest cumulative contributions of three thousand dollars (\$3,000) or more.

(c) In addition to the requirements of section (b) above, the committee placing the advertisement or persons acting in concert with the committee shall be prohibited from creating or using a noncandidate controlled committee or a nonsponsored committee to avoid, or that results in avoidance of, the disclosure of any person or entity as a major funding source.

(d) Any disclosure statement required by this section shall be printed clearly and legibly in no less than 12-point type and in a conspicuous manner as defined by the Commission, or, if the communication is broadcast, the information shall be spoken or otherwise appropriately conveyed for the hearing impaired.

Section 1291. Committees Supporting or Opposing
Identifying Major Contributors

Candidates: Name or Phrase

(a) Any committee that supports or opposes a county candidate shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of three thousand dollars (\$3,000) or more in any reference to the committee required by law, including, but not limited to, its statement of organization filed pursuant to State law.

(b) If the major donors of three thousand dollars (\$3,000) or more share a common employer, the identity of the employer shall also be included.

(c) Any committee that supports or opposes a county candidate shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement.

Section 1292. Paid Spokespersons; Statement; Expenditure Report

(a) A committee that makes an expenditure of \$500 or more to an individual for his or her appearance in an advertisement to support or oppose a county candidate shall file a report within 10 days of the expenditure. The report shall identify the candidate, the date of the expenditure, the name of the recipient, and the amount expended. This Section shall apply only to County Candidates and their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees that are formed or exist primarily to support or oppose a County Candidate or to support or oppose the qualification of, or passage of, a ballot measure that will be voted on exclusively in Ventura County, and to County General Purpose Committees.

(b) The advertisement shall include the statement "(spokesperson's name) is being paid by this campaign or its donors" in highly visible roman font shown continuously if the advertisement consists of printed or televised material, or spoken in a clearly audible format if the advertisement is a radio broadcast or telephone message.

Section 1293. Payment and Disclosure of Payment for Goods and Services

(a) An expenditure is made on the date the payment is made, the date the county candidate or committee receives the goods or services, or the date the county candidate or committee commits to pay for the goods or services, whichever is earlier.

(b) No person who supplies goods or services to a county candidate or committee for use in connection with the campaign of such a candidate or supporting or opposing a county candidate shall refuse to divulge or disclose to the Compliance Officer or Hearing Officer his or her records of any expenditures made by the county candidate or committee for such goods or services.

Section 1294. Application of Ordinance to Other Elections

(a) In the event a county candidate also runs for election for a state, federal, city, special district or other non-county office, the provisions of this ordinance do not apply to the county candidate's campaign for such other office nor to any committee established solely for the purpose of running for such state, federal, city, special district, or other non-county office, or committee controlled by the candidate and formed solely to support or oppose ballot measures.

(b) The contribution and expenditure limits of this ordinance shall not apply to recall elections but all other provisions shall apply to recall elections.

Section 1295. Prohibition on Transfers

(a) No committee controlled by a county candidate shall make any contributions to any other committee supporting or opposing any other county candidate or elective county officer.

(b) No contributions shall be accepted by any county candidate, or by any committee controlled by such county candidate, from any other committee controlled by a federal, state, or local candidate or officeholder that exceed the contribution limits of this ordinance. Notwithstanding this prohibition, a controlled committee formed by a county candidate in compliance with Title 2, Section 18521 of the California Code of Regulations, or any successor section, for candidacy for a Ventura County office may transfer and accept any contributions received in compliance with this ordinance into the county candidate's controlled committee for any office defined in Section 1264 for which the candidate has filed.

(c) The provisions of this section do not apply to a county candidate's contributions of personal funds to any campaign but the contribution limits of this ordinance shall apply.

Section 1296. Access to Records

Each county candidate and committee shall deliver, on demand, to the Compliance Officer or Hearing Officer and any public officer having authority to enforce this division a written authorization permitting the officer to have access to all records pertaining to the campaign contribution checking account.

Section 1297. Penalties

(a) Notwithstanding sections 13 through 13-2 of the enforcement provisions of the Ventura County Ordinance Code, remedies for violations of this ordinance shall be limited to those made available by this section and by the terms of Sections 1298 through 1301, below.

(b) Any person who intentionally or negligently violates any provision of this ordinance shall be liable in an administrative hearing brought before the Hearing Officer, or a civil action brought by a person residing in the jurisdiction for an amount not more than three times the amount or value not properly reported or improperly received, contributed, or expended.

(c) No civil action alleging a violation of this ordinance may be filed against a person if the Compliance Officer has filed an administrative action for the same violation. No civil action may be filed later than three years after the date of the alleged violation.

(d) Before filing a civil action for any alleged violation of this ordinance, any person must first file a complaint pursuant to Section 1298. A civil action may be filed by the complainant only if the Compliance Officer fails to process the complaint pursuant to Section 1299 or the complaint is dismissed pursuant to Section 1299.

(e) With respect to the duties of Clerk, after a matter has been heard by the Hearing Officer, the Hearing Officer may direct the Clerk to perform required duties and/or seek a judicial order to compel performance by the Clerk, however, the Clerk may not be assessed monetary penalties by the Hearing Officer.

(f) With respect to the duties of the Compliance Officer, Hearing Officer, County Executive Office, County Counsel, or their designees, the Hearing Officer may issue a written finding of non-compliance but no monetary penalties may be assessed in either administrative or civil actions.

Section 1298. Filing of and Initial Review of Complaints

(a) Complaints alleging violation of this ordinance may be filed within three years of the date of the alleged violation by residents of Ventura County, the Compliance Officer, or the Clerk. Complaints shall be filed in writing with the Clerk of the Board of Supervisors on a form provided by that office and (except for those Complaints filed by the Compliance Officer or Clerk) shall be signed by the Complainant under penalty of perjury. The Complainant must file with the complaint all available credible evidence supporting the allegations in the complaint. Any resident seeking to file a complaint must pay a filing fee of thirty five dollars (\$35) per complaint. No fee shall be charged to the Clerk or Compliance Officer. The Clerk of the Board of Supervisors shall not accept complaints filed later than three years after the date of the alleged violation.

(b) Upon the filing of a complaint, the County Executive Office shall provide a copy of the complaint to the party alleged to have committed the violation and a copy to the Compliance Officer.

Section 1299. Compliance Officer

The Board of Supervisors shall appoint a Compliance Officer. The Compliance Officer shall not be a Ventura County employee and should have a commitment to the full and fair enforcement of this ordinance. The Compliance Officer may be a volunteer or may be compensated. The County Executive Office shall provide the Compliance Officer with staff support as needed, including engaging the service of attorneys or investigators as may be needed by and approved by the Compliance Officer. The Compliance Officer has the following responsibilities:

(a) Receive and coordinate investigations of complaints and augment complaints as necessary to address any violations as may be identified.

(b) Review campaigns and campaign filings when the Compliance Officer has credible evidence of a possible violation(s) and process any violations or complaints in accordance with this ordinance.

(c) Provide to candidates, committees, and complainants written advice regarding ordinance compliance.

(d) The Compliance Officer shall perform an initial review of each complaint to determine whether the complaint alleges facts that, if true, would constitute a violation of the ordinance and whether there is any credible evidence supporting the allegation in the complaint. During the initial review the Compliance Officer should review evidence submitted with the complaint, evidence submitted by the alleged violator, and other evidence identified in the course of the initial investigation and make a good faith effort to issue to the Hearing Officer a written opinion within 5 working days of his or her receipt of a complaint as to whether the complaint merits further investigation or should be dismissed. If the Compliance Officer cannot issue an opinion within 5 working days, he/she shall notify the Hearing Officer in writing as to when he/she believes he/she will be able to complete the initial review.

(e) If the Compliance Officer's initial investigation finds that a complaint fails to allege facts that, if true, would constitute a violation of the ordinance, and/or that there is no credible evidence to justify further investigation of the complaint, or if adequate exculpatory evidence is identified, he or she shall recommend to the Hearing Officer that he or she dismiss the Complaint at a public meeting. Before finalizing his/her recommendation, the Compliance Officer shall have a discussion of the case with the complainant. Both the Complainant and the subject of the complaint shall be promptly notified of the Compliance Officer's findings and recommendation. The Compliance Officer shall strive to submit the recommendation for dismissal to the Hearing Officer within 40 days of his or her receipt of a

complaint. If additional time is required, the Compliance Officer shall report the reasons to the Hearing Officer.

(f) For any complaint not recommended for dismissal pursuant to subsections (d or e) above the Compliance Officer shall conduct an investigation and determine whether sufficient evidence exists to establish that a violation of the ordinance has occurred. The Compliance Officer shall consider the allegations of the complaint as well as any other information discovered during the investigation that would indicate whether a violation of the Ordinance has or has not occurred.

(g) If the Compliance Officer concludes that either the evidence is insufficient to establish that a violation of the ordinance has occurred or that the evidence establishes that no violation of the ordinance has occurred, the Compliance Officer shall prepare a written report of that conclusion and shall recommend to the Hearing Officer that he/she dismiss the complaint. The Compliance Officer shall strive to submit the recommendation for dismissal to the Hearing Officer within 40 days of his or her receipt of a complaint. If additional time is required, the Compliance Officer shall report the reasons to the Hearing Officer.

(h) If the Compliance Officer concludes on the basis of further investigation that sufficient evidence exists to establish that a violation of the ordinance has occurred, he or she shall offer to enter a proposed voluntary settlement agreement with the alleged violator. The proposed settlement may include all or some of the following:

- (1) Cease and desist violation of this ordinance;
- (2) File any reports, statements, or other documents or information required by this ordinance;
- (3) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the County;
- (4) Pay a fine up to three times the amount or value not properly reported or improperly received or expended.

The Compliance Officer shall primarily consider the deterrent effect of the settlement on future violations by others. If no proposed voluntary settlement agreement is reached in a timely manner, then the Compliance Officer shall refer the matter for an evidentiary hearing before the Hearing Officer and shall present to the Hearing Officer at the evidentiary hearing the evidence supporting the charges.

Before agreeing to a settlement agreement, the Compliance Officer shall have a discussion with the Complainant to explain the proposed settlement rationale and fairly consider the input of the Complainant.

(i) If a proposed voluntary settlement agreement is reached, the Compliance Officer shall (a) provide a copy of the proposed settlement to the complainant and (b) submit to the Hearing Officer within 40 days of his or her receipt of a complaint a written report of his or her findings and a stipulation to the proposed settlement

signed by the Compliance Officer and the alleged violator. A proposed settlement agreement shall become final and effective only upon acceptance by the Hearing Officer. If the Hearing Officer does not accept the proposed settlement agreement, he or she shall schedule a hearing on the matter and then may take any action allowed by this ordinance. If the Compliance Officer needs more time to complete his or her investigation and settlement discussion than the 40 days referenced above in this section, he or she shall submit a written report to the Hearing Officer identifying the reason for the delay and when the Compliance Officer believes the report will be ready.

(j) The Compliance Officer shall have the power and authority to require by subpoena the production of any books, papers, records, documents or other items material to the performance of the Compliance Officer's duties or exercise of his/her powers. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. Failure to obey a subpoena constitutes contempt. The Compliance Officer shall establish procedures for issuing subpoenas.

Section 1300. Hearing Officer

(a) A Hearing Officer shall be appointed by the Board of Supervisors. The Hearing Officer shall not be a Ventura County employee and should, if possible, have knowledge and experience in campaign finance law. The Hearing Officer should possess a dedication to impartial and exacting enforcement of the terms of the ordinance. The Hearing Officer may be a volunteer or may be compensated.

(b) The Hearing Officer shall receive recommendations from the Compliance Officer for dismissal of complaints and adoption of voluntary settlement agreements. In absence of a voluntary settlement agreement, the Hearing Officer shall preside as the trier of fact and law at the evidentiary hearing and shall make determinations concerning the issuance of fines or penalties.

(c) The Hearing Officer shall be provided with staff support by the County Executive Office and legal services by the County Counsel.

(d) The Hearing Officer shall have the power and authority to: issue subpoenas to compel the attendance and testimony of witnesses, administer oaths and affirmations, to take evidence and require by subpoena the production of any books, papers, records, documents or other items material to the performance of the Hearing Officer's duties or exercise of its powers. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. Failure to obey a subpoena constitutes contempt. The Hearing Officer shall establish procedures for issuing subpoenas and may delegate to other attorneys involved in matters before the Compliance Officer or Hearing Officer the power and authority to issue subpoenas.

(e) At least 72 hours before a hearing before the Hearing Officer, notice of the hearing and the agenda of the matters to be heard at the hearing shall be posted in the same manner as agendas are posted of Ventura County boards and commissions that are governed by the Ralph M. Brown Act, Government Code section 54950 et seq.

(f) A proposed settlement agreement shall become final and effective only upon signed acceptance by the Hearing Officer following a public hearing. If the Hearing Officer does not accept the proposed settlement agreement, he/she shall schedule an evidentiary hearing of the matter and then may take any action allowed by this ordinance.

(g) Following public hearing and the consideration of recommendations, reports, testimony, and evidence, the Hearing Officer shall make a determination of the facts and law and render a final disposition of all matters before him or her. Prior to making such a determination, the Hearing Officer may, if he or she deems it necessary, request additional information or investigation, or remand a matter to the Compliance Officer for further investigation and/or reconsideration.

(h) The Hearing Officer shall make any written reports and proposed settlements that are public information available to the public and affected parties at least five calendar days in advance of acting upon a complaint or settlement.

(i) When the Hearing Officer determines on the basis of a public hearing that a violation of this ordinance has occurred, she/he may require the violator to do all or any of the following:

- (1) Cease and desist violation of this ordinance;
- (2) File any reports, statements, or other documents or information required by this ordinance;
- (3) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the County;
- (4) Pay a fine up to three times the amount or value not properly reported or improperly received or expended.

(j) When the Hearing Officer determines that no violation has occurred, she/he shall publish a declaration so stating.

(k) The Board of Supervisors shall adopt rules and procedures for the conduct of evidentiary hearings before the Hearing Officer. The Hearing Officer may propose to adopt, amend, and rescind rules and procedures to carry out the purposes and provisions of this ordinance. Any such adoption, amendment, or rescission shall be subject to the approval of the Board of Supervisors. The Hearing Officer may unilaterally adopt any and all forms that she/he deems appropriate for carrying out his/her authorized purposes after review by County Counsel.

Section 1301. Last Eight Weeks of Campaign

(a) In the last eight weeks of the campaign, there is greater urgency for the timely and accurate reporting of appropriate campaign finance information. A primary goal of the Ordinance and those charged with encouraging compliance with the ordinance is to get the timely and accurate reporting of appropriate campaign information to the public prior to the election. Violations occurring during this time period are to be considered more serious and merit greater penalties than violations during other periods.

(b) One of the prime duties of the Compliance Officer and the Hearing Officer is to encourage the timely and accurate release of appropriate campaign finance information before an election takes place. The timely and accurate release of appropriate information in the 8 weeks prior to an election is an important aspect of a fair election and a goal of this ordinance. The Officers should strive to resolve complaints and violations, particularly in the area of full disclosure, sufficiently in advance of County elections whenever possible.

Section 1302. Cost Effective Operations

The Compliance Officer, Hearing Officer, and their staff shall operate in a cost effective a manner while focusing on the timely and accurate release of appropriate campaign finance information.

Section 1303. Report of Activities to Board of Supervisors

The County Executive Officer shall provide a report of activities under this ordinance to the Board of Supervisors at least once every two years, beginning January 31st, 2017.

Section 1304. Duties of the County Clerk

The Clerk shall

(a) Shall promote the timely and accurate filing of all required campaign finance information in a manner that recognizes the importance of the public having full access to appropriate campaign finance information before an election affected by this ordinance.

(b) Supply the necessary forms and manuals prescribed by the ordinance, Compliance Officer, or Hearing Officer.

(c) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this ordinance.

(d) Notify within one working day of becoming aware of a failure all persons and known committees who have failed to file a report or statement in the form and

at the time required by this ordinance.

(e) Report apparent violations of this ordinance to the appropriate entities including the County Executive Office.

(f) Compile and maintain a current list of all reports and statements filed with this office, and timely post reports and statements online that are required by this ordinance.

(g) Adjust the amounts of the Expenditure Limits as specified in Section 1265

Section 1305. Severability

If any provision of this ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected, and to this extent the provisions of this ordinance are severable.

Section 1306. Construction

This ordinance shall be liberally construed to accomplish its purposes.

PASSED AND ADOPTED this 21 day of April, 2015, by the following vote:

AYES Supervisors Bennett, Zaragoza, and Long
NOES Supervisors Parks, and Fey.
ABSENT: none

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ATTEST: MICHAEL POWERS
Clerk of the Board of Supervisors,
County of Ventura, State of California

By Loni James
Deputy Clerk of the Board

**ETHICS AND CAMPAIGN REPORTING:
WHY AND HOW TO IMPLEMENT STRONGER
OVERSIGHT, TRANSPARENCY, AND ENFORCEMENT**



GRAND JURY 2013-2014

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SUMMARY

The 2013-2014 Orange County Grand Jury undertook part of the mission of the Blue Ribbon Commission recommended by last year's Grand Jury by studying ethics and campaign and lobbyist reporting oversight and enforcement in the County. The 2013-2014 Grand Jury studied ethics commissions in California and other jurisdictions to see if a similar model would be suitable for Orange County. The Grand Jury also analyzed the proposed initiative to have the California Fair Political Practices Commission (FPPC) enforce Orange County's TINCUP Campaign Finance Reform Ordinance.

The 2013-2014 Grand Jury found that ethics, campaign and lobbyist reporting oversight and enforcement in Orange County is deficient in a number of areas, including coordination, audits, transparency, law and policy advice and recommendations, and independence.

Existing ethics commissions in California provide an established and effective model to monitor and enforce campaign finance and reporting and lobbyist reporting laws as well as other ethics laws and policies. The Grand Jury concluded that an ethics body in Orange County would not be bureaucratic, unnecessary, irresponsible, or wasteful, as asserted by the Board of Supervisors. The potential cost of an ethics body is outweighed by its potential benefits, including coordinated oversight, transparency, independence, and creating atmosphere of deterrence to law violations and corruption that could contribute to improving overall trust in local government.

The Grand Jury concluded that the proposed enforcement by the California Fair Political Practices Commission (FPPC) of the County's campaign finance law has several drawbacks:

1. It could possibly invalidate current campaign contribution limits specified in Orange County's TINCUP Campaign Finance Ordinance.
2. Its independence may be limited because it would be under control of and subject to continuing Board of Supervisors approval, including budget approval.
3. It would be limited to only civil (not criminal) enforcement.
4. It could defeat the purpose of establishing coordinated oversight and enforcement in the County of ethics compliance and campaign and lobbyist reporting.

Ethics bodies work effectively to deter, detect, and punish ethics violations. The 2013-2014 Grand Jury calls on County officials and candidates to declare themselves in favor of establishing an ethics program, which could move County government closer to being beyond ethical reproach.

REASON FOR THE STUDY

When the 2012-2013 Orange County Grand Jury called for the creation and implementation of an ethics reform program for the County,¹ it met with strong opposition from members of the Board of Supervisors. With dissenting opinions, the Board declined the recommendation to create a Blue Ribbon Commission to study and recommend an ethics reform program for the County.

The 2013-2014 Grand Jury chose to undertake part of the mission of the previously recommended Blue Ribbon Commission themselves, by analyzing current ethics oversight in the County, and by studying bodies (ethics commissions) that fulfill this purpose in California and other jurisdictions. The Grand Jury also wished to analyze the stated objections of the Board of Supervisors to an ethics body, and the justification and feasibility of fitting parts of the model into County's current structure.

The Board of Supervisors has accepted that there is a need for additional ethics enforcement in the County. They have sponsored legislation (Senate Bill 1226) to allow the FPPC to investigate violations and enforce campaign finance laws in the County. The Grand Jury also wished to study how this FPPC initiative might fit into an overall County ethics program, and the initiative's advantages and disadvantages.

The reasons for 2012-2013 Grand Jury ethics study and report were based partly on a historical recounting of alleged corruption in Orange County politics. This study by the 2013-2014 Grand Jury does not attempt to recount additional recent incidents of alleged corruption in the County, although they are certainly reported, and in many cases apparently supported, in the local news media. The 2013-2014 Grand Jury does not believe that in Orange County, politicians and public officials or people in general, tend to be more corrupt than in other jurisdictions in California.

Orange County, however, is very wealthy,² and land and economic development are still very active here. When such robust development and economic activity is combined with the size and scope of government activity in general today, unethical attempts at self-enrichment and increased power tend to follow, and have followed in Orange County. Such is human nature. Oversight of ethics compliance is necessary to not only uncover and punish violations, but to create an atmosphere in which everyone knows they must fully understand and comply with ethical standards. With such oversight, people who are inclined toward unethical behavior know that such behavior is monitored and are thus discouraged from engaging in it.

¹ 2012-2013 Grand Jury report "A Call for Ethical Standards", accessed 4/8/14 at http://www.ocgrandjury.org/pdfs/2012_2013_reports/Corruption-in-OC04152013.pdf

² In 2011, O.C. was 2nd among California Counties in total income, and in the top ten in per capita, household, and family income. Source: U.S. Census Bureau. American Community Survey, 2011, http://en.wikipedia.org/wiki/California_locations_by_income#Counties, viewed 5/21/14

The need for trust in government by those who are democratically governed cannot be over emphasized. Nevertheless, surveys and polls show that such trust continues to decline,³ perhaps with justification. For example, the California FPPC has reported that prosecutions of both serious campaign violations and lobbying violations were the highest ever in 2013.⁴ The overriding reason for this Grand Jury study was to outline a concrete method for Orange County government to take a leadership role in overcoming this mistrust and rise to a level of being truly beyond ethical reproach.

BACKGROUND AND FACTS

Ethics Provisions Applicable to Orange County Government

A plethora of Federal and State laws, local ordinances, codes of conduct, policies, guidelines, and procedures govern ethical behavior of Orange County officials, employees, contractors, candidates, political campaigns and lobbyists. These rules can be general in nature, or only apply to specific agencies, departments, or activities. Some local Orange County examples are

- a) the Orange County Gift Ban Ordinance,
- b) agency and department Codes of Conduct,
- c) the County's Lobbyist Registration and Reporting Ordinance, and
- d) the Orange County Campaign Reform Finance Ordinance (TINCUP).

Generally, ethics provisions fall under three categories:

- 1. Personal and financial gain,
- 2. Transparency, and
- 3. Fair process and merit based decision making. This category refers to processes and decision based on objective criteria for the benefit of the residents of the County, rather than on personal gain, personal relationships (cronyism), or personal bias.

A very important point is that the broad topic of "ethics" in public service refers to much more than just laws, and certainly to more than just laws relating to campaign finance. Ethics training for public officials strongly emphasizes that laws are only a minimum standard. Quoting a well-known ethics textbook:

"Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even so, it is important to keep in mind that these standards are

³ See American National Election Studies at http://www.electionstudies.org/nesguide/toptable/tab5a_5.htm, viewed 5/27/14

⁴ FPPC 2013 End of Year Report, <http://www.fppc.ca.gov/agendas/01-14/Enforcement%20End%20of%20Year%20Report.pdf>, viewed 5/16/14

*only minimum standards: it is simply not possible or practical to write laws that prevent all actions that might diminish the public's trust. For this reason, the laws should be viewed as a floor for conduct, not a ceiling. Just because a given course of conduct is legal does not mean that it is ethical (or the public will perceive it as such)."*⁵

The Orange County Campaign Reform Ordinance (TINCUP)

The Orange County Campaign Reform Finance Ordinance (known as TINCUP - Time is Now to Clean Up Politics) was originally adopted in 1978 and applies to twelve Orange County elected offices:

1. Sheriff-Coroner
2. District Attorney/Public Administrator
3. Auditor–Controller
4. Clerk–Recorder
5. Assessor
6. Treasurer/Tax Collector
7. Superintendent of Schools
- 8-12. County Supervisors (five)

The Ordinance has been amended a number of times since adoption and is currently comprised of these main elements:

1. Election campaign donations are limited to \$1,900 per person or per campaign committee during an election cycle.
2. Post-election campaign statements are required to be filed with the Registrar of Voters.
3. Provisions/guidelines are established for slate mailers and independent expenditures such as media advertisements, “robo” calls, posters and other campaign style literature.
4. Violations of the ordinance may be prosecuted as misdemeanors by the District Attorney’s office. Civil violations are punishable by fines of up to \$5,000.

⁵ “Understanding the Basics of Public Service Ethics Laws, Principles and California Law,” p.3, viewed 5/14/14 at http://www.ca-ilg.org/sites/main/files/file-attachments/understandingbasicsethicslaws_finalproof_0.pdf

The purpose of the ordinance is to lessen opportunities for disproportionate influence of affluent individuals on County elections.

While TINCUP provisions are generally widely accepted as desirable, compliance oversight of the ordinance has been left to volunteer watchdog groups, opposition candidates, or the media. Complaints about violations of the Ordinance are referred to the District Attorney (DA), who then may refer them to the State Attorney General or to the FPPC. The DA's office reported to the Grand Jury that they have occasionally found violations and imposed fines. However, since 1992 no misdemeanor or felony criminal prosecutions have taken place under TINCUP.⁶ Any civil enforcement of TINCUP by a private individual must be preceded by notice to the District Attorney, who may investigate for 90 days before deciding whether to pursue civil action. Only after the DA declines action may another party pursue a civil action.

FPPC Enforcement and SB1226

In 2013, San Bernardino County contracted with the FPPC for enforcement of that County's Campaign Finance Reform Ordinance. San Bernardino County was the first and only local jurisdiction (city or county) in California to contract with the FPPC for enforcement of a local ordinance. San Bernardino County budgeted just under \$500,000 over a two-year period for FPPC enforcement.⁷ Through February 2014, approximately 13 months into FPPC enforcement in San Bernardino, the FPPC had only billed the County for a little more than \$9,000⁸, although San Bernardino had not yet begun an election year cycle at that time.

In February 2014 the Orange County Board of Supervisors approved proposed legislation to empower the FPPC to assume enforcement responsibility of the Orange County Campaign Finance Reform Ordinance. This approval took place after Board members visited San Bernardino County officials to inquire about San Bernardino's hiring of the FPPC for campaign finance enforcement. Subsequently, at the Board's behest, the State Senator from Orange County's District 34 introduced SB1226 to allow such enforcement in Orange County by the FPPC.

As of this writing, SB1226 has been amended to allow FPPC enforcement of campaign finance ordinances in any California city or county that requests it. The bill has been reported out by the Senate Elections Subcommittee with unanimous approval, and will come up for a vote in the Legislature sometime in mid-year of 2014.

⁶ The DA's office was unable to produce any data regarding TINCUP enforcement when requested to do so by the Grand Jury. Representatives of the office did not refute that no criminal prosecutions under TINCUP had taken place since 1992.

⁷ San Bernardino County staff reported to the Orange County Grand Jury that for the 13 month period from 1/13 through 2/14, the FPPC billed SB County \$9,397.

⁸ Information obtained through an inquiry of San Bernardino officials by the Grand Jury

Current Oversight and Enforcement in Orange County

In addition to individual agency and department management, the following County-wide offices are charged as part of their responsibilities with monitoring, uncovering, investigating, or penalizing ethics violations in County government.

District Attorney

The Orange County District Attorney (DA) is charged with investigating all possible criminal activity, including State and local ethics violations, campaign law violations, as well as Accusations by a Grand Jury of corruption and malfeasance by public officials. The DA's office is the only office that can bring resulting criminal prosecutions, unless the case is referred by the DA to the State Attorney General. The DA is also charged under TINCUP with investigating and enforcing civil violations of the ordinance. Such investigations may result in settlements that include corrections of violations (such as amended filings or return of contributions), or fines up to \$5,000.

Internal Audit

The Internal Audit Department assists agencies and departments regarding County policies and procedures, including advising Human Resources on revisions to these. The Department manages the County-wide OC Fraud Hotline and may conduct or oversee investigations of ethics complaints. The Audit Oversight Committee has proposed to rename the OC Fraud Hotline as the Fraud, Ethics, and Compliance Hotline, with the specific purpose of publicizing that in addition to fraud complaints, ethics and other complaints are accepted. The Internal Audit Department also offers ethics training to agencies and departments.

Human Resources

The Human Resources Department addresses issues related to employee relations, such as hiring, rating, promotion and firing practices, and policies relating to, for example, nepotism and sexual harassment. In many cases, the Human Resources Department would also be the first referral from a department in cases of suspected misuse of funds or fraud.

Registrar of Voters

The Orange County Registrar of Voters (Registrar) is charged with receiving and filing election related forms, including campaign establishment and financial reporting (460) forms. To fulfill this responsibility, the Registrar maintains an electronic database of filings. The database is searchable by a number of criteria, including candidate name, committee name, and elections dates.

The Registrar also issues reminders of filings due from committees, and levies fines for late filings. Interestingly, the Registrar's office can levy fines for late filing by committees; however,

they have no power to fine committees which never file required forms. Following an election, the Registrar of Voters office conducts an audit of each form filed. Registrar of Voters senior management described these audits as “cursory”. In addition, the Registrar of Voters conducts numerous training programs for campaign staff and candidates regarding campaign and reporting legal requirements. In the Grand Jury’s opinion the Registrar of Voters office thereby fulfills all of its State mandated obligations.

Also, the California State Board of Equalization (the State’s taxing authority) does random audits of campaign filings. The Grand Jury did not obtain information about what percentage of filings are audited by the Board of Equalization.

The Clerk of the Board

The Clerk of the Board is charged with receiving and filing the State required Statement of Economic Interest California Form 700 from County officials. The Clerk maintains an electronic database of the forms and is required by the FPPC to audit at least 20% of the filings every year. Audits look for anomalies in forms, such as major investment and asset changes from year to year. *Audits do not investigate the truthfulness of filings.*

The Clerk of the Board also receives registration forms and filing fees from County lobbyists. An electronic database of filings is maintained that is accessible by lobbyists and searchable by the public by lobbyist name. Lobbyists are required to keep registration information up to date, however no audits are conducted and the process is an “honor system” according to senior staff in the Clerk’s office. The Clerk sends reminders to lobbyists each year to renew their filings, and fines are specified for late registration. One fine in 2014 is the only such fine that senior management of the Clerk’s office recalls ever being levied.

In addition, the Clerk of the Board receives and files a report when a County employee receives a “gift” such as lunch or dinner within the function of their job, such as when attending or speaking at a luncheon or dinner.

Grand Jury

The constitution and operations of the Grand Jury are specified under State law. Governance of the Grand Jury is under the Superior Court. The Grand Jury may investigate and issue reports regarding almost any aspect of County government as well as City government, School Districts, and Special Districts within the County. Such investigations can include ethics related issues and violations. The Grand Jury may subpoena individuals to testify, or records relating to an investigation. The Grand Jury may also bring an Accusation against a government official for corruption or malfeasance in office. The District Attorney is charged with prosecuting Accusations brought by the Grand Jury. No formal Accusations have been brought by the Orange County Grand Jury since 1994.

Grand Jury members are chosen from a pool of volunteer applicants and serve a one-year term. The limited Grand Jury budget precludes extensive use of outside lawyers, investigators, or other outside services for very lengthy and complex investigations.

Ethics Commissions in California Cities and Counties

The 2013-2014 Orange County Grand Jury surveyed city and county ethics commissions in California and other jurisdictions in order to understand this method of monitoring and enforcing ethics, and campaign finance and reporting compliance. A table showing the results of the survey is shown in the Appendix. The data in the table will give the reader an idea of the wide variation of commission characteristics relative to the government operations they oversee.

The following is a summary of the information the Grand Jury learned.

Characteristics

- Name:* All but one of the commissions studied has the name Ethics Commission. Kern County has a Campaign Finance Hearing Board. Ventura calls theirs the Campaign Finance Ethics Commission.
- Age:* The oldest California ethics commission (in its current format) is the Los Angeles City Ethics Commission, established in 1990.
- Scope:* The commissions which the Grand Jury studied address, to varying degrees, Federal, State and local laws and policies regarding:
- a) elections,
 - b) election campaign financing,
 - c) conflicts of interest of elected and appointed officials,
 - d) reporting of financial interests of elected and appointed officials,
 - e) public records disclosure, and
 - f) fraud, waste, and other illegal or unethical behavior in government operations.
- Authority:* Authority for all the commissions comes from either a city charter or municipal code section or ordinance. Some ordinances were voter approved.
- Governance:* All are governed by a Board of Supervisors or a City Council, which controls budget.
- Size:* The size of the commissions is either three, five, or seven commissioners (not including hired staff).
- Appointment:* Done by a combination of appointed or elected officials. Only the Oakland Commission appoints some of its own members.

<i>Term:</i>	Varies from three to six years.
<i>Pay:</i>	Only Los Angeles City and Kern County Commissions provide pay for Commission service. The Los Angeles Commission provides \$50 per meeting. ⁹ Kern County provides \$125 for a half day, and \$200 for a full day.
<i>Paid Staff:</i>	Paid staff varies from none in San Jose and Kern County to 21 in Los Angeles. Note that commission members are not considered paid staff. Paid staff performs all of the functions of a commission except hearing and ruling on cases.
<i>Budget:</i>	Of those commissions for which budget information was available, the highest was \$4.2 million for San Francisco, which included \$1.9 million of campaign matching funds.

Functions and Operations

The ethics commissions studied by this Grand Jury performed some or all of the following functions:

1. Receiving mandated filings
2. Collecting data
3. Educating regarding compliance
4. Monitoring compliance
5. Receiving complaints of possible violations
6. Issuing subpoenas, investigating and ruling on possible violations
7. Enforcing with fines and other sanctions
8. Issuing formal and informal opinions and advice regarding compliance
9. Making recommendations for additions and modification to applicable laws
10. Administering candidate matching funds programs

All of the commissions the Grand Jury studied have at least one currently practicing or former attorney as an appointed member, since much of a commission's work deals with interpreting and applying laws. Legal work for the commissions is performed either by full or part-time attorneys on the paid staff, attorneys working as independent contractors, the City Attorney, County Counsel, or volunteer attorneys.

⁹ The Grand Jury was told by Los Angeles Ethics Commission staff that current L.A. Ethics Commissions all decline to receive pay.

Commissions use varying degrees of automation for collecting, analyzing, and distributing data and information. Some use commercially available software packages, and some have developed their own applications. Functionality ranges from simply scanning and indexing documents by a few categories, to extensive analysis and some automated intelligence. Examples of the latter are sophisticated database search capabilities such as analyzing campaign contributions from suspiciously similar names or from connected businesses to uncover hidden campaign contribution limit violations.

One commission, Oakland, is charged with setting the salaries of City Council members.

METHOD OF STUDY

The Grand Jury performed the following tasks in the completion of this study:

1. Reviewed various ethics laws, codes of conduct, policies, guidelines, the Orange County campaign reform ordinance, and the County of San Bernardino campaign reform ordinance
2. Interviewed members of the Orange County Board of Supervisors and senior management and staff of the Office of the District Attorney, the Registrar of Voters, the Internal Audit Department, the Clerk of the Board, County Counsel, and the FPPC.
3. Reviewed characteristics of existing ethics commissions in California that have oversight responsibility over senior elected and appointed officials, including their functions, powers, budgets, history, and governance
4. Interviewed ethics commission management and staff of commissions in
 - a. Ventura County,
 - b. the City and County of San Francisco,
 - c. the City of Los Angeles,
 - d. the City of San Diego, and
 - e. the City of Seattle, Washington
5. Received information from the Office of County Counsel of San Bernardino County
6. Analyzed ethics commission operations and results, as well as past Grand Jury reports from Orange and other counties, and relevant literature, to determine which best practices might apply to Orange County

ANALYSIS

Deficiencies in Current Ethics and Campaign Reporting Enforcement

The Grand Jury found that there are a number of deficiencies in current ethics and campaign reporting enforcement in Orange County. Deficiencies include:

1. Ethics Oversight

There are many areas where literally no one in County government is monitoring ethical behavior. For example, officials who make decisions regarding County contracts, relations with outside parties such as labor unions, or lawsuits, are relied upon to monitor themselves for conflicts of interest, and recuse themselves from decisions where appropriate. No officially authorized body is correlating, for example, California Form 700 economic interest data, or California Form 460 campaign data with decisions and votes about contracts to monitor such potential conflicts. The public, the news media, and usually political opponents are the ones who point out these instances.

This kind of oversight is what ethics commissions do, to call out illegal behavior, or behavior which may not go so far as to be illegal, but would generally be regarded as unethical.

An example of the latter, and of a questionable provision of state and federal law, is when campaign contributions correlate closely with government contracts awarded to those who contribute. Because campaign contributions are not considered “personal gain” to a candidate under the law, the practice is not illegal. However, it could certainly be viewed questionably as unethical “quid-pro-quo.”

This is a particular problem when such contributions are given to independent PACs (Political Action Committees) for which contribution limits tend to be higher than limits for individual candidates, or to “Super” PACs, for which there are no contribution limits. When PACs then donate to candidates, the original source of the contributions can be disguised, and contribution limits can be thwarted.

2. Campaign and Lobbyist Reporting Oversight

While the Registrar of Voters and the Clerk of the Board fulfill their legal responsibilities over campaign and lobbyist reporting, neither has the authorization, not to mention the budget and the staff to be thorough oversight bodies. The Registrar of Voters office collects forms and campaign reporting information, but senior management of the office acknowledged in interviews with the Grand Jury that they only do a “cursory” review to verify the completeness and accuracy of information. Indeed, the Grand Jury found from an examination of samples of campaign reporting 460 forms from past elections that many had important required information missing such as names of campaign officials, addresses, contribution amounts, cumulative

contribution amounts, etc. Also, even when the Registrar knows that campaign forms are due and has sent out letters reminding treasurers to submit them, there is no authority for the Registrar to do anything further if forms are not filed.

The Clerk of the Board has responsibility to collect lobbyist registration forms and maintain reporting information. The Clerk, however, does not have the authority, the budget, or staff, to monitor the correctness of information submitted. Senior management was only able to identify one fine ever levied for a filing violation. Lobbyist registration is on an honor system.

3. TINCUP Oversight

As mentioned above, there is no official authorized body in the County that comprehensively monitors compliance with the TINCUP ordinance provisions. Complaints about violations of the Ordinance are referred to the District Attorney, who then may refer them to the State Attorney General or to the FPPC. The District Attorney has occasionally found violations and imposed fines; however, *since 1992 no criminal prosecutions have taken place under TINCUP*.

A very active private citizen in the County has for years taken on the responsibility of monitoring TINCUP compliance and has forwarded complaints to the District Attorney for investigation. This individual was the author of many of the provisions of TINCUP. However, this individual cannot do it forever, and there is no existing body which would take over these responsibilities.

4. Law and Policy Training, Advice, Opinions, and Recommendations for Change

Most of the ethics commissions which the Grand Jury studied, including the largest and most comprehensive ones (Los Angeles, San Francisco, and San Diego) offer government officials, candidates, and campaign officials extensive education and training, as well as informal advice and official written opinions about compliance. They also make recommendations for changes and additions to ethics laws and policies.

The Grand Jury learned from ethics commission staff in other jurisdictions and from Orange County elected officials that such advice, opinions, and particularly education and training is very valuable. Ethics laws and policies, and particularly campaign finance and reporting laws can be very complicated and difficult to follow. (That is why skilled campaign treasurers and staff are highly prized by candidates.) Proper training and advice helps candidates avoid innocent mistakes and oversights, which are the most common types of violations.

In Orange County, no official body is charged with offering advice or providing written opinions about, or suggesting changes to ethics or campaign finance and reporting laws or policies. Senior staff of the Registrar of Voters told the Grand Jury that inquiries about campaign laws are referred to County Counsel. Senior Staff of County Counsel told the Grand Jury that people making such inquiries are referred to their own private attorneys.

While ethics training is mandatory for County officials, training about campaign laws is not. Campaign law training is available from the Registrar of Voters and from the FPPC at the request of candidates.

5. Coordination

A critical deficiency in ethics and reporting enforcement is the lack of coordination among those charged with partial responsibilities in these areas. The agencies and departments performing various functions do not correlate their information and activities in any sophisticated way. For example, it would be valuable to correlate information the Clerk of the Board has about whom lobbyists are representing and about County officials' economic interests, with information the Registrar of Voters has about campaign contributions. It would also be valuable to coordinate information about ethics complaints the Internal Auditor receives with confidential investigations the District Attorney may be conducting, or with Form 460 Economic Interest forms the Registrar of Voters currently receives but does not analyze.

Of particular benefit would be a sophisticated database and analysis software to automate this correlation process. Such software exists. A software package that the Registrar of Voters, as well as offices in other counties use has some of this needed analysis capability. The City of Los Angeles Ethics Commission has developed and uses their own software system, which they offer for sale to other jurisdictions. The Los Angeles software can, for example, automatically detect when a large number of campaign contributions are coming from individuals who work for the same company. Commission staff is then alerted, and can investigate whether coercion is being exercised by the employer. Such instances have been detected and prosecuted in Los Angeles.

6. Audits

As mentioned above, the Registrar of Voters conducts cursory audits of campaign filings after an election. In addition to such cursory audits, which allow forms with critical missing information to go uncorrected, an audit *after* an election does nothing to affect the election itself. More timely audits *before* an election would allow voters to make decisions based on more information about a candidate's campaign and support.

These audits by the Registrar of Voters, along with the audits of 20% of lobbyist filings and the random audits by the Board of Equalization do not constitute a comprehensive audit program. A comprehensive program would include complete audits of important documents such as form 460 (campaign contributions), independent verification of information provided, and follow-up to correct errors and omissions. More importantly, a comprehensive audit program would uncover violations that are not intentional, and encourage correction before the formal process of issuing notices of violations, penalties and fines could take place. This would save time and effort for all parties involved.

7. Transparency

One of the hallmarks of government and campaign ethics is transparency. Transparency is simply making comprehensive, accurate, and up-to-date information available quickly and on-demand to the public. Such transparency is possible today as never before because of information technology and the Internet.

An important element of ethics commissions is that, to varying degrees, they use comprehensive databases and create public websites with information about campaign reporting and finance and ethics enforcement activities available to the public. Having this information and these activities spread among various groups, without coordination and consolidation, makes such transparency difficult if not impossible. Ethics commissions with this specific responsibility can and do create such transparency. The reader is invited to visit the San Francisco Ethics Commission website at <http://www.sfethics.org/> and the Los Angeles Ethics Commission website at <http://ethics.lacity.org/> as notable examples.

8. Independence

In interviews with ethics commission senior officials in other jurisdictions, the Grand Jury was consistently told of the importance of having a commission and staff which is as independent as possible from those whom they are charged with monitoring. Clearly, it is a conflict for government officials whom the commission monitors to have ultimate control over the commission, including appointment and budget. Clearly it is also a conflict for the DA's office to have responsibility for investigating and prosecuting violations of campaign laws, when, in fact, the DA is an elected official who campaigns for office. Both of these are cases of the "fox guarding the henhouse." Quoting Cityethics.org, a web based organization dedicated to "making government more ethical"

*"The fact that elected officials like to have the final say is itself a conflict of interest, because it is certainly not in the public interest to give them this final say. The more independent the ethics commission, the more it will be trusted by city residents, the less it will be used for political purposes and the more respect its decisions will be given. When an ethics system is not perceived as independent and ethics accusations are politicized, the ethics system can actually undermine the very confidence in government it is supposed to protect."*¹⁰

Every organization mentioned previously as having enforcement responsibilities in Orange County is under some degree of control by the Board of Supervisors, with the head of the organization either appointed directly by the Board, and/or the Board approving their budget appropriations.

¹⁰ <http://www.cityethics.org/content/model-code-introduction>, viewed 5/17/14

Even the Grand Jury is subject to budget approval by the Board of Supervisors. The Grand Jury is appointed to serve a one-year term and has a very minimal budget. It has no power to levy fines or impose sanctions. Because of limited budget and time, it would be impractical for the Grand Jury to conduct lengthy or complex investigations, hire experts, or purchase or pay for development of computer hardware and software to support analyzing campaign and lobbyist filings.

Advantages and Disadvantages of FPPC Oversight and Enforcement

Advantages

The FPPC has deep and lengthy experience in investigating and enforcing campaign and election law. They do so all over California and have done so in Orange County. They have the staff and infrastructure already in place to begin enforcement. Although their staff would have to learn the details of the TINCUP ordinance, it is similar to other such laws, including the ordinance the FPPC is now enforcing in San Bernardino County. Thus, effective oversight and enforcement of TINCUP could begin very quickly after the approval and contract process.

Depending on how an FPPC contract with Orange County would be structured, it may allow the County to have significant flexibility in how it uses FPPC services. The San Bernardino contract has the FPPC billing on an hourly basis. If this is the structure of an Orange County contract, without a long-term commitment or guarantee by the County, this “pay-as-you-go” approach would mean costs could be predictable and controllable. The County could have flexibility to cut back on or terminate services if they become too expensive or otherwise unsatisfactory. The Grand Jury learned however, that the FPPC may wish Orange County and other jurisdictions with which they contract to fund part-time or full-time positions to support the additional work, which may limit such flexibility.

Disadvantages

The primary disadvantage of FPPC enforcement of TINCUP is that it defeats one of the main purposes of an ethics oversight body, which is to be a coordinating and central body of *all* ethics and reporting monitoring and enforcement activities in the County. The TINCUP ordinance *only* addresses campaign reporting and contribution limits relative to twelve elected offices in the County. It does not address the entire spectrum that an ethics body would address, including ethics oversight for other elected officials in the County such as School Boards and Special Districts, non-elected officials including those on various boards and commissions, as well as lobbyist reporting. Neither does it include the important tasks of coordinating such enforcement and correlating collected information in a central database.

There is also a question about whether TINCUP’s current contribution limits would remain the same under FPPC enforcement. An FPPC spokesperson has been quoted as saying that

enforcement of TINCUP's current limits would require specific legislative authority.¹¹ When San Bernardino County hired the FPPC, they increased their local contribution limit to be the same as the State limit of \$4,100 for Assembly candidates.¹² The stated reason was to simplify the process for FPPC staff. A local ethics body enforcing Orange County's own campaign ordinance would entirely avoid this potential problem.

Because an FPPC contract may allow flexibility, it may have to be regularly renewed by the Board of Supervisors, and enforcement activities would be much easier to terminate than would those of a permanently established commission. The FPPC would remain strictly under the control of the Board, which could terminate the contract for whatever reason it wished. This factor significantly reduces the independence of enforcement compared to a permanently established County ethics body.

It is also noteworthy that the recent trend of U.S. Supreme Court decisions has been to strike down campaign contribution limits as violations of the First Amendment right to free speech.¹³ Proponents of eliminating contribution limits also point out that limits favor incumbents over newcomers. This is because newcomers must spend more money, and raise it from a smaller number of supporters who know them, to achieve the same name recognition and media exposure that incumbents already enjoy. If the trend continues and the Court eventually rules all contribution limits as unconstitutional, TINCUP contribution limits could be invalidated and become irrelevant. In that case, the efforts and costs to establish FPPC enforcement in Orange County will have been partly wasted and no longer needed.

The Grand Jury has concluded that the disadvantages of FPPC enforcement of TINCUP may outweigh the advantages. This conclusion is based on its limited scope, its negative impact on coordinated enforcement, its possible repeal of current TINCUP contribution limits, and its control by the Board of Supervisors versus truly independent enforcement.

Solutions for Orange County

The Grand Jury has concluded that the ideal solution for addressing the deficiencies in current ethics and campaign and lobbyist reporting oversight and enforcement is an ethics commission, similar to those studied and described above. An ethics commission would consist of a body of independent commissioners who adjudicate hearings regarding violations and penalties, and a paid staff, overseen by the Commissioners, to carry out all of the duties of the commission. These duties would include receiving and investigating complaints, conducting audits, collecting and analyzing consolidated data, providing training, education, and opinions, etc. The commission would be a single consolidated body performing the functions now spread among many departments and agencies in the County.

¹¹ http://www.voiceofoc.org/countywide/county_government/article_d206351e-94d2-11e3-85df-0019bb2963f4.html viewed 5/10/14

¹² <http://sbsentinel.com/2014/01/county-waters-down-political-donation-limitation-ordinance/>, viewed 5/26/14

¹³ See, e.g., <http://www.voanews.com/content/us-supreme-court-overturms-limits-on-political-campaign-donations/1884818.html>, viewed 5/17/14

Recognizing, however, that the Board of Supervisors is moving in the direction of hiring the FPPC for TINCUP oversight, enforcement, and possibly training,¹⁴ the Grand Jury believes that an independent office performing some of the functions of an ethics commission is still needed. It would function like administrative staff of an ethics commission, but would not include commissioners to conduct hearings or govern enforcement. Enforcement and some investigation would still be done in those agencies where it is currently being done. The office could be called the “Office of Ethics and Compliance”, and would have the following characteristics:

Scope: Data collection, monitoring, investigation and recommendations for enforcement of County ethics laws and policies including Code of Conduct, gift limitations, and conflict of interest. Possible TINCUP and State law violations would be referred to the FPPC or the DA. Monitoring and enforcement would not include fraud and waste or human resources related policies such as sexual harassment or nepotism, since these are now covered under the Human Resources Department and individual agency and department responsibilities.

Authority and Governance: County Ordinance

Paid Staff: A Director appointed by the Board of Supervisors on nomination by either a panel of the past three available retired Presiding Judges of the Superior Court, or by the Orange County Grand Jury Association; two to four full-time staff selected by and reporting to Director. Budget would be a consideration here, along with the degree to which staff attorneys would be used versus outside counsel. Legal services should be independent of County Counsel or the DA.

Jurisdiction: The Office should have jurisdiction over every County department, agency, commission, board, special district, and joint powers authority regardless of whether the head of such a body is elected or appointed, as well as over the elected leadership of the County.

Budget: Mandated budget from the County General Fund to support paid staff, outside services such as legal services, and operations; yearly mandated baseline with automatic cost-of-living increases. No more than 10% reduction cumulative allowed every three years. (See *Potential Costs*, below.)

Functions and Operations

- a) Receiving and maintaining campaign, lobbyist, and economic interest filings
- b) Collecting and maintaining filing data
- c) Education and training regarding compliance
- d) Monitoring compliance

¹⁴ The details of FPPC engagement have yet to be defined by the Board

- e) Receiving complaints of possible violations
- f) Issuing subpoenas and investigating possible violations
- g) Recommending settlements, fines, and penalties to appropriate enforcing agencies and following-up to see if recommendations were implemented
- h) Auditing economic interest, campaign, and lobbyist filings
- i) Issuing formal and informal opinions and advice regarding compliance
- j) Making recommendations for additions and modification to applicable laws

Independence: To maintain as much independence as possible for the Office, the Grand Jury recommends:

1. Permanent establishment through ordinance, and guaranteed budget
2. Independent counsel selected by the Office
3. Director appointment as noted above

Hotline: The Internal Audit Department currently manages the OC Fraud Hotline. As of this writing, the Audit Oversight Committee has proposed that the Hotline be renamed the Fraud, Compliance, and Ethics Hotline, emphasizing that it addresses all of these areas. The Grand Jury concurs with this proposal and recognizes the competent job that the Internal Audit Department has done with the Hotline. The responsibility for Hotline management should remain with the Internal Audit Department. Calls regarding possible ethics violations and related legal violations would be forwarded to the Commission for investigation.

Potential Costs

Costs of the Office would be primarily for staff and outside (primarily legal) services. The San Diego Ethics Commission has five staff members and hires outside attorneys for legal services. Their budget appropriation was \$781,000 in 2012 and \$977,000 in 2013. With a smaller staff, and smaller scope of responsibility than San Diego (i.e. not including local campaign ordinance enforcement that may be done by the FPPC), the Grand Jury estimates the cost for an Office of Ethics and Compliance in Orange County would be less than \$500,000 per year. Note that if costs for hiring the FPPC are budgeted at \$250,000/yr., the same as San Bernardino County, total

yearly costs for the whole program could be about \$750,000 for roughly the same scope of responsibility as the City of San Diego's ethics commission.

Implementation of an Office of Ethics and Compliance may result in some reductions of current costs. If a commission takes on some of the responsibilities for collection and reporting of campaign, economic interest, and lobbyist information from the Registrar of Voters and the Clerk of the Board, costs could be reduced in those departments. Taking on education and training responsibilities of the Registrar of Voters and Internal Audit would also reduce costs in those departments. Also, if the commission does some of the investigation and receiving of complaints now performed by the DA and Internal Audit, their current costs would also be reduced.

In order to further gauge the estimated costs for an Orange County ethics body compared to other jurisdictions, please refer to the discussion following the table shown in the Appendix.

The Grand Jury believes that at the very least, the Board of Supervisors should address the deficiencies in current ethics and campaign lobbyist reporting oversight and enforcement by:

1. Charging and appropriating funds for an existing agency in the County, perhaps the Internal Audit Department, to perform comprehensive oversight of ethics compliance. This would include not just receiving and forwarding complaints, but conducting investigations, recommending actions, offering advice to officials and candidates, and recommending additions and changes to laws and policies. The agency should be empowered to perform analysis across multiple sources of information to detect subtle or hidden violations (see no. 3, below) and offer regular (if not mandatory) training and education programs.
2. Charging and appropriating funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits, and some investigation and verification of data provided.
3. Charging and appropriating funds for an existing agency in the County (perhaps the CEO Office of Information Technology) to create and manage a consolidated, comprehensive database of economic interest and campaign reporting data and information. It should be available to the public via the Internet and should include complex search capability on a number of criteria.
4. Add an additional degree of independence for the three functions described above by mandating their appropriations through an ordinance which also sets a floor under the percentage of cuts to the appropriation allowed year to year.

Objections to an Orange County Ethics Body

The response of the Board of Supervisors to the 2012-2013 Grand Jury recommendation for an Orange County ethics body centered around two main objections:

1. In addition to the Grand Jury, a “host of coordinated accountability and oversight mechanisms...exist within the County for addressing improper behavior”, and
2. An Ethics Commission would be “another bureaucratic structure at taxpayer expense” that would be “practically unnecessary....irresponsible and wasteful.”¹⁵

The current deficiencies in the County for addressing improper behavior are outlined above. As to whether an ethics body would be bureaucratic and unnecessary, or establishing one would be irresponsible and wasteful, the Grand Jury considered the following:

- a) A staff of approximately three to five could hardly be called bureaucratic.
- b) Summaries of FPPC enforcement actions on the FPPC’s website appear to show that the FPPC has concluded only thirteen settlements of violations of election law in Orange County since 1990?¹⁶ This number can be compared, for example, to 10 such settlements in the City of San Diego and 49 settlements in the City and County of San Francisco in 2012 alone, both of which jurisdictions have ethics commissions. The conclusion has to be that ethics commissions work to uncover unethical and illegal behavior which is not uncovered elsewhere. The Grand Jury disagrees that this function is unnecessary.
- c) Would establishment of an ethics body be irresponsible? The Grand Jury finds it hard to understand why uncovering unethical, illegal, and corrupt behavior by those in positions of public trust is irresponsible. Indeed, it is irresponsible *not* to uncover, investigate, and prosecute such behavior.
- d) Would establishing an ethics body be wasteful? Orange County is the third largest government jurisdiction in California in terms of population, behind the County of Los Angeles and the City of Los Angeles, and roughly equal in population to San Diego County. The Grand Jury is proposing an estimated expense for an ethics body that is less than 0.01 of one percent of Orange County’s total budget.

Orange County receives less of a percentage of the property tax it pays to the State than any of the other 57 counties in California. This factor, as well as the recent ruling taking additional vehicle license fees from Orange County, and the current economic climate have put extreme pressures on Orange County’s budget. Nevertheless, calling the establishment of an ethics body wasteful means that it would not serve an important or useful function. The Grand Jury believes that there is no more important or useful

¹⁵ Response to Grand Jury report by County Executive Office, accessed 4/8/14 at http://www.ocgrandjury.org/pdfs/2012_2013_reports/County%20Executive%20Officer062513.pdf

¹⁶ See FPPC website at <http://www.fppc.ca.gov/Act/2009AppendixIV.pdf>, viewed 5/23/14

function by public officials than maintaining the trust of the population and assuring the most ethical and transparent political environment possible.

The Grand Jury has concluded establishing an ethics body, or at least addressing the deficiencies in current oversight and enforcement would greatly serve Orange County residents in creating an atmosphere of trust, transparency, and high ethical respect.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of existing ethics commissions, and of oversight and enforcement in Orange County of ethics laws and policies, and of campaign and lobbyist reporting, the 2013-2014 Orange County Grand Jury has arrived at six principal findings, as follows:

F.1. Ethics monitoring and enforcement is important, not just to punish violators, but to promote understanding of ethical guidelines and to remind public officials, employees, and candidates that their behavior is under close scrutiny. Vigorous ethics monitoring and enforcement is necessary to develop and maintain trust in government.

F.2. Governmental ethics includes much more than just campaign finance. It covers prohibitions against personal and financial gain, requirements for transparency, and requirements for fair process and merit based decision making. Most importantly, it includes prohibitions of behavior that is unethical but may not be illegal, such as campaign contributions as quid-pro-quo for government favors and lucrative contracts.

F.3. Orange County is subject to the same potential for corruption as anywhere else, yet monitoring and enforcement of ethics, and campaign and lobbyist reporting in the County is deficient in a number of areas, including oversight, law and policy advice and recommendations, audits, coordination, transparency, and independence.

F.4. Independence in monitoring and enforcing of ethics and reporting violations from those who are monitored is critical. Organizations performing these functions in Orange County, including the District Attorney, Internal Audit, Human Resources, The Registrar of Voters, the Clerk of the Board, and even the Grand Jury, are not truly independent since appointment of their head officials, and/or their budget appropriations are controlled by the Board of Supervisors.

F.5. Hiring the FPPC to enforce the County's TINCUP ordinance has some advantages, but would have a number of drawbacks:

- a) It could more than double TINCUP contribution limits.

- b) A contract with the FPPC would be under the control of the Board of Supervisors, while at the same time the FPPC would be responsible for policing the Board.
- c) Enforcement would only include civil and not criminal violations.
- d) It would be a pioneering and entirely new enforcement model in California versus the already established ethics commission model.
- e) It may soon become irrelevant because campaign finance regarding contribution limits may disappear in the near future given the current trend of decisions by the U.S. Supreme Court.

F.6. Ethics bodies in California function effectively to monitor and enforce campaign finance laws as well as other ethics laws and policies, and serve as a check and balance on government officials, employees, and candidates.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2013-2014 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of existing ethics commissions, and of oversight and enforcement in Orange County of ethics laws and policies, and of campaign and lobbyist reporting, the 2013-2014 Orange County Grand Jury makes the following four recommendations:

R.1. The Board of Supervisors should place a proposition on the next available general election ballot to establish an Orange County Campaign Reporting and Ethics Commission, similar to commissions in other jurisdictions in California. (**F.1., F.2., F.3., F.4., F.5., F.6.**)

R.2. The Board of Supervisors should carefully weigh the drawbacks to FPPC enforcement outlined in the Findings before pursuing it as an option to enforcing the County's campaign finance ordinance. (**F.5.**)

R.3. If the Board of Supervisors contracts with the FPPC for enforcement of the County's campaign finance ordinance, it should establish an Office of Ethics and Compliance charged with receiving complaints, monitoring, and investigating possible ethics law and policy

violations, and offering training, advice and recommendations regarding such laws and policies. The Office should have the following characteristics:

- a) a director nominated independently from County government officials,
- b) a budget mandated by ordinance, with a floor on year-to-year reductions
- c) paid staff, including its own inside or outside counsel, and
- d) power to subpoena records and persons. (F.1., F.2., F.3., F.4., F.6.)

R.4. At a minimum, to address current deficiencies in ethics and campaign and lobbyist oversight and reporting, the Board of Supervisors should:

- 1. Charge and appropriate funds for an existing agency in the County to perform comprehensive oversight of ethics compliance.
- 2. Charge and appropriate funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits.
- 3. Charge and appropriate funds for an existing agency in the County to create and manage a consolidated, compressive database of economic interest and campaign reporting data and information, available to the public via the Internet. (F.1., F.2., F.3., F.4., F.6.)

REQUIRED RESPONSES

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Required:

Responses to Findings **F.1.**, **F.2.**, **F.3.**, **F.4.**, **F.5.**, and **F.6.** are required from the Board of Supervisors

Responses to Recommendations **R.1.**, **R.2.**, **R.3.** and **R.4.** are required from the Board Supervisors

APPENDIX: Ethics Commission Survey Results

(Figures are for FY 2012-2013 unless otherwise noted)

	ORANGE COUNTY	CITY OF SAN DIEGO	CITY OF LOS ANGELES	CITY AND COUNTY OF SAN FRANCISCO	COUNTY OF SAN BERNARDINO
Population	3,090,132	1,328,073	3,866,133	826,003	2,081,313
Total budget	\$5.6 billion	\$2.8 billion	\$20, billion	\$7.9 billion	\$4.3 billion
Total employees	17,000	19,500	42,000	19,919	
Agency name		City of San Diego Ethics Commission	Los Angeles City Ethics Commission	San Francisco Ethics Commission	Office of Compliance and Ethics (OCE)
Authority		City Charter, City Ordinance	Voter approved proposition, City Ordinance	Charter Amendment, voter approved	Appears to be part of county government structure.
Date established		2001	1990	1993	
Mission		City's governmental ethics laws including education, training, investigation, advice, recommendations, enforcement	Shape, administer, and enforce laws regarding governmental ethics, conflicts of interest, campaign financing, and lobbying.	Education, training, complaint investigation, statistical reporting, advice, audits, recommendations, enforcement,	Operate a strategic countywide compliance and ethics program, ensuring regulatory and ethical
Governance /Budget		City Council	City Council	Board of Supervisors	Appears to be county CEO.
Purview (elections, elected, staff, cities, county)		Political activities of elected officials, candidates, political committees, com. Treasurers, public employees, lobbyists, 1,500 people	Campaign finance audits, candidate matching funds, lobbyist registration and disclosure, city official financial	Elections, elected officials, candidates, city & county employees, lobbyists, school & college board. Jurisdiction over investigations, subpoena, opinions, enforcement proceedings, fines, oral, written informal & formal	
Actions		Investigations, subpoena power, outreach & education, advice letters, fines, audits	Investigations, campaign funding, training, education, whistleblower hotline, audits, fines.		Monitor changes in state laws, recommend policies, develop internal controls, audits, helpline.
Whistleblower hotline (Y, N)		Y -@ Auditor/Controller's office	Y	Y -@ Controller's Office	Yes, 3rd party is host.
Body size		7	5	5	Appears to be 2 listed on web-site.
Jurisdiction Population		1,328,073	3,866,133	826,003	
Jurisdiction Budget \$		\$2.8 billion	\$20 billion	\$6.7 billion	
Jurisdiction no. of employees		19,500.00	42,000		
How appointed		By Mayor on nomination of Council and City Att'y, approved by majority of Council	Appointed by the Mayor, City Council President, CC Pres Pro Tem, City Attorney, and Controller	One ea. appointed by Mayor, BoS, City Attorney, DA, Assessor	
Term		Four years	Five years	Six years	
Pay		None	\$50 per meeting/waived by all	No compensation except for "City benefits"	
Paid staff		5 (attorneys would be an asset)	21 -not covered by civil service procedures!	18 includes a full-time educator & 2 investigators but need more.	
Commission Budget \$		\$781K FY 2012 / \$977K FY 2013	\$2.4 million FY'12-13	\$4.2 million '12-13 (\$2.3 non-grant)	
Collect fines & fees?		Y -\$25,000 collected in 2013	Y -\$220,200 collected in 2013	Y - + Lobbyists, campaign consultants (\$82,000 2013)	
Products		Annual report, training, audits, info website, formal & informal advice letters, stipulations	Campaign finance audits	Annual report, training, audits, campaign info website	

APPENDIX: Ethics Commission Survey Results (cont'd)

(Figures are for FY 2012-2013 unless otherwise noted)

	COUNTY OF VENTURA	KERN COUNTY	CITY OF OAKLAND	CITY OF SAN JOSE	CITY OF SEATTLE
Population	834,398	855,498	399,699	983,574	
Total appropriations	\$1.6 billion		\$1 billion	\$2.9 billion	
Total employees			3,898	5,655	
Agency name	Ventura County Campaign Finance Ethics Commission	Campaign Finance Hearing Panel	Public Ethics Commission	San Jose Ethics Commission	Seattle Ethics and Elections Commission
Authority	County Ordinance	Voter approved ordinance	City Charter	Municipal Code	Budget set by City Council
Date established	2003 or 2004	2003	1996		1992
Mission	Consider formal complaints of and possible Ethics Ordinance violations		Ensure fairness, openness, honesty and integrity in city government.	Monitors compliance w/ all ethics and campaign ordinances	Administer, interpret and enforce the Seattle Ethics Code
Governance /Budget	Board of Supervisors	County Board of Supervisors	City Council	City Council	Mayor and City Council
Purview (elections, elected, staff, cities, county)	Campaign Finance for candidates -County only, <u>no</u> lobbyists, no training or education, no audits. County	Campaign finance violations under Kern County ordinance (campaign contributions)	Campaign finance, conflicts of interest, city council code of conduct, transparency, public financing, lobbyist	Campaign and ethics regulations of elected officials	Interpreting and applying the Seattle Ethics, elections, Election Pamphlet, and Whistleblower Codes.
Actions		Hears administrative actions re: alleged ordinance violations	Set the salaries of city council members; investigations, audits, public hearings, subpoenas, fines, penalties.	of violations of the Code and makes recommendations for enforcement action where appropriate	Complaint driven investigations, includes whistle-blowers, has subpoena power -handles NO Sexual Harassment
Whistleblower hotline (Y, N)		None listed			Yes
Body size	3	5	7	5	7
How appointed	By Board of Supervisors	Board of Supervisors	3 - by mayor and city council. 4 - recruited and selected by commission.	City Council	Mayor and city council - 3 each and 7th by Commission
Term	Four years	3 years	Three years	4 years	3 years / staggered -may be reappointed
Pay	None	\$200 per day for hearings	None		0
Paid staff	1/2 person (from the CEO's staff)	0	5	none	6.2 paid (some are part-time)
Commission appropriation		0	\$186,000		\$782,000
Collect fines & fees?		Collects fines and penalties.			\$3,000 - \$5,000 in a normal year
Products	Annual Report, revise ordinance prior to each election (every 2 years), letters		Annual report	Annual Report	Hearings / Public Notices & Reports

Commission Cost Discussion

Note that an estimated yearly cost of \$500,000 for an Orange County ethics body would be less than 0.01 of one percent of Orange County's total yearly budget. With comparable functions to those proposed for Orange County, the City of San Diego Ethics Commission's budget is more than double the percentage of the City's total budget compared to the Orange County cost estimate.

Note also that the Los Angeles Ethics Commission budget is 0.01 of one percent of the total City budget, with a total City budget and City staff more than three times the size of Orange County's. Note also that the City and County of San Francisco Ethics commission budget is whopping 0.06 of one percent of that jurisdiction's total budget for a much smaller jurisdiction. However, Los Angeles and San Francisco may not be as relevant since they collect and administer campaign matching funds as one of their main functions, a function not proposed for Orange County.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

Summary Response Statement:

On June 24, 2014, the Grand Jury released a report entitled: “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement.” This report directed responses to findings and recommendations to the Orange County Board of Supervisors which are included below.

F1. Ethics monitoring and enforcement is important, not just to punish violators but to promote understanding of ethical guidelines and to remind public officials, employees, and candidates that their behavior is under close scrutiny. Vigorous ethics monitoring and enforcement is necessary to develop and maintain trust in government.

Response: The Board of Supervisors (“Board”) agrees with this finding.

F2. Governmental ethics includes much more than just campaign finance. It covers prohibitions against personal and financial gain, requirements for transparency, and requirements for fair process and merit based decision making. Most importantly, it includes prohibitions of behavior that is unethical but may not be illegal, such as campaign contributions as quid-pro-quo for government favors and lucrative contracts.

Response: The Board disagrees partially with the finding. The Board agrees that the concept of government ethics includes more than merely the lawful receipt and expenditure of campaign contributions. However, the Grand Jury’s claim that the *quid pro quo* exchange of government favors and lucrative contracts for campaign contributions is “unethical but may not be illegal” is wholly inaccurate. Bribery is prohibited under both state law (*i.e.*, Penal Code § 86) and federal law (*i.e.*, 18 U.S.C. § 666). Bribery can often also be prosecuted as mail or wire fraud (*i.e.*, depriving the public of its right to the honest services of elected officials) per 18 U.S.C. § 1346. Self-dealing in public contracts is prohibited under Gov. Code section 1090.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

F3. Orange County is subject to the same potential for corruption as anywhere else, yet monitoring and enforcement of ethics, and campaign and lobbyist reporting in the County is deficient in a number of areas, including oversight, law and policy advice and recommendations, audits, coordination, transparency, and independence.

Response: The Board disagrees wholly with this finding. By suggesting that the monitoring and enforcement of ethic, campaign, and lobbyist reporting is “deficient,” the Grand Jury suggests that the County is somehow not meeting a legal or other minimum standard. The County of Orange exceeds legal requirements for the areas mentioned above. For example, the Board has established a number of oversight bodies and functions, including the Internal Audit Department, the Performance Audit Department, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee, and the Compliance Oversight Committee. In addition, the County already has limits on campaign contributions in County elections through the Orange County Campaign Reform Ordinance (Codified Ordinances of Orange County, Section 1-6-1 *et seq.*) The Board has adopted the Orange County Gift Ban Ordinance (Codified Ordinances of Orange County, Section 1-3-21 *et seq.*) that prohibits County elected officials and high-level employees from receiving gifts from persons doing business, or seeking to do business, with the County. Additionally, the Board has adopted an ordinance requiring the disclosure of lobbyists and lobbying activities through the Lobbyist Registration Ordinance (Codified Ordinances of Orange County, Section 1-1-8 *et seq.*) These oversight agencies and local laws, all of which operate to prevent corruption and the appearance of corruption, are in addition to the required responsibilities of the District Attorney and County Auditor-Controller.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

F4. Independence in monitoring and enforcing of ethics and reporting violations from those who are monitored is critical. Organizations performing these functions in Orange County, including the District Attorney, Internal Audit, Human Resources, The Registrar of Voters, the Clerk of the Board, and even the Grand Jury, are not truly independent since appointment of their head officials, and/or their budget appropriations are controlled by the Board of Supervisors.

Response: The Board disagrees partially with the finding. The Board agrees with that the budgets of the listed County departments are approved by the Board. The Board also notes that the discretionary power vested in the district attorney to control the institution of criminal proceedings may not be controlled by a county board of supervisors. (See Gov.Code, § 26500; Const. Art. 5, § 13.)

What the Grand Jury appears to reject, however, is the basic principle that the Board, as a legislative body, represents the People, and operates as a constitutional check and balance on the executive and administrative functions of County government. No executive or administrative function of government should be beyond the reach and control of the electorate, acting through its locally chosen representatives. A separation of powers, and a system of checks and balances, are the basic pillars of our local, state, and federal government. Indeed, the question of whether the executive functions of government should be “independent” of the legislative branch was resolved in favor of the People in 1783 with America’s victory over British in the American Revolutionary War. As James Madison explained in *Federalist* No. 47, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny.” This Board is not going to create an “independent” branch of government that is above the law and accountable to no one. Before the Grand Jury issues further complaints about the absence of true executive branch “independence,” the Board respectfully encourages the Grand Jury to read and consider *The Federalist*, the *Declaration of Independence*, and other foundational documents that shed light on the features and meaning of our Constitutional system of government.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

F5. Hiring the FPPC to enforce the County’s TINCUP ordinance has some advantages, but would have a number of drawbacks:

a) It could more than double TINCUP contribution limits.

Response: The Board disagrees wholly with the finding. As a matter of law, the finding is factually incorrect and ignores the public direction given by the Board of Supervisors of February 4, 2014, to preserve TINCUP’s existing campaign contribution limits no matter which agency provides administrative enforcement of campaign reform ordinances. The video of the February 4, 2014, Board meeting, item 22, at 2:16:00, is available at the following link:

http://ocgov.granicus.com/MediaPlayer.php?view_id=6&clip_id=1395

In any event, TINCUP can only be amended by a majority vote of the electors (registered voters) of Orange County. Section Sec. 1-6-23, subdivision (b), of the Codified Ordinances of the County of Orange (*i.e.*, TINCUP) states, “no amendment or repeal of any provision of this division shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the County and approved by a majority vote.” Authorizing the FPPC to prosecute violations of TINCUP would not change the substantive requirements and contribution limits of TINCUP nor would it have any impact on the County’s gift ban ordinance.

b) A contract with the FPPC would be under the control of the Board of Supervisors, while at the same time the FPPC would be responsible for policing the Board.

Response: The Board disagrees wholly with the finding. The FPPC is an independent state agency, governed by a five-member commission appointed by the Governor, and enjoys complete prosecutorial discretion in deciding which cases to prosecute. Moreover, the FPPC’s budget is approved by the state Legislature. If a contract with the County is approved, the FPPC would receive only a small portion of its operating budget from the County of Orange. The County’s contract with the FPPC would be a matter of public record and would not permit the County to interfere with FPPC prosecution decisions. In any event, it is highly unlikely that the FPPC would ever agree to such control as suggested by this Finding.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

c) Enforcement would only include civil and not criminal violations.

Response: The Board agrees with the finding, but asserts that this finding is irrelevant. The Orange County District Attorney is charged with the responsibility of prosecuting crimes that occur in the County of Orange. (See Gov.Code, § 26500; Const. Art. 5, § 13.) Whether the County reaches an agreement with the FPPC for the civil and administrative enforcement of TINCUP, the District Attorney retains jurisdiction to prosecute criminal violations of TINCUP.

d) It would be a pioneering and entirely new enforcement model in California versus the already established ethics commission model.

Response: The Board disagrees wholly with the finding. The County has followed the successful precedent set by the County of San Bernardino. Moreover, the Grand Jury’s finding assumes facts for which there is no evidence. The Grand Jury has not provided, nor does any evidence exist that that local ethics commissions effectively reduce corruption. Yet local ethics commissions are subject to many of the same concerns (*e.g.*, cronyism, favoritism, lack of independence, etc.) that contracting with the FPPC would avoid by virtue of their appointments coming from those they purport to regulate.

e) It may soon become irrelevant because campaign finance regarding contribution limits may disappear in the near future given the current trend of decisions by the U.S. Supreme Court.

Response: The Board disagrees wholly with this finding. The Board, like the Grand Jury, is in no position to assess the probability that the Supreme Court will invalidate campaign contribution limits in the future. Reasonable campaign contribution limits, aimed at preventing corruption and the appearance of corruption, have been upheld by the U.S. Supreme Court since 1976, when the Supreme Court decided *Buckley v. Valeo*, 424 U.S. 1 (1976). In any event, this wholly speculative finding presents no reason not to authorize the FPPC to prosecute violations of TINCUP for as long as reasonable campaign contribution limits are constitutional.

F6. Ethics bodies in California function effectively to monitor and enforce campaign finance laws as well as other ethics laws and policies, and serve as a check and balance on government officials, employees, and candidates.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

Response: The Board disagrees wholly with the finding. The effectiveness of the “ethics bodies” is matter of opinion and difficult to determine. The Grand Jury’s report did not provide any metrics or analysis to explain how “effectiveness” of an ethics body is defined nor did they provide any evidence or examples of said effectiveness. In any event, other institutions also monitor and enforce campaign finance laws, ethics laws, and policies, including the District Attorney, the County Auditor-Controller, the Registrar of Voters, the County Internal Audit Department, the County Performance Audit Department, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee and the Compliance Oversight Committee. The Board itself conducts oversight of County officials and employees. Additionally, private citizens can themselves file “private attorney general lawsuits” under the California Political Reform Act and also TINCUP to enforce campaign finance laws. However, the Grand Jury did not analyze the effectiveness of these other enforcement mechanisms.

R1. The Board of Supervisors should place a proposition on the next available general election ballot to establish an Orange County Campaign Reporting and Ethics Commission, similar to commissions in other jurisdictions in California.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. The 2012-13 Grand Jury also looked at ethics and made a number of findings and recommendations. In response to that report and based on research and analysis, the County determined that San Bernardino’s model of contracting with the FPPC was the best option to meet the recommendations from the Grand Jury. As a result, the recommended efforts are duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to prosecute violations of the Orange County Campaign Finance Reform Ordinance pending future legislative authorization.

R2. The Board of Supervisors should carefully weigh the drawbacks to FPPC enforcement outlined in the Findings before pursuing it as an option to enforcing the County’s campaign finance ordinance.

Response: The recommendation has already been implemented. Prior to seeking legislation and placing a measure on the ballot, the Board of Supervisors reviewed the advantages and disadvantages of FPPC enforcement and determined that FPPC enforcement was the best and most cost effective option for the County. The County will continue to pursue this course of action under Board direction.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

R3. If the Board of Supervisors contracts with the FPPC for enforcement of the County’s campaign finance ordinance, it should establish an Office of Ethics and Compliance charged with receiving complaints, monitoring, and investigating possible ethics law and policy violations, and offering training, advice and recommendations regarding such laws and policies. The Office should have the following characteristics:

- a) a director nominated independently from County government officials,**
- b) a budget mandated by ordinance, with a floor on year-to-year reductions**
- c) paid staff, including its own inside or outside counsel, and**
- d) power to subpoena records and persons.**

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. An Office of Ethics is duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to provide those services with legislative authority. Also, County of Orange adopted an Electronic Campaign Disclosure ordinance (section 1-6-32), which requires county officers, candidates, or committees to file campaign disclosure documents electronically. These are available to search, review, and export online at www.ocvote.com/voting/campaign-finance-info/. Also, the FPPC already makes the Form 700: Statement of Economic Interest available for all County Supervisors on the www.fppc.ca.gov website.

In the County’s budget the amount of discretionary or non-mandated general purpose revenue is extremely limited. Orange County is underfunded and ranks last out of all 58 counties in allocation of property tax revenues. The creation of another County department would be duplicative and costly and being an ongoing drain on those scarce resources.



COUNTY OF ORANGE

Responses to Findings and Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

R4. At a minimum, to address current deficiencies in ethics and campaign and lobbyist oversight and reporting, the Board of Supervisors should:

- 1. Charge and appropriate funds for an existing agency in the County to perform comprehensive oversight of ethics compliance.**
- 2. Charge and appropriate funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits.**
- 3. Charge and appropriate funds for an existing agency in the County to create and manage a consolidated, compressive database of economic interest and campaign reporting data and information, available to the public via the Internet.**

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. The recommended efforts are duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to provide those services with legislative authority. As noted in F3, the County disagrees with the use of the word “deficiency” and maintains that all requirements are met and in many cases exceeded.

As noted above in R3, the County makes campaign disclosure documents available on the Registrar of Voters website. (See <http://www.ocvote.com/voting/campaign-finance-info/>). Statements of Economic Interest (FPPC Form 700) filed by members of the Board of Supervisors are already publicly available on the FPPC website. (See <http://www.fppc.ca.gov/index.php?id=592>.) The creation of an additional database would be duplicative and costly as this information is already available to the public.

COUNTY OF ORANGE

Supplemental Response to Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

R1. The Board of Supervisors should place a proposition on the next available general election ballot to establish an Orange County Campaign Reporting and Ethics Commission, similar to commissions in other jurisdictions in California.

Original County Response: The recommendation will not be implemented because it is not warranted and is not reasonable. The 2012-13 Grand Jury also looked at ethics and made a number of findings and recommendations. In response to that report and based on research and analysis, the County determined that San Bernardino’s model of contracting with the FPPC was the best option to meet the recommendations from the Grand Jury. As a result, the recommended efforts are duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to prosecute violations of the Orange County Campaign Finance Reform Ordinance pending future legislative authorization.

Grand Jury Rebuttal: “First in explaining its refusal to implement the recommendations regarding the formation of a local ethics commission, Respondent proposed an alternative solution that depended on the passage of legislation that would authorize the County to contract with the Fair Political Practices Commission (FPPC) for civil and administrative enforcement of the County’s campaign reform ordinance. Although Respondent alleged in its response that passage of Measure E ‘would allow the FPPC to provide those [enforcement] services with legislative authority,’ the proposed state legislation (AB1421), had already met defeat one month before the County filed its response with the Superior Court. Thus, the premise underlying the Response is fundamentally flawed because it was known to be invalid.”

Draft County Supplemental Response: Although SB 1226 (Correa), the legislation sponsored by the County of Orange (and co-sponsored by the Urban Counties Caucus) was substantially re-written in the face of opposition from organized labor, obtaining legislative authorization for FPPC enforcement of TINCUP continues to be a priority for the Board and is included in the County’s legislative platform. AB 910 (Harper) was introduced this session to provide this authority. The original response recognized the need for future legislative authorization which can require a multi-year effort. The passage of Measure E by over 56% of Orange County voters was a big step in allowing the County to move toward FPPC enforcement of campaign finance reform.

COUNTY OF ORANGE

Supplemental Response to Recommendations

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R2. The Board of Supervisors should carefully weigh the drawbacks to FPPC enforcement outlined in the Findings before pursuing it as an option to enforcing the County’s campaign finance ordinance.

Original County Response: The recommendation has already been implemented. Prior to seeking legislation and placing a measure on the ballot, the Board of Supervisors reviewed the advantages and disadvantages of FPPC enforcement and determined that FPPC enforcement was the best and most cost effective option for the County. The County will continue to pursue this course of action under Board direction.

Grand Jury Rebuttal: “Second, Respondent’s alternative method wrongly presupposes that the FPPC is the functional equivalent of an ethics commission and can sanction unethical conduct. Respondent’s assertion that a County ethics commission would be ‘duplicative’ of FPPC enforcement is incorrect. As noted above, the FPPC-contract option is no longer viable, but even if it were, the FPPC would never monitor or sanction any unethical conducted unrelated to the enforcement of the County’s TINCUP ordinance, as emphasized in the above-referenced Grand Jury Report, such as conflict of interest, gift bans, lobbyist registration and reporting, and codes of conduct.

Draft County Supplemental Response: The recommendation suggested that the Board of Supervisors weigh the drawbacks to FPPC enforcement. The Board has done so. The Fair Political Practices Commission currently has jurisdiction to bring administrative and civil enforcement actions against County elected officials and employees who are designated Statement of Economic Interest (FPPC Form 700 filers) who violate the conflict of interest provisions or gift limits of the Political Reform Act. The County continues to seek legislative authorization to allow the Fair Political Practices Commission (FPPC) to provide local enforcement of the County’s campaign finance reform ordinance. This year, AB 910 was introduced by Assemblyman Harper to grant the FPPC such authority.

COUNTY OF ORANGE

Supplemental Response to Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

R3. If the Board of Supervisors contracts with the FPPC for enforcement of the County’s campaign finance ordinance, it should establish an Office of Ethics and Compliance charged with receiving complaints, monitoring, and investigating possible ethics law and policy violations, and offering training, advice and recommendations regarding such laws and policies. The Office should have the following characteristics:

- a) a director nominated independently from County government officials,**
- b) a budget mandated by ordinance, with a floor on year-to-year reductions**
- c) paid staff, including its own inside or outside counsel, and**
- d) power to subpoena records and persons.**

Original County Response: The recommendation will not be implemented because it is not warranted and is not reasonable. An Office of Ethics is duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to provide those services with legislative authority. Also, County of Orange adopted an Electronic Campaign Disclosure ordinance (section 1-6-32), which requires county officers, candidates, or committees to file campaign disclosure documents electronically. These are available to search, review, and export online at www.ocvote.com/voting/campaign-finance-info/. Also, the FPPC already makes the Form 700: Statement of Economic Interest available for all County Supervisors on the www.fppc.ca.gov website.

In the County’s budget the amount of discretionary or non-mandated general purpose revenue is extremely limited. Orange County is underfunded and ranks last out of all 58 counties in allocation of property tax revenues. The creation of another County department would be duplicative and costly and being an ongoing drain on those scarce resources.

Grand Jury Rebuttal: “Third, the respondent’s alternative method presumes that only the twelve Orange County elected officials listed in the TINCUP ordinance are in need of ethics oversight. FPPC enforcement of TINCUP would overlook the wide spectrum of elected and appointed official throughout the county that a local ethics commission would oversee, as pointed out in the above

COUNTY OF ORANGE

Supplemental Response to Recommendations

2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

referenced Report. Thus, the Response is clearly insufficient because it fails to address the Grand Jury’s call for an ethics commission that would monitor, investigate, and sanction ethics violations by elected and appointed officials throughout the county.”

Draft County Supplemental Response: The Grand Jury’s rebuttal did not address the County’s response to R3 which cited duplication and costliness of implementation of an Office of Ethics, with the implementation of FPPC enforcement. The Fair Political Practices Commission currently has jurisdiction to bring administrative and civil enforcement actions against County elected officials and employees who are designated Statement of Economic Interest (FPPC Form 700 filers) who violate the conflict of interest provisions or gift limits of the Political Reform Act.

**FULL TEXT OF MEASURE E
COUNTY OF ORANGE**

ORDINANCE NO. ____

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA,
AUTHORIZING THE CALIFORNIA FAIR POLITICAL PRACTICES
COMMISSION TO PROSECUTE VIOLATIONS OF THE ORANGE COUNTY
CAMPAIGN REFORM ORDINANCE, AND ADDING SECTIONS 1-6-15.1
AND 1-6-15.2 TO, AND AMENDING SECTIONS 1-6-16 AND 1-6-17 OF,
ARTICLE 1, DIVISION 6 OF TITLE 1 OF THE CODIFIED
ORDINANCES OF THE COUNTY OF ORANGE

The People of the County of Orange, California, hereby ordain as follows:

SECTION 1: Section 1-6-15.1 is added to the Codified Ordinances of the County of Orange to read:

Sec. 1-6-15.1. Enforcement by the California Fair Political Practices Commission.

Upon mutual agreement between the Fair Political Practices Commission and the County, the civil prosecutor shall be the Fair Political Practices Commission. In the absence of an agreement between the Fair Political Practices Commission and the County, the civil prosecutor shall be the District Attorney.

SECTION 2. Section 1-6-15.2 is added to the Codified Ordinances of the County of Orange to read:

Sec. 1-6-15.2. Violations and Enforcement - Administrative.

- (a) Any person who, pursuant to an appropriate administrative action, is determined by the civil prosecutor to have violated any provision of this division, purposely caused any other person to violate any provision of this division, or aided and abetted any other person in the violation of any provision of this division, shall be subject to an administrative order requiring that the person to do all or any of the following:
 - (1) cease and desist violating this division;
 - (2) file any reports, statements, or other documents or information required by this division;
 - (3) pay to the County a monetary penalty of up to five thousand dollars (\$5,000) per violation;
- (b) If two or more persons are responsible for any violation of any provision of this division, then they shall be jointly and severally liable.
- (c) No administrative action brought alleging a violation of any provision of this division shall be commenced more than five (5) years after the date on which the violation occurred.

SECTION 3: Section 1-6-16 of the Codified Ordinances of the County of Orange is amended to read:

Sec. 1-6-16. Civil actions.

- (a) Any person who intentionally or negligently violates any provision of this division shall be liable in a civil action brought by the ~~District Attorney~~ **civil prosecutor** or by a person residing within the jurisdiction for an amount not more than three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received or five thousand dollars (\$5,000.00) per violation, whichever is greater.
- (b) If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.
 - a. Any person, other than the ~~District Attorney~~ **civil prosecutor**, before filing a civil action pursuant to this subdivision, shall first file with the ~~District Attorney~~ **civil prosecutor** a written request for the ~~District Attorney~~ **civil prosecutor** to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The ~~District Attorney~~ **civil prosecutor**, within thirty (30) days of receipt of the request, shall conduct an initial inquiry into the merits of the complaint. If the ~~District Attorney~~ **civil prosecutor** determines in good faith that additional time is needed to examine the matter further, the complaining party shall be notified and the ~~District Attorney~~ **civil prosecutor** shall automatically receive an additional sixty (60) days in order to determine the merits of the complaint. At the end of sixty (60) days the ~~District Attorney~~ **civil prosecutor** shall inform the complaining party whether the ~~District Attorney~~ **civil prosecutor** intends to file a civil action or **refer the complaint to the District Attorney** for is conducting a criminal investigation. **Within thirty (30) days thereafter, if** ~~if~~ the ~~District Attorney~~ **civil prosecutor** indicates in the affirmative and files a civil action or **if** criminal charges **are filed by the District Attorney** ~~within thirty (30) days thereafter~~, no other action may be brought unless the action brought by the **civil prosecutor** or District Attorney is dismissed without prejudice.
- (c) In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action, the plaintiff shall receive fifty (50) percent of the amount recovered. The remaining fifty (50) percent shall be deposited into the County's General Fund. In an action brought by the ~~District Attorney~~ **civil prosecutor** the entire amount shall be paid to the General Fund.

SECTION 4: Section 1-6-17 of the Codified Ordinances of the County of Orange is amended to read:

Sec. 1-6-17. Injunctive relief.

Any person residing in the jurisdiction, including the ~~District Attorney~~ **civil prosecutor** may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this division.

**IMPARTIAL ANALYSIS
COUNTY OF ORANGE
MEASURE E**

The Orange County Campaign Reform Ordinance was approved by the voters in 1992. The Ordinance sets contribution limits and regulates other campaign activity of County elected officials and candidates for those offices. Under the existing Ordinance, civil actions seeking monetary penalties for violations of the Ordinance may be brought by the Orange County District Attorney or by a County resident after following the procedure set forth in the Ordinance. Criminal violations are prosecuted by the District Attorney. There is no mechanism in the existing Ordinance for administrative enforcement short of filing a civil action.

State legislation was introduced this year to authorize the Fair Political Practices Commission ("FPPC") to enter into an agreement with a city or county for the FPPC's civil administration, implementation and enforcement of a local campaign finance ordinance. The FPPC is a State agency that regulates and enforces the Political Reform Act of 1974, including its provisions on campaign finance.

This measure would amend the Orange County Campaign Reform Ordinance to authorize Orange County and the FPPC to enter into an agreement for the FPPC to be the civil prosecutor of the Ordinance. The measure provides that in the absence of an agreement between the County and the FPPC, the District Attorney will be the civil prosecutor. The civil prosecutor can bring civil actions to enforce the Ordinance. Under the measure, authority to prosecute criminal violations of the Ordinance remains with the District Attorney.

The measure also provides that the civil prosecutor may bring an administrative action to stop violations of the Ordinance, and to require the filing of reports, statements or other documents and payment to the County of a monetary penalty of up to \$5,000 per violation. The measure further provides that an administrative action must be brought within 5 years after a violation occurs.

This measure will become effective if approved by a majority of the voters in the County casting votes on the measure. Future changes to the Orange County Campaign Reform Ordinance, including this provision if approved, must be submitted to the voters for approval. However, the Board of Supervisors may impose additional requirements without voter approval.

A "yes" vote is a vote to amend Orange County Campaign Reform Ordinance to authorize the Fair Political Practices Commission to be the civil prosecutor of the Ordinance and to add administrative enforcement to the Ordinance.

A "no" vote is a vote not to amend the Orange County Campaign Reform Ordinance.

ARGUMENT IN FAVOR OF MEASURE E

Measure E does one simple thing: it allows California's ethics commission to enforce Orange County's campaign finance rules.

In 1974, California voters approved Proposition 9, the Political Reform Act, which created the Fair Political Practices Commission (FPPC). The FPPC is California's ethics commission, serving as a watchdog enforcing California's campaign finance laws.

Currently, the FPPC is not allowed to enforce Orange County's campaign finance regulations. Measure E amends Orange County's campaign finance rules to permit the County to enter into an agreement with the FPPC to enforce our local campaign finance regulations. The FPPC will be able to provide enforcement, auditing, and training for Orange County's campaign finance rules. **Orange County's lower campaign finance limits would remain unchanged.**

Read the text of Measure E yourself — you'll see it does the following, nothing more, nothing less:

- Orange County can enter into an agreement for the FPPC to be the civil prosecutor enforcing Orange County's campaign finance rules. If there's no agreement, the civil prosecutor remains the District Attorney.
- The FPPC can impose penalties for violations of Orange County's campaign finance rules — including fines of \$5,000 per violation.
- The FPPC can refer cases to the District Attorney for criminal prosecution, if necessary.

Currently, a politician is responsible for enforcing Orange County's campaign finance rules. Some people want an Orange County ethics commission to enforce campaign finance rules while others have expressed concern about creating a new government bureaucracy.

Measure E provides critical government reform by giving Orange County the best of both worlds by bringing in the expertise of the FPPC, California's existing ethics commission.

The FPPC is California's watchdog and expert on enforcing campaign finance law. The FPPC is independent and far beyond the reach of Orange County's politicians, lobbyists, labor unions, business groups, and special interests.

Vote "Yes" on Measure E to allow California's ethics commission to enforce Orange County's campaign finance laws.

s/ Shawn Nelson
Chairman, Orange County Board of Supervisors

s/ Todd Spitzer
Orange County Supervisor

s/ Darryl Wold
Former Chairman, United States Federal Election Commission

s/ Ronald Rotunda
Former Commissioner, California Fair Political Practices Commission

s/ Lou Correa
California State Senator

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE E

Vote NO on Measure E. What Orange County needs is a **local** independent Ethics Commission that will audit **all** campaign statements and identify **all** violations.

Measure E incorrectly refers to the Fair Political Practices Commission (FPPC) as "California's Ethics Commission".

- The FPPC is **NOT** an ethics commission. Ethics commissions, such as those in Los Angeles, San Diego and San Francisco, deal with much more than just campaign law violations — including fraud, waste, conflicts of interest, transparency of public records, nepotism, etc.
- The primary job of the FPPC is to enforce the State's campaign laws — **not** to handle ethics issues.

In order to adequately enforce Orange County's campaign law, the FPPC would have to **audit all** the county candidates' campaign statements over an entire four-year Election Cycle. But the FPPC has stated they would audit only on a random basis. Most violations would therefore go undetected.

Moreover, the Board of Supervisors could cancel the FPPC contract at any time, making the process vulnerable to political pressure. **A local Ethics Commission would not be subject to this interference.**

The last two Grand Juries recommended establishment of an Ethics Commission for Orange County and the last Grand Jury specifically recommended **against** hiring the FPPC.

Measure E is an attempt by the Board of Supervisors to skirt the need for an Orange County Ethics Commission. Politicians do not want this type of scrutiny that the public deserves. **Don't be fooled** by this diversion.

Vote NO on Measure E.

s/ Shirley L. Grindle
Author of TINCUP Campaign Reform Ordinance

s/ Kay Bruce
Co-President League of Women Voters of Orange County

s/ Dave Baker
Foreman 2013-2014 Grand Jury

s/ Wm. R. Mitchell
Former Chair Orange County Common Cause

s/ Fred Smoller
Political Science Professor

ARGUMENT AGAINST MEASURE E

According to the Orange County Grand Jury, Orange County has been a “hotbed of corruption” and “untoward behavior continues and is actively festering”. Former Sheriff Mike Carona is in prison, and there is a history of county executives that have been convicted or charged with serious crimes. Unfortunately, these problems have gone unaddressed for the past decade by the County District Attorney.

As a result, several Grand Juries and citizen activists have repeatedly asked the Board of Supervisors to establish an independent Ethics Commission. This Commission would monitor and enforce conflicts of interest by county officials and employees, as well as monitor and enforce the County campaign finance law (TINCUP - Time Is Now, Clean Up Politics.)

Rather than establish an Ethics Commission, the Board of Supervisors is asking the voters to amend the TINCUP Campaign Ordinance to allow the Board to contract with the Fair Political Practices Commission (FPPC) in Sacramento to review complaints and enforce violations of TINCUP. The FPPC would not address the culture of corruption in Orange County government and most of the violations of the county’s Campaign Reform Ordinance would also go undetected since only random audits would be conducted by the FPPC.

An Orange County Ethics Commission would help reduce the influence of money and interest group power in County politics. Los Angeles, San Diego, San Francisco and at least five other major cities/counties in California have their own Ethics Commissions. Orange County needs one too. Contracting with a narrowly focused Sacramento-based bureaucracy will not get the job done. We can only get comprehensive reform by establishing a local Ethics Commission that is independent of the politicians.

We therefore urge you to Vote No on Measure E to prevent this band-aid solution as an alternative to an Orange County Ethics Commission.

s/ Shirley L. Grindle

Author of TINCUP Campaign Reform ordinance

s/ Dave Baker

Foreman, 2013-2014 Grand Jury

s/ Kay Bruce

Co-President, League of Women Voters of Orange County

s/ Wm. R. Mitchell

Former Chairman Orange County Common Cause

s/ Fred Smoller

Political Science Professor

REBUTTAL TO ARGUMENT AGAINST MEASURE E

Measure E stands for ethical standards and accountability for Orange County’s elected officials. California’s Fair Political Practices Commission (FPPC) currently audits and prosecutes campaign finance violations in other counties: **Measure E allows the FPPC to enforce laws in Orange County that often go unenforced.**

Opponents claim the only way to obtain proper oversight is to create a local ethics commission. However, the opponents’ idea would expand bureaucracy, cost taxpayers additional pension liability, be filled with political appointees and primed for corruption. Local “Ethics Commissions” in the cities of San Francisco, Los Angeles and San Diego cited by the opponents are appointed by politicians and have proven ineffective:

- **Indeed, the three California State Senators who have been indicted for corruption are from the counties the opponents seek to emulate**, and those Ethics Commissions did nothing to help indict these corrupt politicians.
- Opponents cite San Francisco’s ethics commission as a model to follow. In fact, Senator/former Supervisor **Leland Yee appointed San Francisco Ethics Commissioners prior to his gun trafficking indictment** to provide “oversight” of the ethical behavior of that city’s politicians.

Measure E would provide real oversight and enforcement by a known quantity: the California FPPC. The County of San Bernardino currently utilizes the FPPC as their campaign finance watchdog and the **FPPC HAS AUDITED EVERY POLITICIAN** there and is proven in cleaning up corruption in San Bernardino County government.

If Measure E is defeated, Orange County will get neither a County Ethics Commission nor oversight from the FPPC.

Vote “YES” on Measure E for ethical accountability and oversight of our politicians!

s/ Shawn Nelson

Chairman, Orange County Board of Supervisors

s/ Darryl Wold

Former Chairman, United States Federal Election Commission

s/ Ronald Rotunda

Former Commissioner, California Fair Political Practices Commission

s/ Todd Spitzer

Orange County Supervisor

**ORANGE COUNTY BOARD OF SUPERVISORS
CODE OF ETHICS
AND
COMMITMENT TO COUNTY PUBLIC SERVICE**

(Adopted 10/5/93, Item 71)

Section 1 – PURPOSE

This code establishes the standards of conduct required of County officials and employees for the proper operation of County government. These standards are intended to strengthen County public service and to maintain and promote faith and confidence of the people in their government.

Section 2 – RESPONSIBILITIES OF PUBLIC OFFICE

County officials and employees are agents of the public and serve for the benefit of the public. They shall uphold the Constitution of the United States, the Constitution of the State of California, rules, regulations and the policies of the County, and shall carry out impartially the laws of the Nation, State, and County. In their official acts, they shall discharge faithfully their duties, recognizing that the public interest is paramount. County public officials and employees must demonstrate the highest standards of morality and ethics consistent with the requirements of their position and consistent with law.

Section 3 – DEDICATED SERVICE

In the performance of their duties, all County officials and employees shall support governmental objectives expressed by the electorate and interpreted by the Board of Supervisors and the County programs developed to attain these objectives. County officials and employees shall adhere to work rules and performance standards established for their positions by the appointing authority. The County requires all County officials and employees to use good manners, to be considerate, to be accurate in statement and to exercise sound judgment in the performance of their work. County officials and employees shall neither exceed their authority nor breach the law nor ask others to do so. They shall work in full cooperation with other public officials, employees and the public.

Section 4 – NONDISCRIMINATION

No County official or employee shall grant any special consideration, treatment, or advantage to any person beyond that which is available to every other person in similar circumstance. No person shall be favored or discriminated against with respect to any appointment in the County service because of family or social relationships, sex, race, religion, national origin, ancestry, marital status, age, physical disability, mental disability, medical condition, political opinion or political affiliation.

Section 5 – OATH OF ALLEGIANCE

All County officials and employees must execute an Oath of Allegiance as follows:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

Section 6 – USE OF PUBLIC PROPERTY

County officials and employees are prohibited from using County-owned equipment, materials, or property for personal benefit or profit unless specifically authorized by the Board of Supervisors as an element of compensation.

Section 7 – CONFLICT OF INTEREST

No County official or employee shall engage in any business, transaction or activity, or have a financial interest, which is in conflict the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. County officials and employees are also subject to the provisions of the California Government Code Sections 1090, 1126, 87100, and any other applicable provisions of State law as well as County conflict of interest codes and policies applicable to County employment.

Section 8 – POLITICAL ACTIVITY

It is the intent of the Board of Supervisors that County officials and employees participate in the political process to the extent that such participation does not interfere with the proper performance of County duties and functions. The provisions of California Government Code Sections 3201-3209 and 3302 and any future amendments thereto are hereby incorporated as part of this rule.

Section 9 – REVOLVING DOOR

A public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one year following termination of the former official or employee from County employment.

ARTICLE 2. - GIFTS TO PUBLIC OFFICIALS^[1]

Footnotes:

--- (1) ---

Cross reference— Campaign reform, § 1-6-1 et seq.

Sec. 1-3-21. - Purpose; meaning of terms; interpretation; citation.

The Board of Supervisors finds that the receipt of gifts by public officials from persons who do business with the County erodes public confidence in the impartiality of decisions made by those officials. The purpose of this article is to prohibit the donation and receipt of specified gifts, thereby eliminating, to the extent possible, such loss of confidence.

Unless otherwise expressly defined, the terms used in this article shall have the same meaning as defined in the California Political Reform Act (title 9 of the California Government Code) and regulations issued by the Fair Political Practices Commission pursuant to the authority of the Political Reform Act, as the Act and regulations shall be, from time to time, amended.

This article shall be known as, and may be cited as, the "Orange County Gift Ban Ordinance."

(Ord. No. 3892, § 1, 5-25-93)

Sec. 1-3-22. - Definitions.

For the purposes of this Article:

- (a) *County* means the County of Orange.
- (b) *County officer* means every person who is elected or appointed to an office in the County which is specified in Section 87200 of the California Government Code.
- (c) *Designated employee* means every employee of the County who is designated in the County's Conflict of Interest Code to file a statement of economic interests and every member of a board or commission under the jurisdiction of the Board of Supervisors required to file such a statement.
- (d) *Doing business with the County* means:
 - (1) Seeking the award of a contract or grant from the County, or
 - (2) Having sought the award of a contract or grant from the County in the past twelve (12) months, or
 - (3) Being engaged as a lobbyist or lobbyist firm, as defined in this Article, from the time of such engagement until twelve (12) months after the award of the contract grant, license, permit, or other entitlement for use, which was the subject of the engagement, or
 - (4) Having an existing contractual relationship with the County, until twelve (12) months after the contractual obligations of all parties have been completed, or
 - (5) Seeking, actively supporting, or actively opposing the issuance, by the County, of a discretionary license, discretionary permit, or other discretionary entitlement for use, or having done any of these things within the past twelve (12) months.
- (e) *Gift* shall have the meaning it is defined to have in the California Political Reform Act, and the regulations issued pursuant to that Act, except that the following shall not be deemed to be gifts:

- (1) Meals, beverages, and free admission at any event sponsored by, or for the benefit of, a bona fide educational, academic, or charitable organization, and commemorative gifts from such organizations with a cumulative value, from any single source, of fifty dollars (\$50.00) or less during any twelve-month period.
- (2) Flowers, plants, balloons or similar tokens which are given to express condolences, congratulations, or sympathy for ill health, or to commemorate special occasions, provided that gifts made or received under this exemption shall not exceed a value of fifty dollars (\$50.00) from any single source in any calendar year.
- (3) A prize awarded on the basis of chance in a bona fide competition not related to the official status of the public official.
- (4) Gifts from any agency of a foreign sovereign nation, provided that such gifts are unconditionally donated by the public official to the Director of the Public Facilities and Resources Department within forty-five (45) days of receipt, and the public official does not claim any tax deduction by virtue of such donation.
- (5) Food, beverages, and free admission provided by a governmental agency or provided to the public at large, for ceremonial functions commemorating the groundbreaking, opening, or naming of a governmental facility.
- (6) Food and beverages consumed by a public official that total less than five dollars (\$5.00) per occasion.
- (f) *Lobbyist* shall mean any individual, including an attorney, who is employed or contracts for consideration, other than reimbursement of reasonable travel expenses, to communicate directly with any County officer or staff member of a County Supervisor for the purpose of seeking, actively supporting, or actively opposing the award of a contract or grant from the County, or the issuance, by the County of a discretionary license, discretionary permit, or other discretionary entitlement for use. An attorney shall not be considered a lobbyist when performing activities which can only be performed by a person admitted to the practice of law.
- (g) *Lobbyist firm* shall mean (1) any business entity, which is employed or contracts for consideration, other than reimbursement of reasonable travel expenses, to communicate directly with a County officer or staff member of a County Supervisor for the purpose of seeking, actively supporting or actively opposing the award of a contract or grant from the County, or the issuance, by the County, of a discretionary license, discretionary permit, or other discretionary entitlement for use, or (2) any business entity of which any member or employee is a lobbyist.
- (h) *Principal* shall mean any individual or business entity which employs or contracts with a lobbyist or lobbyist firm for any of the purposes stated in Section 1-3-22(f) or Section 1-3-22(g).
- (i) An individual or business entity shall be deemed to be employed or contracting to communicate directly with a County officer or staff member of a County Supervisor if it is reasonably foreseeable that in the course of employment or in the course of performing the contract the individual or an employee of the entity will have a telephone conversation or a discussion with any County officer or staff member of a County Supervisor, outside of any meeting governed by the Ralph M. Brown Act (which is codified in the California Government Code commencing with section 54950), for the purpose of seeking, actively supporting, or actively opposing the award of a contract or grant from the County, or the issuance, by the County, of a discretionary license, discretionary permit, or other discretionary entitlement for use.
- (j)

An individual lobbyist who is an officer, partner or employee of his or her principal shall be deemed to be "engaged" within the meaning of this section on the first occasion on which he or she engages in a telephone conversation or discussion described in Section 1-3-22(i). A lobbyist firm, or an individual lobbyist who is not an officer, partner or employee of his or her principal shall be deemed to be "engaged" within the meaning of this section upon the completion of an agreement, oral or written, to provide the services specified in Section 1-3-22(f) or 1-3-22(g).

(k) *Public official* means every County officer and every designated employee.

(Ord. No. 3892, § 1, 5-25-93; Ord. No. 98-11, § 1, 9-15-98)

Sec. 1-3-23. - Prohibitions.

- (a) No person who is doing business with the County shall make any gift to any County officer.
- (b) No person who is doing business with the County shall make any gift to any designated employee who, by virtue of his County employment, could make a governmental decision, participate in making a governmental decision, or use his or her official position to influence a governmental decision regarding the pending business of the donor, or who has done any of the above during the twelve (12) months preceding the donation.
- (c) No County officer shall solicit or accept any gift from any person whom he knows, or has reason to know, is doing business with the County.
- (d) No designated employee shall solicit or accept any gift from any person whom he knows, or has reason to know, is doing business with the County, when such employee, by virtue of his County employment, could make a governmental decision, participate in making a governmental decision, or use his or her official position to influence a governmental decision regarding the pending business of the donor, or has done any of the above during the twelve (12) months preceding the donation.
- (e) No public official shall accept any gift when the identity of the donor is not known to the public official.

(Ord. No. 3892, § 1, 5-25-93)

Sec. 1-3-24. - Violations and enforcement.

- (a) Any County officer who violates section 1-3-23 shall be guilty of a misdemeanor.
- (b) Any designated employee who violates section 1-3-23 shall be subject to discipline for such violation, including, in appropriate cases, termination of employment.
- (c) Any member of any County board or commission, other than a board or commission established by the Constitution or a statute of the State of California, who violates section 1-3-23 shall be subject to removal from office.
- (d) Any person who violates section 1-3-23(a) or 1-3-23(b) shall be guilty of a misdemeanor.
- (e) These enforcement provisions are in lieu of the penalty provided in section 1-1-34, are cumulative, and are not mutually exclusive.

(Ord. No. 3892, § 1, 5-25-93)

ORDINANCE NO. 11-014

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA AMENDING SECTIONS 1-1-80
(b) (3) AND (h) (8) OF THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE
PERTAINING TO LOBBYIST REGISTRATION AND REPORTING

The Board of Supervisors of the County of Orange, California, ordains as follows:

SECTION 1-1-80 of the Codified Ordinances of the County of Orange Pertaining to Lobbyist
Registration and Reporting is amended to read as follows:

Article 5
LOBBYIST REGISTRATION AND REPORTING

Sec. 1-1-80. Definitions.

For the purpose of this Article:

- (a) “Administrative action” means: (1) the proposal, drafting, development, consideration, amendment, enactment, or defeat of any rule, regulation, policy, or other action in any proceeding that will apply generally to a group or class of persons; or (2) any decision to initiate, defend, appeal, or take any other action regarding, litigation by or against the County of Orange or any official or employee of the County of Orange.
- (b) Except as provided in subsection (3), below, “County lobbyist” means any person who:
 - (1) Receives compensation of \$500 or more in any calendar month for engaging in lobbying activities, as defined in subdivision (g), below; or
 - (2) Is employed by his or her employer and receives compensation of \$500 or more in any calendar month for engaging in lobbying activities, as defined in subdivision (g), below. For the purposes of this Article, an “employer” shall include, but not be limited to, any corporation, partnership, limited liability company, labor organization, labor union, or any other business entity.
 - (3) The definition of a “County lobbyist” shall not apply to representatives of corporations organized under Section 501(c)(3) or Section 501(c)(6) of the United States Internal Revenue Code who are not seeking grants from, or contracts with, the County of Orange.
- (c) “County lobbyist employer” means any person, other than a lobbying firm, who either:
 - (1) Employs one or more County lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of engaging in lobbying activities; or

- (2) Contracts for the services of a County lobbying firm for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of engaging in lobbying activities.
- (d) “County lobbying firm” means an individual County lobbyist or a corporation, partnership, limited liability company, labor organization, labor union, or any other business entity that employs or is controlled or managed by a County lobbyist.
- (e) “County Supervisor” means any person elected or appointed to the County of Orange Board of Supervisors in a current term.
- (f) “Influencing official action” means promoting, supporting, influencing, modifying, opposing, or delaying any administrative, legislative, or quasi-judicial action of the Orange County Board of Supervisors, including but not limited to, soliciting County contracts or funds, by any means, including but not limited to the provision or use of information, statistics, studies or analyses.
- (g) “Legislative action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat of any County ordinance, expenditure, budget, or the components thereof.
- (h) “Lobbying activities” means any oral, written, or electronic communication to a County Supervisor, made directly or indirectly, for the purpose of persuading or influencing official actions or decisions of the Orange County Board of Supervisors. Provided, however, lobbying activities shall not include:
 - (1) A request for information or inquiry about the facts or status of any matter when the request is not made to attempt to influence official action, or
 - (2) A written comment filed in the course of a public proceeding or any other communication that is made on the record at a public meeting, or
 - (3) A written communication as a petition for official action and required to be a public record pursuant to County procedures provided it is publicly recorded and disclosed before the vote or action, or
 - (4) A written response to a request by a County Supervisor or other County employee for specific information, or
 - (5) A communication made by an elected official or public employee acting in his or her official capacity, or
 - (6) A response to a public notice soliciting communications from the public and directed to the County Supervisor or other County employee specifically designated in the notice to receive such communications, or

- (7) A communication by an attorney or advocate made solely in connection with his or her duties representing a party to an administrative proceeding the decision of which is reviewable by a court pursuant to California Code of Civil Procedure Section 1094.5.
- (8) A written communication applying for a County grant or responding to a County solicitation for goods or services.
- (i) "Quasi-judicial action" means: (1) the consideration or re-consideration of the granting or denial of any permit, grant license or other entitlement of use; (2) the awarding, granting or denial of any County contract for the purchase or sale of property, goods or services by the County or any agency of the County; and (3) the awarding, granting or denial of any County contract with any public employee bargaining unit.

Any other term not defined by this section but defined in the California Political Reform Act (Title 9 of the California Government Code) or the California Code of Regulations enacted thereto, shall govern the interpretation of this Article.

Sec. 1-1-81. Registration and Annual Reporting

- (a) Within ten (10) days of becoming a County lobbyist, and annually thereafter, that person shall register as such with the Clerk of the Board (COB) and file the necessary completed Registration Form supplied by the COB.
- (b) The Registration Form supplied by the COB shall require the County lobbyist to disclose all the following:
 - (1) The full name, business address, telephone number, and e-mail address of the County lobbyist;
 - (2) The full name, business address, telephone number and e-mail address of each County lobbyist, employer, person or entity that has contracted for the services of the retained County lobbyist to conduct lobbying activities on its behalf.
- (c) An Amendment to Registration Form must be completed and filed by the County lobbyist with the COB within ten (10) days of any change in the accuracy of the information reported on the Registration Form, including, but not limited to, any termination of services by the County lobbyist and the addition or loss of any County lobbyist employer.
- (d) Within ninety (90) days from the operative date of this Article, County lobbyist reports shall be made available for public inspection on the County's website.

Sec. 1-1-82. Prohibited acts

No County lobbyist or County lobbying firm shall:

- (a) Do anything with the purpose of placing any County Supervisor under personal obligation to the County lobbying firm, or the County lobbyist's or the firm's employer. However, nothing in this subdivision shall be construed to prohibit a County Supervisor from conducting personal, non-County related business with any business entity on terms that are available to members of the public when such terms are offered in the normal course of business by the business entity and are offered without regard to the County Supervisor's official status.
- (b) Deceive any County Supervisor or any member of any County Supervisor's staff with regard to any material fact pertinent to any pending or proposed legislative, administrative, or quasi-judicial action.
- (c) Cause or influence the introduction of any legislative, administrative, or quasi-judicial action for the purpose of thereafter being employed to secure its passage or defeat.
- (d) Attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative, administrative, or quasi-judicial action or to cause any communication to be sent to any County official in the name of any fictitious person or in the name of any real person, except with the consent of such real person.
- (e) Represent, either directly or indirectly, that the County lobbyist or County lobbying firm can control the official action of any County official.

Sec. 1-1-83. Filing Fees

- (a) Each County lobbyist, County lobbying firm, and/or lobbyist employer shall pay a filing fee when filing or renewing a Registration Form pursuant to Section 1-1-81 according to the following fee schedule:

	Initial Registration	Annual renewal of Registration
County Lobbyist	\$75.00	\$50.00 effective January 1, 2012, and for each calendar year thereafter
County Lobbying Firm	N/A	N/A
County Lobbyist Employer	N/A	N/A

- (b) Fees associated with the Registration and Reporting of County Lobbyist(s), County Lobbyist Firm(s), and County Lobbyist Employer(s) are levied for the purpose of covering the cost of administering the ordinance.

Sec. 1-1-84 Enforcement

- (a) If a County lobbying firm report is filed after its due date, the Clerk of the Board shall impose the following penalties:

- (1) Written warning letter sent to the filer for filings made within the first two (2) weeks after the due date of the filing.
- (2) Twenty five dollars (\$25) per week for the next two (2) weeks after the due date of the filing;
- (3) Fifty dollars (\$50) per week for the next two (2) weeks if the filing is not made within four (four) weeks after the due date;
- (4) Seventy five dollars (\$75) per week until the date that the filer comes into compliance with the provisions of this Article or the date that any other penalties are imposed by the Board of Supervisors or the Clerk of the Board as provided for in this Article, whichever occurs first, if the filing is not made within six (6) weeks after the due date.

A penalty imposed under this subsection (a) shall not exceed five hundred dollars (\$500).

- (b) Any person who knowingly, intentionally, or negligently violates the provisions of this Article shall be liable in a civil action brought by the Office of the County Counsel. Any violation of the provisions of this Article may result in a civil penalty no greater than two thousand five hundred dollars (\$2,500) for each violation.

Sec. 1-1-85. Severability.

The provisions of this Article are severable. If any provision of this Article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Sec. 1-1-86. Operative Date

The provisions of this Article shall become operative on July 1, 2011.

This ordinance shall take effect and be in full force thirty (30) days from and after its passage and before the expiration of fifteen (15) days after the passage thereof, shall be published once in an adjudicated newspaper in the County of Orange.

DRAFT
July 15, 2015

ARTICLE XXX – COUNTY ETHICS COMMISSION

Sec. 100. ETHICS COMMISSION.

(a) Purpose and Establishment.

The purpose of the Ethics Commission is to provide independent oversight of the County's Campaign Reform Ordinance, the Gift Ban Ordinance and the Lobbyist Registration Ordinance and to act as a safe haven for County employees to report alleged violations of the County's Code of Ethics and Commitment to Public Service. Ancillary to these purposes, the Ethics Commission will also provide training to candidates for County office and to newly elected and appointed County officials in those areas for which the Ethics Commission has responsibility.

There shall be established in the County of Orange an Ethics Commission (the "Commission") that shall have the powers, duties and responsibilities set forth in this Ordinance. The Commission shall have five members.

(b) Jurisdiction.

The Commission's jurisdiction covers County Elected Officials and County Candidates as defined in the County Campaign Reform Ordinance No. 3862, appointed members to County Commissions, and County employees.

(c) Appointment.

1. The appointments to the Commission shall be made by the Board of Supervisors as follows:

a. For the initial five (5) appointments to the Commission, each member of the Board of Supervisors shall select a name blind drawn out of a container which contains the names of the three (3) applicants from his or her Supervisorial District recommended by the Grand Jurors Association of Orange County through the process outlined in Section 100(c)(2) below.

b. For vacancies due to retirement, resignation or removal, the Supervisor who appointed the Commission seat being vacated shall make the replacement appointment by selecting a name blind drawn out of a container which contains the names of no more than three applicants recommended by the Grand Jurors Association of Orange County through the process outlined in Section 100(c)(2) below.

2. A Selection Panel made up of five members of the Grand Jurors Association of Orange County shall publicize, solicit applications for, and interview and screen

applicants applying for a seat on the Commission. The Selection Panel shall be chosen by vote of the members of the Grand Jurors Association of Orange County and shall serve at the pleasure of the Grand Jurors Association of Orange County. A total of 15 applicants, with not less than three (3) of such applicants residing in each Supervisorial District, shall be recommended to the Board of Supervisors for initial appointment in the manner set forth in Section 100(c)(1)(a). After the initial appointments are made, a maximum of 3 applicants per open seat shall be forwarded to the Board of Supervisors which shall appoint the applicant to the open seat in the manner set forth in Section 100(c)(1)(b). The Selection Panel shall screen all applicants to ensure they comply with the Qualifications listed in subsection (e) below. No applicant may be appointed by the Board of Supervisors who does not meet the Qualifications set forth in subsection (e) below. The list of nominees submitted for appointment shall be a matter of public record.

(d) Terms of Office.

1. The members of the Commission shall serve staggered five-year terms beginning on January 1 and ending on December 31. Notwithstanding this provision, three of the initial Commissioners selected by random lot shall initially serve a three-year term; all members may be reappointed for no more than one further five (5) year term. No member who has served two terms of any length shall be eligible for reappointment.

2. A Chairperson and Vice-Chairperson of the Commission shall be selected by majority vote of the members of the Commission. The Chairperson and Vice-Chairperson shall each be elected for a one-year term and may be re-elected for not more than a second one-year term.

(e) Qualifications.

1. Each member of the Commission shall be a registered voter of the County.

2. During his or her tenure, neither a member of the Commission nor its Executive Director whose duties are defined in Section 101 herein, shall hold any other elected or appointed public office, including, without limitation, any elective office in any jurisdiction, any employee of any holder of any elective office, any member of any body any of whose members are appointed by any elected official, and any employee of any such body.

3. If a member of the Commission, during their term of office, desires to participate in the campaign of, or publicly support or oppose, a candidate for local County office or an incumbent local County Elected Official, such member shall first resign from the Commission. Failure to resign before such participation or support shall be grounds for removal from the Commission.

4. No member of the Commission shall employ or be employed by or as a person who is acting as a Lobbyist, as that term is defined in Title 1, Division 1, Article 5

of the Orange County Municipal Code. No member of the Commission shall employ or be employed by or as a person who is registered as a State Lobbyist.

5. No member of the Commission shall have been a former County Elected Official during the previous five (5) years, a current Agency/Department Head employed by the County of Orange, or a current Executive Manager employed by the County of Orange.

6. No member of the Commission shall have been a former or a current elected or appointed official of a national, state or local partisan political committee.

7. No person who has been convicted of a felony, or a misdemeanor involving dishonesty or untruthfulness, or any crime involving election law violations, shall be a member of the Commission.

8. The Selection Panel shall screen out and not forward to the Board of Supervisors applicants whose profession, primary occupation, or employment consist of i) providing services to candidates for public office or to elected officials within the County of Orange; ii) engaging in public affairs or legislative liaison services for an employer doing business with the County of Orange, or with any Joint Powers Authority or with any Special District operating within the County of Orange; iii) employment with the County of Orange, any Joint Powers Authority or Special District operating within Orange County or any bargaining unit whose members are employees of the County of Orange.

(f) Removal.

Members of the Commission may be removed by a majority of the Board of Supervisors for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office or violation of this Ordinance, and conflicts of interest, after written notice of the grounds on which the removal is sought and an opportunity for a written reply and oral presentation to the Board of Supervisors, and a finding by the Board of Supervisors made in and as a result of a public hearing of substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office or violation of this Ordinance, or a conflict of interest.

(g) Vacancies.

Appointments to fill vacancies on the Commission resulting from term limits set forth herein or from resignations or removal of a member shall be made within 60 calendar days in the manner described in Sec. 100(c)(1)(b). Appointments to fill vacancies of those members who resign or who are removed prior to the end of their term shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to exercise the powers of the Commission.

(h) Quorum.

Three members shall constitute a quorum, and the affirmative vote of not less than three members shall be required to take any action.

(i) Compensation; Expenses.

The members of the Commission shall serve without compensation and shall be reimbursed for travel and other expenses incurred in the performance of their official duties in accordance with Government Code section 53232.2, as amended from time to time.

Sec. 101. EXECUTIVE DIRECTOR, COMMISSION STAFF AND DELEGATION OF AUTHORITY.

(a) The Commission shall appoint and has the authority to discharge an Executive Director, who shall act in accordance with Commission policies and regulations and with applicable law. The Executive Director shall not be subject to civil service provisions, and shall have no property interest in his or her employment. The salary of the Executive Director shall be set by the Board of Supervisors and shall be based on a recommendation submitted by the County Executive Officer after a review and analysis of the responsibilities and authority vested in his or her employment.

(b) The Executive Director shall hire and has the authority to discharge, Commission staff members and prescribe their duties. Non-clerical personnel of the Commission shall serve at the will of the Executive Director, shall not be subject to civil service provisions, and shall have no property interest in their employment.

(c) The Commission may delegate authority to the Executive Director to act on behalf of the Commission between meetings of the Commission to effectuate decisions, directives or policies except that rules, regulations and adjudicatory decisions can only be acted upon by the Commission.

Sec. 102. DUTIES AND RESPONSIBILITIES OF THE ETHICS COMMISSION.

The Commission shall have responsibility for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances of the County of Orange concerning campaign financing, lobbyists, gifts, governmental ethics, and conflicts of interest. Specifically, such provisions shall include: County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93, each as amended from time to time. Whenever reference is made herein to any or all of the above ordinances and codes, such reference shall include such

ordinances and codes as each is amended from time to time. Specifically, the Commission shall have the following duties, powers, and responsibilities:

- (a) To receive copies of campaign statements and any other reports required by the Political Reform Act and the County's campaign ordinance pertaining to County Candidates and County Elected Officials and to persons making independent expenditures supporting or opposing County Candidates and County Elected Officials;
- (b) To maintain an independent tracking system of each contributor's total cumulative and aggregated contributions in an Election Cycle (as that term is defined in County Campaign Reform Ordinance No. 3862) to County Candidates and County Elected Officials (as those terms are defined in County Campaign Reform Ordinance No. 3862);
- (c) To receive documents required to be filed pursuant to, and to otherwise administer, the provisions of the Lobbyist Registration Ordinance 11-014;
- (d) To review all reports pursuant to County Campaign Reform Ordinance No. 3862 and the Lobbyist Registration Ordinance 11-014, and reports from persons making independent expenditures supporting or opposing County Candidates and County Elected Officials for completeness, accuracy, and any potential violations of the County Campaign Reform Ordinance No. 3862, the Lobbyist Registration Ordinance 11-014, or any other applicable law.
- (e) To enforce provisions of County laws pertaining to campaign finance, lobbyists, gift ban, and ethics. Specifically, the Commission shall investigate, as more fully set forth herein below, alleged violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93;
- (f) To initiate complaints and to receive written complaints alleging possible violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93;
- (g) To receive, investigate, and act upon recommendations of the Orange County Grand Jury with respect to alleged violations of those provisions of County laws pertaining to campaign finance, lobbyists, gift ban, the Code of Ethics and conflicts of interest including, without limitation, County Campaign Reform Ordinance No. 382; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public service adopted 10/5/93;
- (h) To subpoena witnesses and the production of records, including campaign committee bank records, pertinent to its investigations, and to administer oaths;
- (i) To maintain an independent whistle-blower hot line;

(j) To have full charge and control of its office, to be responsible for its proper administration, to submit annually a proposed budget to the Board of Supervisors and to expend the funds of the office; and

(k) To apply for and receive grants and appropriations in support of the responsibilities of the Commission and its staff.

Sec. 103. REGULATIONS.

The Commission may adopt, amend and rescind regulations to carry out the purposes and provisions of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93. In the event of any conflict between the regulations and any of the ordinances and Codes referred to herein, the ordinance or Code shall prevail. Violation of any regulation shall be subject to those penalties and remedies as may be provided.

Sec. 104. ADDITIONAL DUTIES.

The Commission shall have the following additional duties, which may be exercised by motion or order:

(a) Prescribe forms for reports, statements, notices and other documents required by ordinances or other laws relating to County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; and the Lobbyist Registration Ordinance 11-014;

(b) Develop an educational program which shall consist of the following components:

1. Seminars to familiarize newly elected and appointed County Elected Officials and County Candidates, and their treasurers, with County campaign laws, including, without limitation, County Campaign Reform Ordinance No. 3862, and the Gift Ban Ordinance No. 3892; and

2. A manual that summarizes, in simple, non-technical language, reporting requirements applicable to County Elected Officials and County Candidates, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable County laws governing campaign financing, including, without limitation, County Campaign Reform Ordinance No. 3862, and the Gift Ban Ordinance No. 3892.

(c) The Executive Director shall prepare an annual report summarizing Ethics Commission activities. This report shall be approved by a majority vote of the Commission and forwarded to the Board of Supervisors for placement on an agenda as a public hearing item.

Sec. 105. REQUESTS FOR WRITTEN ADVICE.

Any person may request the Executive Director of the Commission to provide written advice with respect to the person's duties under provisions of the Charter or any Ordinance relating to County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; and the Lobbyist Registration Ordinance 11-014. Such advice shall be provided within 21 working days of the actual receipt of the request, except that the time may be extended for no more than 15 working days by the Executive Director for good cause. Reliance on the advice, or the failure of the Executive Director to provide the advice within 21 working days of its receipt of the request, or within the extended time for response, shall be a complete defense in any enforcement proceeding conducted by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding if the requester, at least 21 working days prior to the alleged violation, requested written advice from the Executive Director in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the Executive Director to provide advice within 21 working days of the request or such later extended time. The Executive Director's written advice shall be a public record.

Sec. 106. INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The Commission shall conduct investigations of alleged violations of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93. Any person who violates any provision of the aforementioned, or who causes any other person to violate any provision, or who aids and abets any other person in a violation, shall be liable under the provisions of this Ordinance.

The possible proceedings involving alleged violations shall be as follows: (a) Investigations on Cause; (b) Provision of Remedial Measures; (c) Probable Cause Determinations; (d) Administrative Hearings; and (e) Orders or Reference to the District Attorney, Attorney General, or other appropriate enforcement agencies.

(a) Investigations.

If the Executive Director, upon the sworn complaint of any person, or on his or her own initiative, or on the Commission's initiative, first determines that there is cause to conduct an investigation, the Executive Director shall investigate alleged violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93. The Executive Director shall not be required to investigate a complaint filed with it unless the complaint is in writing, identifies the specific alleged violation which forms the basis for the complaint and, upon the determination of the Executive Director, contains sufficient facts to warrant an investigation. The investigation shall be conducted in a confidential manner. To the

extent permitted by applicable law, including the California Public Records Act, Government Code section 6250, et seq, records of any investigation shall be considered confidential information. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or the removal of the Commissioner responsible for the release.

In the conduct of any proceedings set forth herein, the Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by administrative subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(b) Remedial Measures

(1) It is the intent of this Ordinance that the Executive Director shall resolve as many Complaints as possible using the remedial measures as herein described. If the Executive Director determines or believes that any person (the "target party") has violated any provision of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014; the Executive Director may, at his or her sole discretion, advise the target party of remedial measures (the "Remedial Measures") which may be taken by the target party to avoid further action by the Commission. Nothing contained herein shall be deemed to require the Executive Director to offer Remedial Measures to any target party.

(2) In the event the target party is offered and, within 15 calendar days, timely performs such Remedial Measures to the satisfaction of the Executive Director, the Executive Director shall issue a "Letter of Resolution" which shall advise the target party (and any person who, in writing informed or complained to the Commission concerning any such violation), that the alleged violation has been resolved and the manner in which it was resolved.

(3) Excess contributions which the Executive Director determines have been inadvertently accepted shall be refunded to the contributor in accordance with Sec. 1-6-30 of County Campaign Ordinance No. 3862. The number of returned contributions throughout the year shall be included in the annual report referenced in Sec. 104(c) of this Ordinance. In the case of such returned contributions, the Executive Director shall not be required to issue a Letter of Resolution, so long as such return is included in the annual report referenced in Sec. 104(c) of this Ordinance.

(4) In the event a Letter of Resolution is issued, no further proceedings, civil action, or reference shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required. The Executive Director shall provide a copy of each Letter of Resolution to each member of the Commission, but the Letter of Resolution shall remain confidential, and no member of the Commission is authorized to publicly release the Letter of Resolution.

(c) Findings of Cause; Administrative Enforcement.

In the event that no Letter of Resolution is issued pursuant to Section 106(b), the next step is a Probable Cause hearing by the Executive Director and Staff.

If, based upon the investigation referenced in Section 106(a), the Executive Director determines that there is cause to believe that the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; or the County Code of Ethics and Commitment to Public Service adopted 10/5/93; may have been violated, and such possible violation cannot or will not be remedied in accordance with Section 106(b) above, the Executive Director shall hold a Probable Cause hearing.

Such Probable Cause hearing shall not occur, and no finding of Probable Cause shall be made by the Executive Director unless, at least 21 calendar days prior to the Executive Director's consideration of the alleged violation in the Probable Cause hearing, the person alleged to have committed the violation is: (1) given written notice of the alleged violation and the date, time and location of the Probable Cause hearing by service of process or registered mail with return receipt requested; (2) is provided with a written summary of the facts supporting the violation; and (3) is informed of his or her right to be present in person and represented by counsel at such Probable Cause hearing conducted by the Executive Director and the Staff for the purpose of considering: (1) whether probable cause exists for believing the person committed the violation; and (2) such person has failed to adopt the Remedial Measures referenced in Section 106(b) above.

Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or, if the registered mail receipt is not signed, the date returned by the post office. The Probable Cause hearing shall be private unless the alleged violator files with the Executive Director a written request, not less than 15 calendar days prior to the Probable Cause hearing, that the proceeding be public.

If the Executive Director determines there is no probable cause, the complainant and the alleged violator(s) shall be notified in writing of the finding, which writing shall set forth the reasons for said finding, and, in such event, no further proceedings, civil action or reference shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required.

(d) Administrative Hearings.

1. In the event that the Executive Director, after the Probable Cause hearing described in Section 106(c) above, determines that probable cause of a violation of the County's Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014 has occurred, the Executive Director shall cause an administrative enforcement accusation to be issued and served, triggering the Administrative Hearing set forth herein.

2. For an alleged violation of the County's Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014, after an administrative enforcement accusation is issued and served, the Commission shall cause a public hearing to be held to determine if a violation has occurred. When the Commission determines on the basis of evidence presented at the hearing that a violation of the County Campaign Reform Ordinance No. 3862; or the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014 has occurred, it shall issue an order which may require the violator to:

- Cease and desist the violation;
- File any reports, statements or other documents or information required by law;
- Correct the violation and/or
- Pay a monetary penalty to the General Fund of the County of up to \$5,000 for each violation or three times the amount which the violator failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

When the Commission determines that no violation has occurred, it shall publish an order so stating.

3. For an alleged violation of the County Code of Ethics and Commitment to Public Service adopted 10/5/93, which violation constitutes a felony or misdemeanor, after an accusation is issued and served, the Executive Director shall request the Commission to refer the matter to the Orange County District Attorney and to the Attorney General, pursuant to California Government Code Section 12553 if the District Attorney would have any conflict of interest in pursuing the accusation resulting in the disqualification of the District Attorney, or other appropriate enforcement agencies, for purposes of enforcement. No such reference shall be made when it appears from a preliminary investigation that an alleged violation will warrant only an action for administrative penalties.

(e) Petition for Writ

When the Commission determines that a violation has occurred, the person who is the subject of such determination may, within 60 calendar days after receiving written notice of such determination, file a Petition in the Superior Court for the County of Orange seeking a Writ of Mandate or Prohibition, as the case may be, ordering the Commission to adopt a finding of no violation. Such Petition may only be granted in the event that the Superior Court finds that no substantial evidence supports the Commission's determination or that the Commission abused its discretion in making such determination.

(f) Civil Action to Collect Debt and Obtain Other Relief.

The Commission may file and prosecute a civil action in Superior Court to recover any

amount(s) due and owing to the County of Orange by any person pursuant to this section, or to enjoin any violation or otherwise compel compliance with the requirements of this Ordinance. In the event of any civil action within the jurisdictional amount of the Small Claims court, the Commission may designate the person to bring such action on its behalf.

(g) Cost of Litigation.

In the event that either the Ethics Commission must bring a civil action against an individual who is the subject of an Ethics Commission determination, or such individual brings a Petition described in Section 106 (e) above, the court may award to the prevailing party in any such action authorized by this Ordinance, the costs of litigation, which costs shall include reasonable attorney's fees.

(h) Referrals Between Agencies.

Regardless of whether the Executive Director or the Commission makes a formal determination concerning probable cause, the Executive Director or the Commission may refer the matter to another appropriate agency for purposes of enforcement.

(i) Superseding Effect.

This Section 106 shall supersede any conflicting provisions of codified Section 1-6-15 and 1-6-16 of County Campaign Reform Ordinance No. 3862.

Sec. 107. LEGAL SERVICES.

The County Counsel shall provide legal services without charge to the Commission until such time that a full-time or part-time Staff Counsel is warranted and approved by a vote of the Board of Supervisors. In providing such legal services, the County Counsel and the Commission shall be deemed to have entered into an attorney-client relationship.

Sec. 108. APPROPRIATION.

By not later than May 1 of each year, the Commission shall prepare a budget for the forthcoming fiscal year and present it to the County of Orange CEO and CFO for inclusion in the County budget and budgeting process. Said budget shall be not less than \$300,000 for the first year of the Commission's operation, plus a reasonable estimate of expected cost increases for the forthcoming year. The budget shall include at a minimum, salaries for the Executive Director and one full-time clerical staff member. The Executive Director shall be classified at the same level as the Director of Internal Audit. The County of Orange CEO shall include the budget request as proposed by the Commission without change, and the Board of Supervisors shall appropriate the funds requested by the Commission for the effective operation of the Commission at least one year in advance of each subsequent fiscal year, and shall have no power to reduce the budget request absent a declaration of financial emergency applicable to the County

budget as a whole. The Board of Supervisors may, in their discretion, increase the budget request if they find it is warranted by increased enforcement activity or estimated cost increases. The Commission's budget shall be appropriated from County funds to the extent that the funds are not otherwise obtained from any Federal, State, or other grants.

Sec. 109. STAFF OF THE ORANGE COUNTY ETHICS COMMISSION.

Within 60 calendar days of adoption of this Ordinance either by the voters or by the Board of Supervisors, the County Executive Officer shall initiate the process for appointment of Commission members per Sec. 100 of this Ordinance and authorize the hiring of an Executive Director who is to be selected by the Commission, assign associated staff sufficient to perform the duties and responsibilities of the Commission, and submit an operating budget to the Board of Supervisors for authorization.

Sec. 110. AUTHORITY; CONFLICT WITH OTHER CHARTER PROVISIONS.

This Ordinance is adopted pursuant to and under the authority of Article III of the Charter of Orange County, and California Government Code Section 81013. In the event any provision of this Ordinance conflicts with other provisions of the Charter, or of the Codified Ordinances, or of any County Code, this Ordinance shall prevail.

Sec. 111. STATUTE OF LIMITATIONS FOR ADMINISTRATIVE ENFORCEMENT ACTIONS.

No remedial measures or administrative enforcement action brought by the Ethics Commission shall be commenced more than four (4) years after the date on which the violation occurred. The receipt of a written complaint alleging a violation of the law shall constitute the commencement date. If the person alleged to have violated the law engaged in the concealment of his or her acts, the four-year period shall be tolled for the period of concealment. If upon being ordered by a court to produce any person, witness or document sought by a subpoena, the person alleged to have violated the law fails to appear, or produce any witness or document in response to the order by the date ordered to comply therewith, the four-year period shall be tolled for the period of delay from the date the person or witness was originally scheduled to appear, or the document was to be produced, pursuant to the subpoena until the date the person appears, or the witness or document is produced.

Sec. 112. AMENDMENTS AND ADDITIONAL REQUIREMENTS.

(a) No amendment or repeal of any provision of this Ordinance shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the County and approved by a majority vote.

(b) Nothing in this Ordinance prevents the Orange County Board of Supervisors from adding additional requirements to this Ordinance so long as they do not eliminate requirements or disqualifying characteristics for membership on the Commission or

otherwise reduce the scope of this Ordinance or the authority of the Executive Director or Commission, and so long as they do not prevent any person from complying with this Ordinance.

Sec. 113. SUPERSEDING EFFECT.

This Ordinance is intended to terminate any and all agreements made pursuant to Assembly Bill 910 (2015-2016 session), or any similar legislation, authorizing the Fair Political Practices Commission to administer, implement, or enforce Orange County's local campaign finance ordinance or any provision thereof.

Sec. 114. OPERATIVE DATE.

The provisions of this Ordinance shall be operative beginning on either July 1 or January 1, whichever comes first, following its adoption by either the voters or by the Orange County Board of Supervisors.

Sec. 115. DEFINITIONS.

Unless a term is specifically defined in this Ordinance, or a contrary indication is stated or clearly appears from the context of this Ordinance, words and phrases shall have the same meaning as when they are used in Title 9 of the California Government Code, in which the Political Reform Act of 1974 is codified, as the same may be, from time to time amended.

DRAFT
August 22, 2015

ARTICLE XXX – CAMPAIGN FINANCE AND ETHICS COMMISSION

Sec. 100. CAMPAIGN FINANCE AND ETHICS COMMISSION.

(a) Purpose and Establishment.

The purpose of the Campaign Finance and Ethics Commission is to provide independent oversight of the County’s Campaign Reform Ordinance, the Gift Ban Ordinance, the Lobbyist Registration Ordinance and certain sections of the County Code of Ethics and Commitment to Public service. Ancillary to these purposes, the Campaign Finance and Ethics Commission will also provide training and information manuals to candidates for County office and to newly elected and appointed County officials in those areas for which the Campaign Finance and Ethics Commission has responsibility.

There shall be established in the County of Orange a Campaign Finance and Ethics Commission (the “Commission”) that shall have the powers, duties and responsibilities set forth in this Ordinance. The Commission shall have five members.

(b) Jurisdiction.

The Commission’s jurisdiction covers County Elected Officials and County Candidates as defined in the County Campaign Reform Ordinance No. 3862, appointed members to County Commissions, and County employees.

(c) Appointment.

1. The appointments to the Commission shall be made by the Board of Supervisors as follows:

a. For the initial five (5) appointments to the Commission, each member of the Board of Supervisors shall select a name blind drawn out of a container which contains the names of the three (3) applicants from his or her Supervisorial District recommended by the Grand Jurors Association of Orange County through the process outlined in Section 100(c)(2) below.

b. For vacancies due to retirement, resignation or removal, the Supervisor who appointed the Commission seat being vacated shall make the replacement appointment by selecting a name blind drawn out of a container which contains the names of no more than three applicants recommended by the Grand Jurors Association of Orange County through the process outlined in Section 100(c)(2) below.

2. The Selection Panel is to be made up of five (5) members of the Grand Jurors Association of Orange County which shall publicize, solicit applications for, and

interview and screen applicants applying for a seat on the Commission. The Commission shall contract with the Grand Jurors Association of Orange County for the formation of the Selection Panel to perform the duties set forth in this subsection. If the Grand Jurors Association of Orange County refuses or fails to act in such capacity, the Commission shall contract with another independent non-partisan organization selected by the Commission for the formation of the Selection Panel.

a. The Selection Panel shall be chosen by vote of the members of the Grand Jurors Association of Orange County and shall serve at the pleasure of the Grand Jurors Association of Orange County.

b. A total of 15 applicants, with not less than three (3) of such applicants residing in each Supervisorial District, shall be recommended to the Board of Supervisors by the Selection Panel for initial appointment in the manner set forth in Section 100(c)1a. After the initial appointments are made, a maximum of three (3) applicants per open seat shall be forwarded to the Board of Supervisors by the Selection Panel, which shall appoint the applicant to the open seat in the manner set forth in Section 100(c)1b. The Selection Panel shall screen all applicants to ensure they comply with the Qualifications listed in Section 100(e). No applicant may be appointed by the Board of Supervisors who does not meet the Qualifications set forth in Section 100(e). The list of nominees submitted for appointment shall be a matter of public record.

(d) Terms of Office.

1. The members of the Commission shall serve staggered five-year terms beginning on January 1 and ending on December 31. Notwithstanding this provision, three of the initial Commissioners selected by random lot shall initially serve a three-year term; all members may be reappointed for no more than one further five (5) year term. No member who has served two terms of any length shall be eligible for reappointment.

2. A Chairperson and Vice-Chairperson of the Commission shall be selected by majority vote of the members of the Commission. The Chairperson and Vice-Chairperson shall each be elected for a one-year term and may be re-elected for not more than a second one-year term.

(e) Qualifications.

1. Each member of the Commission shall be a registered voter of the County.

2. During his or her tenure, neither a member of the Commission nor its Executive Director whose duties are defined in Section 101 herein, shall hold any other elected or appointed public office, including, without limitation, any elective office in any jurisdiction, any employee of any holder of any elective office, any member of any body any of whose members are appointed by any elected official, and any employee of any such body.

3. If a member of the Commission, during their term of office, desires to participate in the campaign of, or publicly support or oppose, a candidate for local County office or an incumbent local County Elected Official, such member shall first resign from the Commission. Failure to resign before such participation or support shall be grounds for removal from the Commission.

4. No member of the Commission shall during the previous five (5) years employ or be employed by or as a person who is acting as a Lobbyist, as that term is defined in Title 1, Division 1, Article 5 of the Orange County Municipal Code, or have been a registered State Lobbyist.

5. No member of the Commission shall have been during the previous five (5) years, either a County Elected Official, an Agency/Department Head employed by the County of Orange, or an Executive Manager employed by the County of Orange.

6. No member of the Commission shall have been during the previous five (5) years, an elected or appointed official of a national, state or local partisan political (central) committee.

7. No person who has been convicted of a felony, or a misdemeanor involving dishonesty or untruthfulness, or any crime involving election law violations, shall be a member of the Commission.

8. The Selection Panel shall screen out and not forward to the Board of Supervisors applicants whose profession, primary occupation, or employment consist of i) providing services to candidates for public office or to elected officials within the County of Orange; ii) engaging in public affairs or legislative liaison services for an employer doing business with the County of Orange, or with any Joint Powers Authority or with any Special District operating within the County of Orange; and iii) employment within the past five (5) years with the County of Orange, or with any Joint Powers Authority or with any Special District operating within Orange County, or with any bargaining unit whose members are employees of the County of Orange.

9. No member of the Commission shall have served on the Orange County Grand Jury within the past five (5) years.

(f) Removal.

Members of the Commission may be removed by a majority of the Board of Supervisors for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office or violation of this Ordinance, and conflicts of interest, after written notice of the grounds on which the removal is sought and an opportunity for a written reply and oral presentation to the Board of Supervisors, and a finding by the Board of Supervisors made in and as a result of a public hearing of substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office or violation of this Ordinance, or a conflict of interest.

(g) Vacancies.

Appointments to fill vacancies on the Commission resulting from term limits set forth herein or from resignations or removal of a member shall be made within 60 calendar days in the manner described in Sec. 100(c)(1)(b). Appointments to fill vacancies of those members who resign or who are removed prior to the end of their term shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to exercise the powers of the Commission.

(h) Quorum.

Three members shall constitute a quorum, and the affirmative vote of not less than three members shall be required to take any action.

(i) Compensation; Expenses.

The members of the Commission shall serve without compensation and shall be reimbursed for travel and other expenses incurred in the performance of their official duties in accordance with Government Code section 53232.2, as amended from time to time.

Sec. 101. EXECUTIVE DIRECTOR, COMMISSION STAFF AND DELEGATION OF AUTHORITY.

Within 60 calendar days of adoption of this Ordinance, the County Executive Officer shall recommend no more than three (3) candidates to the Commission who shall then select an Executive Director from those candidates. The candidates may be current County employees. Candidates for subsequent Executive Director positions shall be interviewed by the Commission and appointed by a majority vote of the Commission.

(a) The Commission shall appoint and has the authority to discharge an Executive Director, who shall act in accordance with Commission policies and regulations and with applicable law. The Executive Director shall not be subject to civil service provisions, and shall have no property interest in his or her employment. The salary of the Executive Director shall be set by the Board of Supervisors and shall be based on a recommendation submitted by the County Executive Officer after a review and analysis of the responsibilities and authority vested in his or her employment.

(b) The Executive Director shall hire and has the authority to discharge Commission staff members and prescribe their duties. Non-clerical personnel of the Commission shall serve at the will of the Executive Director, shall not be subject to civil service provisions, and shall have no property interest in their employment. The Commission and the Executive Director may utilize support staff or support services of the Clerk of the Board of Supervisors and/or the Registrar of Voters.

(c) The Commission may delegate authority to the Executive Director to act on behalf of the Commission between meetings of the Commission to effectuate decisions, directives or policies except that rules, regulations and adjudicatory decisions can only be acted upon by the Commission.

Sec. 102. DUTIES AND RESPONSIBILITIES OF THE ETHICS COMMISSION.

The Commission shall have responsibility for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances of the County of Orange concerning campaign financing, lobbyists, gifts, governmental ethics, and conflicts of interest. Specifically, such provisions shall include: County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and the County Code of Ethics and Commitment to Public Service adopted 10/5/93, each as amended from time to time. Whenever reference is made herein to any or all of the above ordinances and codes, such reference shall include such ordinances and codes as each is amended from time to time. Specifically, the Commission shall have the following duties, powers, and responsibilities:

- (a) To receive copies of campaign statements and any other reports required by the Political Reform Act and the County's campaign ordinance pertaining to County Candidates and County Elected Officials and to persons making independent expenditures supporting or opposing County Candidates and County Elected Officials;
- (b) To maintain an independent tracking system of each contributor's total cumulative and aggregated contributions in an Election Cycle (as that term is defined in County Campaign Reform Ordinance No. 3862) to County Candidates and County Elected Officials (as those terms are defined in County Campaign Reform Ordinance No. 3862);
- (c) To receive documents required to be filed pursuant to, and to otherwise administer, the provisions of the Lobbyist Registration Ordinance 11-014;
- (d) To review all reports pursuant to County Campaign Reform Ordinance No. 3862 and the Lobbyist Registration Ordinance 11-014, and reports from persons making independent expenditures supporting or opposing County Candidates and County Elected Officials for completeness, accuracy, and any potential violations of the County Campaign Reform Ordinance No. 3862, the Lobbyist Registration Ordinance 11-014, or any other applicable law.
- (e) To enforce provisions of County laws pertaining to campaign finance, lobbyists, gift ban, and ethics. Specifically, the Commission shall investigate, as more fully set forth herein below, alleged violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93;

(f) To initiate complaints and to receive written complaints alleging possible violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93;

(g) To receive, investigate, and act upon recommendations of the Orange County Grand Jury with respect to alleged violations of those provisions of County laws pertaining to campaign finance, lobbyists, gift ban, and ethics including, without limitation, County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93;

(h) To subpoena witnesses and the production of records, including campaign committee bank records, pertinent to its investigations, and to administer oaths;

(i) To have full charge and control of its office, to be responsible for its proper administration, to submit annually a proposed budget to the Board of Supervisors and to expend the funds of the office; and

(j) To apply for and receive grants and appropriations in support of the responsibilities of the Commission and its staff.

(k) Notwithstanding anything herein to the contrary, the Commission shall only have jurisdiction over alleged violations by a person of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93. The scope of the investigations and the right to enforce the County Code of Ethics and Commitment to Public Service adopted 10/5/93 pursuant to this Ordinance shall be limited to allegations of lack of compliance with the following specifically enumerated provisions of said Code:

1. That County officials are prohibited from using County-owned equipment, materials, or property for personal benefit or profit unless specifically authorized by the Board of Supervisors as an element of compensation;

2. That no County official shall engage in any business, transaction or activity, or have a financial interest, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties; and

3. That no public official shall meet or confer with a former County official or employee who is acting as a lobbyist within one year following termination of the former official or employee from County employment.

Sec. 103. REGULATIONS.

The Commission may adopt, amend and rescind regulations to carry out the purposes and provisions of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93. In the event of any conflict between the regulations and any of the ordinances and Codes referred to herein, the ordinance or Code shall prevail. Violation of any regulation shall be subject to those penalties and remedies as may be provided.

Sec. 104. ADDITIONAL DUTIES.

The Commission shall have the following additional duties, which may be exercised by motion or order:

(a) Prescribe forms for reports, statements, notices and other documents required by ordinances or other laws relating to County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; and the Lobbyist Registration Ordinance 11-014;

(b) Develop an educational program which shall consist of the following components:

1. Training seminars to familiarize newly elected and appointed County Elected Officials, their staff members, County Candidates and their treasurers, with County campaign laws, including, without limitation, County Campaign Reform Ordinance No. 3862, and the Gift Ban Ordinance No. 3892. Such training seminars shall be mandatory for each newly elected County Elected Official, each newly appointed staff member of a County Elected Official, and each County Candidate and their treasurer; and

2. A manual that summarizes, in simple, non-technical language, reporting requirements applicable to County Elected Officials and County Candidates, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable County laws governing campaign financing, including, without limitation, County Campaign Reform Ordinance No. 3862, and the Gift Ban Ordinance No. 3892.

(c) The Executive Director shall prepare an annual report summarizing Commission activities. This report shall be approved by a majority vote of the Commission and forwarded to the Board of Supervisors for placement on an agenda as a public hearing item.

Sec. 105. REQUESTS FOR WRITTEN ADVICE.

Any person may request the Executive Director of the Commission to provide written advice with respect to the person's duties under provisions of the Charter or any

Ordinance relating to County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; and the Lobbyist Registration Ordinance 11-014. Such advice shall be provided within 21 working days of the actual receipt of the request, except that the time may be extended for no more than 15 working days by the Executive Director for good cause. Reliance on the advice, or the failure of the Executive Director to provide the advice within 21 working days of its receipt of the request, or within the extended time for response, shall be a complete defense in any enforcement proceeding conducted by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding if the requester, at least 21 working days prior to the alleged violation, requested written advice from the Executive Director in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the Executive Director to provide advice within 21 working days of the request or such later extended time. The Executive Director's written advice shall be a public record.

106. INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The Commission shall conduct investigations of alleged violations of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93. Any person who violates any provision of the aforementioned, or who causes any other person to violate any provision, or who aids and abets any other person in a violation, shall be liable under the provisions of this Ordinance.

The possible proceedings involving alleged violations shall be as follows: (a) Investigations on Cause; (b) Provision of Remedial Measures; (c) Probable Cause Determinations; (d) Administrative Hearings; and (e) Orders or Reference to the District Attorney, Attorney General, or other appropriate enforcement agencies.

(a) Investigations.

If the Executive Director, upon the sworn complaint of any person, or on his or her own initiative, or on the Commission's initiative, first determines that there is cause to conduct an investigation, the Executive Director shall investigate alleged violations of County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; and certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93. The Executive Director shall not be required to investigate a complaint filed with it unless the complaint is in writing, identifies the specific alleged violation which forms the basis for the complaint, is signed by the complainant, and, upon the determination of the Executive Director, contains sufficient facts to warrant an investigation. The investigation shall be conducted in a confidential manner. To the extent permitted by applicable law, including the California Public Records Act, Government Code section 6250, et seq, records of any investigation shall be considered confidential information. The unauthorized release of confidential

information shall be sufficient grounds for the termination of the employee or the removal of the Commissioner responsible for the release.

In the conduct of any proceedings set forth herein, the Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by administrative subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(b) Remedial Measures

(1) It is the intent of this Ordinance that the Executive Director shall resolve as many Complaints as possible using the remedial measures as herein described. If the Executive Director determines or believes that any person (the "target party") has violated any provision of the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014; or certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93, the Executive Director may, at his or her sole discretion, advise the target party of remedial measures (the "Remedial Measures") which may be taken by the target party to avoid further action by the Commission. Nothing contained herein shall be deemed to require the Executive Director to offer Remedial Measures to any target party.

(2) In the event the target party is offered and, within 15 calendar days, timely performs such Remedial Measures to the satisfaction of the Executive Director, the Executive Director shall issue a "Letter of Resolution" which shall advise the target party (and any person who, in writing informed or complained to the Commission concerning any such violation), that the alleged violation has been resolved and the manner in which it was resolved.

(3) Excess contributions which the Executive Director determines have been inadvertently accepted shall be refunded to the contributor in accordance with Sec. 1-6-30 of County Campaign Ordinance No. 3862. The number of returned contributions throughout the year shall be included in the annual report referenced in Sec.104(c) of this Ordinance. In the case of such returned contributions, the Executive Director shall not be required to issue a Letter of Resolution, so long as such return is included in the annual report referenced in Sec. 104(c) of this Ordinance.

(4) In the event a Letter of Resolution is issued, no further proceedings, civil action, or reference shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required. The Executive Director shall provide a copy of each Letter of Resolution to each member of the Commission, but the Letter of Resolution shall remain confidential, and no member of the Commission is authorized to publicly release the Letter of Resolution.

(c) Findings of Cause; Administrative Enforcement.

In the event that no Letter of Resolution is issued pursuant to Section 106(b), the next step is a Probable Cause hearing by the Executive Director and Staff.

If, based upon the investigation referenced in Section 106(a), the Executive Director determines that there is cause to believe that the County Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; or certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93; may have been violated, and such possible violation cannot or will not be remedied in accordance with Section 106(b) above, the Executive Director shall hold a Probable Cause hearing.

Such Probable Cause hearing shall not occur, and no finding of Probable Cause shall be made by the Executive Director unless, at least 21 calendar days prior to the Executive Director's consideration of the alleged violation in the Probable Cause hearing, the person alleged to have committed the violation is: (1) given written notice of the alleged violation and the date, time and location of the Probable Cause hearing by service of process or registered mail with return receipt requested; (2) is provided with a written summary of the facts supporting the violation; and (3) is informed of his or her right to be present in person and represented by counsel at such Probable Cause hearing conducted by the Executive Director and the Staff for the purpose of considering: (1) whether probable cause exists for believing the person committed the violation; and (2) such person has failed to adopt the Remedial Measures referenced in Section 106(b) above.

Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or, if the registered mail receipt is not signed, the date returned by the post office. The Probable Cause hearing shall be private unless the alleged violator files with the Executive Director a written request, not less than 15 calendar days prior to the Probable Cause hearing, that the proceeding be public.

If the Executive Director determines there is no probable cause, the complainant and the alleged violator(s) shall be notified in writing of the finding, which writing shall set forth the reasons for said finding, and, in such event, no further proceedings, civil action or reference shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required.

(d) Administrative Hearings.

1. In the event that the Executive Director, after the Probable Cause hearing described in Section 106(c) above, determines that probable cause of a violation of the County's Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; or certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93 has occurred, the Executive Director shall cause an administrative enforcement accusation to be issued and served, triggering the Administrative Hearing set forth herein.

2. For an alleged violation of the County's Campaign Reform Ordinance No. 3862; the Gift Ban Ordinance No. 3892; or the Lobbyist Registration Ordinance 11-014; or certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93, after an administrative enforcement accusation is issued and served, the Commission shall cause a public hearing to be held to determine if a violation has occurred. When the Commission determines on the basis of evidence presented at the hearing that a violation of the County Campaign Reform Ordinance No. 3862; or the Gift Ban Ordinance No. 3892; the Lobbyist Registration Ordinance 11-014; or certain sections of the County Code of Ethics and Commitment to Public Service adopted 10/5/93, has occurred, it shall issue an order which may require the violator to:

- Cease and desist the violation;
- File any reports, statements or other documents or information required by law;
- Correct the violation and/or
- Pay a monetary penalty to the General Fund of the County of up to \$5,000 for each violation or three times the amount which the violator failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

When the Commission determines that no violation has occurred, it shall publish an order so stating.

3. For an alleged violation of the County Code of Ethics and Commitment to Public Service adopted 10/5/93, which violation constitutes a felony or misdemeanor, after an accusation is issued and served, the Executive Director shall request the Commission to refer the matter to the Orange County District Attorney and to the Attorney General, pursuant to California Government Code Section 12553 if the District Attorney would have any conflict of interest in pursuing the accusation resulting in the disqualification of the District Attorney, or other appropriate enforcement agencies, for purposes of enforcement. No such reference shall be made when it appears from a preliminary investigation that an alleged violation will warrant only an action for administrative penalties.

(e) Petition for Writ

When the Commission determines that a violation has occurred, the person who is the subject of such determination may, within 60 calendar days after receiving written notice of such determination, file a Petition in the Superior Court for the County of Orange seeking a Writ of Mandate or Prohibition, as the case may be, ordering the Commission to adopt a finding of no violation. Such Petition may only be granted in the event that the Superior Court finds that no substantial evidence supports the Commission's determination or that the Commission abused its discretion in making such determination.

(f) Civil Action to Collect Debt and Obtain Other Relief.

The Commission may file and prosecute a civil action in Superior Court to recover any amount(s) due and owing to the County of Orange by any person pursuant to this section, or to enjoin any violation or otherwise compel compliance with the requirements of this Ordinance. In the event of any civil action within the jurisdictional amount of the Small Claims court, the Commission may designate the person to bring such action on its behalf.

(g) Cost of Litigation.

In the event that either the Commission must bring a civil action against an individual who is the subject of a Commission determination, or such individual brings a Petition described in Section 106 (e) above, the court may award to the prevailing party in any such action authorized by this Ordinance, the costs of litigation, which costs shall include reasonable attorney's fees.

(h) Referrals Between Agencies.

Regardless of whether the Executive Director or the Commission makes a formal determination concerning probable cause, the Executive Director or the Commission may refer the matter to another appropriate agency for purposes of enforcement.

(i) Superseding Effect.

This Section 106 shall supersede any conflicting provisions of codified Section 1-6-15 and 1-6-16 of County Campaign Reform Ordinance No. 3862.

Sec. 107. LEGAL SERVICES.

The County Counsel shall provide legal services without charge to the Commission until such time that a full-time or part-time Staff Counsel is warranted and approved by a vote of the Board of Supervisors. In providing such legal services, the County Counsel and the Commission shall be deemed to have entered into an attorney-client relationship.

Sec. 108. APPROPRIATION.

By not later than May 1 of each year, the Commission shall prepare a budget for the forthcoming fiscal year and present it to the County of Orange CEO and CFO for inclusion in the County budget and budgeting process. Said budget shall be not less than \$300,000 for the first year of the Commission's operation, plus a reasonable estimate of expected cost increases for the forthcoming year. The budget shall include at a minimum, salaries for the Executive Director and one full-time clerical staff member. The Executive Director shall be classified at the same level as the Director of Internal Audit. The County of Orange CEO shall include the budget request as proposed by the Commission without change, and the Board of Supervisors shall appropriate the funds

requested by the Commission for the effective operation of the Commission at least one year in advance of each subsequent fiscal year, and shall have no power to reduce the budget request absent a declaration of financial emergency applicable to the County budget as a whole. The Board of Supervisors may, in their discretion, increase the budget request if they find it is warranted by increased enforcement activity or estimated cost increases. The Commission's budget shall be appropriated from County funds to the extent that the funds are not otherwise obtained from any Federal, State, or other grants.

Sec. 109. STAFF OF THE ORANGE COUNTY CAMPAIGN FINANCE AND ETHICS COMMISSION.

Within 60 calendar days of adoption of this Ordinance by the voters, the County Executive Officer shall initiate the process for appointment of Commission members per Sec. 100 of this Ordinance and authorize the hiring of an Executive Director per Section 101, assign associated staff sufficient to perform the duties and responsibilities of the Commission, and submit an operating budget to the Board of Supervisors for authorization.

Sec. 110. AUTHORITY; CONFLICT WITH OTHER CHARTER PROVISIONS.

This Ordinance is adopted pursuant to and under the authority of Article III of the Charter of Orange County, and California Government Code Section 81013. In the event any provision of this Ordinance conflicts with other provisions of the Charter, or of the Codified Ordinances, or of any County Code, this Ordinance shall prevail.

Sec. 111. STATUTE OF LIMITATIONS FOR ADMINISTRATIVE ENFORCEMENT ACTIONS.

No remedial measures or administrative enforcement action brought by the Commission shall be commenced more than four (4) years after the date on which the violation occurred. The receipt of a written complaint alleging a violation of the law shall constitute the commencement date. If the person alleged to have violated the law engaged in the concealment of his or her acts, the four-year period shall be tolled for the period of concealment. If upon being ordered by a court to produce any person, witness or document sought by a subpoena, the person alleged to have violated the law fails to appear, or produce any witness or document in response to the order by the date ordered to comply therewith, the four-year period shall be tolled for the period of delay from the date the person or witness was originally scheduled to appear, or the document was to be produced, pursuant to the subpoena until the date the person appears, or the witness or document is produced.

Sec. 112. AMENDMENTS AND ADDITIONAL REQUIREMENTS.

(a) No amendment or repeal of any provision of this Ordinance shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the County and approved by a majority vote.

(b) Nothing in this Ordinance prevents the Orange County Board of Supervisors from adding additional requirements to this Ordinance so long as they do not eliminate requirements or disqualifying characteristics for membership on the Commission or otherwise reduce the scope of this Ordinance or the authority of the Executive Director or Commission, and so long as they do not prevent any person from complying with this Ordinance.

Sec. 113. SUPERSEDING EFFECT.

This Ordinance is intended to terminate any and all agreements made pursuant to Assembly Bill 910 (2015-2016 session), or any similar legislation, authorizing the Fair Political Practices Commission to administer, implement, or enforce Orange County's local campaign finance ordinance or any provision thereof.

Sec. 114. OPERATIVE DATE.

The provisions of this Ordinance shall be operative beginning on either July 1 or January 1, whichever comes first, following its adoption by the voters of Orange County.

Sec. 115. DEFINITIONS.

Unless a term is specifically defined in this Ordinance, or a contrary indication is stated or clearly appears from the context of this Ordinance, words and phrases shall have the same meaning as when they are used in Title 9 of the California Government Code, in which the Political Reform Act of 1974 is codified, as the same may be, from time to time amended.

Division 6 - CAMPAIGN REFORM^[1]

Footnotes:

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Editor's note—Section 1 of Ord. No. 3066, enacted June 20, 1978, added div. 6, §§ 1-6-2—1-6-18, to title 1 of the Code. Section 24 of Ord. No. 3862, adopted June 23, 1992, effective July 2, 1992, having received a majority of the votes cast in the election held on June 2, 1992, repealed Ord. No. 3066, as amended by Ord. Nos. 3207, 3245, 3289, 3415, 3483, 3547, 3605, 3671, 3743, 3769, and 3803. Sections 1—23 of Ord. No. 3862 have been included as a new div. 6, §§ 1-6-1—1-6-23. Section 24 also stated that former art. 2 "shall remain in effect until July 2, 1996 for all contributions received prior to July 2, 1992."

Cross reference— Gifts to public officials, § 1-3-21 et seq.

ARTICLE 1. - GENERAL PROVISIONS

Sec. 1-6-1. - Name.

This division shall be known and may be cited as the "Orange County Campaign Reform Ordinance.

(Ord. No. 3862, § 1, 6-23-92)

Sec. 1-6-2. - Purpose.

The purpose of this division is to ensure that the financial strength of certain individuals or organizations does not permit them to exercise a disproportionate or controlling influence on the election of Orange County candidates. To achieve this purpose, this division is designed to minimize the opportunity for corruption, to minimize the appearance or perception of corruption, to prevent evasion of the contribution limit, and to maintain public trust in governmental institutions and the electoral process.

(Ord. No. 3862, § 2, 6-23-92; Ord. No. 02-012, § 1, 12-17-02)

Sec. 1-6-3. - Relation to Political Reform Act of 1974.

This division is intended to supplement the Political Reform Act of 1974. Unless the term is specifically defined in this division or the contrary is stated or clearly appears from the context, words and phrases shall have the same meaning as when they are used in title 9 of the California Government Code, in which the Political Reform act of 1974 is codified, as the same may be, from time to time, amended.

(Ord. No. 3862, § 3, 6-23-92)

Sec. 1-6-4. - Definitions.

- (a) *County Candidate*: "County candidate" means any person who is a candidate for Supervisor, Sheriff-Coroner, District Attorney, Assessor, Treasurer-Tax Collector, County Clerk-Recorder, Auditor, Public Administrator, or Superintendent of Schools, or, in the event any of the listed consolidated county offices are separated, any of the separated offices which are elective.
- (b) *Elective County Officer*: "Elective County officer" means any person who is a Supervisor, Sheriff-Coroner, District Attorney, Assessor, Treasurer-Tax Collector, County Clerk-Recorder, Auditor, Public Administrator, or Superintendent of Schools, whether appointed or elected or, in the event any of the listed consolidated county offices are separated, any individual occupying a separated office which is elective.

(Ord. No. 3862, § 4, 6-23-92; Ord. No. 02-012, § 2, 12-17-02)

Sec. 1-6-5. - Contribution limitations.

- (a) No person shall make to any candidate for County elective office or the controlled committee of such a candidate, and no such candidate or committee shall accept from any such person, a contribution or contributions totaling more than one thousand nine hundred dollars (\$1,900.00) for each of the following elections for which the person is a candidate; a primary election, a special election, or a general (runoff) election.
 - (b) The contribution limitations set forth in subsection (a) shall also apply to any committee which collects contributions for the purpose of making expenditures in support of or opposition to the recall of the elective County officer, and to contributions received by the elective County officer during the time period set forth in section 1-6-7(b) of this division.
 - (c) Any person or committee that spends or incurs more than twenty-five (25) percent of its independent expenditures during the twelve (12) months preceding a County election on independent expenditures supporting or opposing County candidate(s) shall not accept any contribution(s) from any person in excess of one thousand nine hundred dollars (\$1,900.00) during the time periods set forth in section 1-6-7 of this division.
 - (d) The provisions of this section shall not apply to a candidate's contribution of his or her personal funds to his or her own campaign committee, but shall apply to contributions from a spouse.
- (Ord. No. 3862, § 5, 6-23-92; Ord. No. 02-002, § 1, 4-23-02; Ord. No. 03-013, § 1, 5-6-03; Ord. No. 05-002, § 1, 2-15-05; Ord. No. 07-001, § 1, 2-6-07; Ord. No. 09-003, § 1, 2-10-09; Ord. No. 11-007, § 1, 3-1-11; Ord. No. 13-002, § 1, 2-5-13)

Sec. 1-6-6. - Aggregation of contributions.

For purposes of the limitations in this division, the following shall apply:

- (a) All contributions made by a sponsored committee to a County candidate or to an elective County officer (or to a committee controlled by such candidate or officer) shall be combined with those contributions made by the sponsor(s) of the committee, and the combined amount shall not exceed one thousand nine hundred dollars (\$1,900) within the time periods set forth in section 1-6-7 of this division.
- (b) Two (2) or more entities shall be treated as one (1) person when any of the following circumstances apply:
 - (1) The entities share the majority of members of their boards of directors.
 - (2) The entities share two (2) or more officers.
 - (3) The entities are owned or controlled by the same majority shareholder or shareholders.
 - (4) The entities are in a parent-subsidary relationship.
- (c) An individual and any general or limited partnership in which the individual has a ten (10) percent or more share, or an individual and any corporation in which the individual owns a controlling interest (fifty (50) percent or more), or an individual connected with a business entity and that business entity when the individual participates in or controls in any way a decision on whether the candidate or candidates receive contributions from that business entity, regardless of the percentage of ownership, shall be treated as one (1) person.
- (d) No committee which supports or opposes a candidate for County office shall have as a majority of its officers individuals who serve as the majority of officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit

or make contributions on behalf of, any other committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on whether the candidate or candidates receive contributions.

- (e) Contributions by a husband and wife except as set forth in section 1-6-5(d), shall be aggregated unless a contribution comes exclusively from the separate property of one spouse.
- (f) Contributions by children under eighteen (18) years of age shall be presumed to be contributions by their parents or legal guardians, allocated equally to each living parent or living guardian of the child.

(Ord. No. 3862, § 6, 6-23-92; Ord. No. 02-012, § 3, 12-17-02; Ord. No. 03-013, § 2, 5-6-03; Ord. No. 05-002, § 2, 2-15-05; Ord. No. 07-001, § 2, 2-6-07; Ord. No. 09-003, § 2, 2-10-09; Ord. No. 11-007, § 2, 3-1-11; Ord. No. 13-002, § 2, 2-5-13)

Sec. 1-6-7. - Election cycles.

- (a) *Primary and general (runoff) elections:* For purposes of the limits of this division, contributions made at any time between the final date for contributions to the last primary or general (runoff) election (whichever occurred last) for that same elective County office and June 30 of the present election year shall be considered primary election contributions. If there is a general (runoff) election, then contributions made from July 1 through December 31 of the election year shall be considered general (runoff) election contributions.
- (b) *Recalls:* For purposes of the limits of this division, contributions made at any time after a committee has been formed, pursuant to the provisions of the Political Reform Act, in support of a recall election, or after the registrar has approved a recall petition for circulation and gathering of signatures, whichever occurs first, shall be considered contributions during a recall election cycle. A recall election cycle shall end whenever any of the following occur:
 - (1) The recall proponents fail to return signed petitions to the registrar within the time limits set forth in the California Elections Code.
 - (2) All committees formed in support of the recall have been terminated pursuant to the provisions of the Political Reform Act.
 - (3) Ten (10) days after a recall election has been held.
- (c) *Special Elections:* For purposes of the limits of this division, contributions made at any time after a committee has been formed, pursuant to the provisions of the Political Reform Act, in support of a candidate for a special election shall be considered contributions during a special election cycle. A special election cycle shall end on June 30 or December 31 following the special election, which ever occurs first.

(Ord. No. 3862, § 7, 6-23-92; Ord. No. 02-002, § 2, 4-23-02)

Sec. 1-6-8. - Prohibition on multiple campaign committees.

A County candidate or an elective County officer shall have no more than one (1) campaign committee which shall have only one (1) bank account out of which all qualified campaign and office holder expenses related to that County office shall be made. This section does not prevent a County candidate or an elective County officer from establishing another committee solely for the purpose of running for a state, federal, or local office that is not identified in section 1-6-4 of this division.

(Ord. No. 3862, § 8, 6-23-92)

Sec. 1-6-9. - Prohibition on transfers.

- (a) No funds may be transferred into any County candidate or elective County officer's campaign committee from any other campaign committee controlled by a candidate. No contributions shall be accepted by any County candidate or elective County officer or their controlled committees, from any other committee controlled by another federal, state, or local candidate or officeholder.
- (b) No County candidate or elective County officer and no committee controlled by a County candidate or elective County officer shall make any contribution to any other County candidate or elective County officer or to any committee supporting or opposing a County candidate for office. This section shall not prohibit a County candidate or elective County officer from making a contribution from his or her own personal funds to his or her own candidacy or to the candidacy of any other candidate for elective County office.

(Ord. No. 3862, § 9, 6-23-92; Ord. No. 02-012, § 4, 12-17-02)

Sec. 1-6-10. - Loans to County candidates and elective County officers and their controlled committees.

- (a) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this division.
- (b) Every loan to a County candidate or elective County officer or their controlled committees shall be by written agreement which shall be filed with the campaign statement on which the loan is first reported.
- (c) The proceeds of a loan made to a County candidate or elective County officer by a commercial lending institution in the regular course of business on the same terms available to members of the public shall not be subject to the contribution limitations of this division if the loan is made directly to the County candidate or elective County officer or his or her controlled committee. The guarantors of such a loan shall remain subject to the contribution limits of this division.
- (d) Extensions of credit (other than loans pursuant to subsection (c) of this section) for a period of more than thirty (30) days are subject to the contribution limitations of this division.
- (e) This section shall apply only to loans and extensions of credit used or intended for use for campaign purposes or which are otherwise connected with the holding of public office.

(Ord. No. 3862, § 10, 6-23-92)

Sec. 1-6-11. - Money received by officials treated as contributions.

Any funds, property, goods or services, other than government funds, received by elective County officers or County candidates which are used, or intended by the donor or by the recipient to be used, for expenses (including legal expenses) related to holding County office or running for County office, shall be considered campaign contributions and shall be subject to the limitations of this division. Reimbursement for reasonable travel expenses related to holding County office shall be excluded from the provisions of this section.

(Ord. No. 3862, § 11, 6-23-92; Ord. No. 02-012, § 5, 12-17-02)

Sec. 1-6-12. - Solicitation of contributions from persons who have County business dealings.

No nonelected County public official or County employee shall solicit, direct or receive a contribution from any person, or his or her agent, who has a proceeding involving legislative or administrative action pending before the County public official or County employee or has had such a matter pending during the preceding twelve (12) months. This section does not apply to a nonelected County public official or County employee who is a County candidate acting in furtherance of his own controlled committee.

(Ord. No. 3862, § 12, 6-23-92)

Sec. 1-6-13. - Transmittal of campaign contributions in County office buildings.

- (a) No person shall receive or personally deliver or attempt to deliver a contribution in any office which the County owns or for which the County pays the majority of the rent.
- (b) For purposes of this section:
 - (1) *Personally deliver* means delivery of a contribution in person or causing a contribution to be delivered in person by an agent or intermediary, other than the United States Mail.
 - (2) *Receive* includes the receipt of a campaign contribution delivered in person.

(Ord. No. 3862, § 13, 6-23-92)

Sec. 1-6-14. - Disclosure of occupation and employer.

- (a) No campaign contribution cumulating to one hundred dollars (\$100.00) or more shall be deposited into a campaign bank account of a County candidate or elective County officer unless the disclosure information required by the Political Reform Act, including the name, address, occupation and employer of the contributor or, if self-employed, the name of the business under which the individual is self-employed, is on file in the records of the recipient of the contribution. Said disclosure information shall be included in the campaign disclosure statement in which the contribution is reported.
- (b) In the event the required disclosure information is not obtained within sixty (60) days of receipt of the contribution or by the end of the next filing period whichever occurs last, the contribution shall be returned to the contributor. If the whereabouts of the contributor cannot be ascertained, the contribution shall be deposited in the Orange County General Fund or transferred to a charity that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(Ord. No. 3862, § 14, 6-23-92; Ord. No. 02-012, § 6, 12-17-02)

Sec. 1-6-15. - Criminal misdemeanor actions.

- (a) Any person who willfully violates any provision of this division is guilty of a misdemeanor. Any person who willfully causes or solicits any other person to violate any provision of this division, or who aids and abets any other person in the violation of any provision of this division, shall be liable under the provisions of this section.
- (b) No person convicted of a misdemeanor under this division shall be a candidate for an elective County office or act as a County lobbyist or as a County contractor for a period of four (4) years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of *nolo contendere* shall be deemed a conviction for purposes of this section.

(Ord. No. 3862, § 15, 6-23-92)

Sec. 1-6-15.1. - Enforcement by the California Fair Political Practices Commission.

Upon mutual agreement between the Fair Political Practices Commission and the County, the civil prosecutor shall be the Fair Political Practices Commission. In the absence of an agreement between the Fair Political Practices Commission and the County, the civil prosecutor shall be the District Attorney.

(Ord. No. 14-007, § 1, 11-4-2014)

Sec. 1-6-15.2. - Violations and enforcement—Administrative.

- (a) Any person who, pursuant to an appropriate administrative action, is determined by the civil prosecutor to have violated any provision of this division, purposely caused any other person to violate any provision of this division, or aided and abetted any other person in the violation of any provision of this division, shall be subject to an administrative order requiring that the person to do all or any of the following:
 - (1) Cease and desist violating this division;
 - (2) File any reports, statements, or other documents or information required by this division;
 - (3) Pay to the County a monetary penalty of up to five thousand dollars (\$5,000.00) per violation.
- (b) If two or more persons are responsible for any violation of any provision of this division, then they shall be jointly and severally liable.
- (c) No administrative action brought alleging a violation of any provision of this division shall be commenced more than five (5) years after the date on which the violation occurred.

(Ord. No. 14-007, § 2, 11-4-2014)

Sec. 1-6-16. - Civil actions.

- (a) Any person who intentionally or negligently violates any provision of this division shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received or five thousand dollars (\$5,000.00) per violation, whichever is greater.
- (b) If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.
 - (1) Any person, other than the civil prosecutor, before filing a civil action pursuant to this subdivision, shall first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The civil prosecutor, within thirty (30) days of receipt of the request, shall conduct an initial inquiry into the merits of the complaint. If the civil prosecutor determines in good faith that additional time is needed to examine the matter further, the complaining party shall be notified and the civil prosecutor shall automatically receive an additional sixty (60) days in order to determine the merits of the complaint. At the end of sixty (60) days the civil prosecutor shall inform the complaining party whether the civil prosecutor intends to file a civil action or refer the complaint to the District Attorney for a criminal investigation. Within thirty (30) days thereafter, if the civil prosecutor indicates in the affirmative and files a civil action or if criminal charges are filed by the District Attorney, no other action may be brought unless the action brought by the civil prosecutor or District Attorney is dismissed without prejudice.
- (c) In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action, the plaintiff shall receive fifty (50) percent of the amount recovered. The remaining fifty (50) percent shall be deposited into the County's General Fund. In an action brought by the civil prosecutor the entire amount shall be paid to the General Fund.

(Ord. No. 3862, § 16, 6-23-92; Ord. No. 14-007, § 3, 11-4-2014)

Sec. 1-6-17. - Injunctive relief.

Any person residing in the jurisdiction, including the civil prosecutor may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this division.

(Ord. No. 3862, § 17, 6-23-92; Ord. No. 14-007, § 4, 11-4-2014)

Sec. 1-6-18. - Cost of litigation.

The court may award to a plaintiff, other than an agency, who prevails in any action authorized by this division, his or her costs of litigation.

(Ord. No. 3862, § 18, 6-23-92)

Sec. 1-6-19. - Statute of limitations.

Civil actions and/or criminal prosecutions for violations of any provision of this division shall be commenced within four (4) years after the date on which the violation occurred.

(Ord. No. 3862, § 19, 6-23-92)

Sec. 1-6-20. - Applicability of other laws.

Nothing in this division shall exempt any person from applicable provisions of any other laws of this State or jurisdiction.

(Ord. No. 3862, § 20, 6-23-92)

Sec. 1-6-21. - Severability.

If any provision of this division, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this division to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this division are severable.

(Ord. No. 3862, § 21, 6-23-92)

Sec. 1-6-22. - Interpretation of division.

This division should be liberally construed to accomplish its purposes.

(Ord. No. 3862, § 22, 6-23-92)

Sec. 1-6-23. - Amendments and additional requirements.

- (a) The Board of Supervisors shall by ordinance adjust the contribution limitations in January of odd-numbered years to reflect any cumulative increase or decrease in the Consumer Price Index for the State of California as announced by the United States Department of Labor since the last adjustment. Such adjustments shall be rounded off to the nearest hundred dollars for the limitations on contributions.
- (b) Except as specified in subsection (a), no amendment or repeal of any provision of this division shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the County and approved by a majority vote.
- (c) Nothing in this division prevents the Orange County Board of Supervisors from imposing additional requirements on any person if the requirements do not prevent the person from complying with this division.

(Ord. No. 3862, § 23, 6-23-92)

Sec. 1-6-24. - Slate mailers.

- (a) The provisions of Government Code Section 82048.4 are not incorporated in, and shall not be used in the interpretation of, the Orange County Campaign Reform Ordinance.
- (b) If a slate mailer is produced and/or distributed other than at the behest of a County candidate, then it is an independent expenditure, and is not subject to the contribution limitations of this division.
- (c) The following provisions shall apply only to slate mailers in which more than twenty-five (25) percent of the surface area of the slate mailer (exclusive of the area used for address and postage) expressly advocates or opposes the election of an individual County candidate.
 - (1) If a third party has provided funds to the slate mailer organization that are used for the production and/or distribution of a slate mailer at the behest of a County candidate, then:
 - (A) The attributable cost of production and/or distribution of the slate mailer is a contribution from the third party to the County candidate to the extent the attributable cost of production and/or distribution exceeds the amount, if any, paid by the County candidate or the controlled committee of such a candidate, up to the total of the funds provided by the third party, and this contribution is subject to the contribution limitations of this division, and
 - (B) The attributable cost of production and/or distribution of the slate mailer that exceeds the total of the funds provided by the third party and any funds paid by the County candidate or the controlled committee of such a candidate is a contribution from the slate mailer organization to the County candidate, and this contribution is subject to the contribution limitations of this division.
 - (2) If a slate mailer is produced or distributed at the behest of a County candidate, without any contribution from a third party, then the attributable cost of production and/or distribution is a contribution from the slate mailer organization to the County candidate to the extent the attributable cost of production and/or distribution exceeds the amount, if any, paid by the County candidate or the controlled committee of such a candidate to the slate mailer organization, and this contribution is subject to the contribution limitations of this division.
 - (3) If a slate mailer expressly opposes the election of a County candidate, and the slate mailer is produced and/or distributed at the behest of an opposing County candidate ("the opponent"), then:
 - (A) If a third party has paid the slate mailer organization to oppose the County candidate, then:
 - (i) The attributable cost of production and/or distribution of the slate mailer is a contribution from the third party to the opponent to the extent it exceeds any payment to the slate mailer organization from the opponent or the controlled committee of such opponent up to the total amount paid to the slate mailer organization by the third party to oppose the County candidate, and this contribution is subject to the contribution limitations of this division, and
 - (ii) The attributable cost of production and/or distribution of the slate mailer that exceeds the total of the payment made to the slate mailer organization by the third party to oppose the County candidate and any payment made to the slate mailer organization by the opponent or the controlled committee of such opponent is a contribution from the slate mailer organization to the opponent, and this contribution is subject to the contribution limitations of this division.
 - (B) If no third party has paid the slate mailer organization to oppose the County candidate, then the attributable cost of production and/or distribution is a contribution from the slate mailer organization to the opponent to the extent the attributable cost of production and/or

distribution exceeds the amount, if any, paid by the opponent or the controlled committee of such opponent to the slate mailer organization, and this contribution is subject to the contribution limitations of this division.

- (d) "Attributable cost of production and/or distribution" is computed by multiplying the total cost of production and/or distribution of the slate mailer by a fraction, the numerator of which is the number of square inches of the mailer that expressly advocates or opposes the election of a County candidate, and the denominator of which is the number of square inches of the mailer devoted to all candidates.
- (e) A slate mailer is produced and/or distributed at the behest of a County candidate:
 - (1) If the County candidate, or the County candidate's controlled committee, or the County candidate's or committee's agent or consultant pays any of the costs for the slate mailer, or provides any information or photographs used in the mailer, or consults or confers with the slate mailer organization in any manner regarding the content, timing, or distribution of the slate mailer, or
 - (2) Under any of the circumstance described in section 18225.7(a) and section 18225.7(b) of Title 2 of the California Code of Regulations, as those sections exist as of June 1, 2002.
 - (3) A nonrefundable deposit made to a slate mailer organization shall not be considered a payment within the meaning of subsections (e)(1) or (e)(2) above, if (A) the deposit is made by, or on behalf of, a County candidate who is not opposed in the County election, or (B) if the deposit is made as consideration for a written agreement whereby the slate mailer organization obligates itself to not produce a slate mailer in which more than twenty-five (25) percent of the surface area of the slate mailer (exclusive of the area used for address and postage) expressly advocates or opposes the election of the County candidate by, or for whom, the deposit is made.

(Ord. No. 02-006, § 1, 7-23-02)

Sec. 1-6-25. - Notice of late independent expenditures.

Any person who makes a late independent expenditure of one thousand dollars (\$1,000.00) or more in support of or in opposition to any County candidate(s) shall notify all candidates running for that same office at least twenty-four (24) hours prior to the first publication, distribution or broadcast of the independent expenditure communication. The Notice of Late Independent Expenditure shall be by personal delivery, telegram, facsimile, or by any other electronic means and shall include a copy of such communication.

(Ord. No. 02-012, § 7, 12-17-02)

Sec. 1-6-26. - Disclosure by persons subject to aggregation of contributions.

Any person who makes a contribution(s) that is subject to aggregation as described in section 1-6-6(b), (c) and (f) shall disclose in writing to the County candidate or to his or her committee at the time a contribution is made, any other prior contributions with which their current contribution must be aggregated. This subsection does not relieve the County candidate or his/her treasurer of the obligation to use reasonable diligence in determining which contributions should be aggregated.

(Ord. No. 02-012, § 8, 12-17-02)

Sec. 1-6-27. - Reporting of current and cumulative contributions.

Contributions received from any contributor during a reporting period which have a cumulative total of one hundred dollars (\$100.00) or more shall be itemized along with the cumulative total of contributions received from that contributor (including any other contributions required to be aggregated with the current contribution) during that same election cycle. Such amounts shall be reported on the required forms as provided by the Fair Political Practices Commission. The term "election cycle" as used in this section shall mean the applicable period described in section 1-6-7.

(Ord. No. 02-012, § 9, 12-17-02)

Sec. 1-6-28. - Filing of post-election campaign statements.

A post-election Campaign Statement (Fair Political Practices Commission Form 460, or successor form) shall be filed by all County candidates running in the current election including write-in candidates, no later than fifteen (15) days following the date of a primary, general (runoff), recall or special election covering the period from the last pre-election statement through the tenth (10th) day following the election.

(Ord. No. 02-012, § 10, 12-17-02)

Sec. 1-6-29. - Filing of amendments to campaign statements.

Upon written notification by the County Registrar of Voters that an amendment of a previously-filed campaign statement is required, said amendment shall be filed with the Registrar of Voters no later than thirty (30) calendar days following the date of the notification.

(Ord. No. 02-012, § 11, 12-17-02)

Sec. 1-6-30. - Timely return of excess contributions.

That portion of contributions accepted in excess of the limitations imposed by this ordinance shall be returned to the donor within seven (7) days of their discovery. A written notification showing the donor's name, the amount returned, and the date of the return shall be provided to the Registrar of Voters within seventy-two (72) hours after the return.

(Ord. No. 02-012, § 12, 12-17-02)

Sec. 1-6-31. - Candidate acknowledgment of receiving county Campaign Finance Ordinance.

The Registrar of Voters shall provide each County candidate and County officer appointed to an office which is normally elective with a copy of this division as well as copies of any subsequent amendments. Each County candidate and County officer appointed to an office which is normally elective will be required to sign a form prepared by the Registrar of Voters acknowledging receipt of a copy of this division and any subsequent amendments.

(Ord. No. 02-012, § 13, 12-17-02)

ARTICLE 2. - ELECTRONIC CAMPAIGN DISCLOSURE

Sec. 1-6-32. - Electronic campaign disclosure.

- (a) Whenever any County candidate or elective County officer, or his or her controlled committee, is required by the Political Reform Act of 1974 to file a campaign disclosure statement or report with the registrar of voters and receives contributions or loans totaling more than twenty-five thousand dollars (\$25,000.00) in an election cycle, as defined in section 1-6-7 of the Orange County Campaign Reform

Ordinance, the County candidate, elective County officer, or his or her controlled committee shall file at the same time a copy of the statement or report in an electronic format with the registrar of voters, provided the registrar of voters has prescribed the format at least sixty (60) days before the statement or report is due.

- (b) All other candidates and officers, and their controlled committees, who are required by the Political Reform Act to file a campaign disclosure statement or report with the Registrar of Voters may voluntarily file a copy of the statement or report electronically, in the format prescribed by the Registrar of Voters.
 - (c) Once a County candidate or elective County officer, or his or her controlled committee, is subject to the electronic filing requirements imposed by subsection (a), every statement or report filed thereafter shall also be filed electronically.
 - (d) Each campaign disclosure statement and report filed pursuant to subsections (a) and (b) shall be maintained in an electronic database that is searchable by the public. Information that is protected from disclosure by State law shall not be available to the public.
 - (e) For purposes of this Article, "County candidate" and "elective County officer" shall have the same meaning as provided in section 1-6-4 of the Orange County Campaign Reform Ordinance.
 - (f) The requirements of this section shall not abrogate any requirements in the Political Reform Act that paper originals and copies be filed.
 - (g) This section shall become effective upon on the date set by resolution of the Board of Supervisors.
- (Ord. No. 08-014, § 1, 10-21-08)

ARTICLE 3. - SOLICITATION OF SIGNATURES FOR CANDIDATE NOMINATION PAPERS

Sec. 1-6-33. - Solicitation of signatures for candidate nomination papers.

- (a) No person may solicit for the nomination paper for any local, state or federal office the signature of any County employee at his or her workplace. For the purpose of this article, "workplace" shall mean any area devoted primarily to the conduct of County business but shall not include any area that is a traditional, limited, or designated public forum.
- (b) Any person who willfully violates this article is guilty of an infraction punishable in accordance with section 1-1-34.
- (c) Nothing in this article shall be construed to limit, restrict, or interfere with the access rights of a recognized employee organization under the Meyers-Milias-Brown Act (Government Code section 3500 et seq.)

(Ord. No. 14-004, § 1, 7-22-14)



Everyday Ethics for Local Officials

Understanding the Role of Ethics Commissions

December 2007

QUESTION

We have a citizens' group in our community considering whether to propose establishing an ethics commission. We have looked for information about ethics commissions but have not really found much. Can you help?

ANSWER

There are a number of questions to ask in evaluating whether an ethics commission represents a useful tool for your community, including:

1. What is your overall goal?
2. What do you want an ethics commission to do?
3. How would commission members be selected?
4. What powers would the commission have?
5. What resources are available to support the commission?
6. What decision-making process should you use to determine whether a commission is right for the community?

Let's look at each issue.

What Is Your Overall Goal?

The interest in creating an entity with some kind of responsibility for public service ethics can be inspired by any number of goals. One goal may be symbolic: to convey the message that ethics is important to a jurisdiction -- so important that the jurisdiction has a body responsible for it. Unfortunately, symbolic gestures rarely accomplish much in terms of ethics.

Other goals may relate to the type of role the entity will play. An ethics task force can determine whether additional ethics measures and activities would be helpful in a jurisdiction. The City of Long Beach used this approach in 2001 when it created an ethics task force that came back a year later with a series of recommendations on how to enhance the ethical climate in the city. This kind of entity is an information-gathering and advisory body. However, the city council made the ultimate decision on whether to adopt the measures recommended by the task force.

One advantage of having an ethics task force is that it brings the community's voice to the table about ethics in public service. Depending on the composition of the task force, the respect that task force members enjoy in the community can translate into community respect for the task force's proposals.

Types of Ethics Entities

The following nomenclature may be helpful to underscore the differing roles that ethics-related positions or bodies can play in an organization, although different organizations may use different terminology.

Ethics Task Force

A body convened by a local agency to accomplish a specific task relating to ethics, typically making policy recommendations on ways to enhance the culture of ethics in an agency. The task force is usually disbanded after it has made its recommendations or accomplished its task.

Ethics Committee

A standing body designed to be a source of advice on policy implementation and support for ethics within the agency. An ethics committee can also play an educational role within the agency and out in the community.

Ethics Hotline/Ombudsperson

A sounding board for public officials on public service ethics dilemmas. In the private sector, many large companies provide such a source of advice for their people. This kind of position can also play an educational and training role.

Ethics Commission

A standing body with delegated authority to interpret and enforce the jurisdiction's ethics regulations. An ethics commission can also play a role in training and education.

Other communities have an ethics committee. The committee is a group of individuals that provides advice and feedback on how to promote and enhance the city's ethics program. It can comprise members of the public, local officials or a combination of both. The City of Santa Clara's ethics committee, for example, is composed of the mayor and two council members, the city manager, city attorney, city clerk, chief of police and the city's ethics advisor. Other staff regularly attend. The meetings are open to the public, and the city posts meeting notices and mails them to those who wish to be notified.

An ethics commission is usually an in-dependent body that provides external oversight and enforcement of ethics laws.¹

In California, the state's Fair Political Practices Commission (FPPC) performs this role for state and local officials subject to the Political Reform Act. The FPPC regulates:

- Campaign financing and spending at the state and local levels;
- Financial conflicts of interest at the state and local levels;
- Lobbyist registration and reporting at the state level;
- Post-governmental employment at the state and local levels;
- Mass mailings at public expense at the state and local levels; and
- Gifts and honoraria given to public officials and candidates at the state and local levels.

A key goal of an ethics commission is to enhance public trust in the ethics enforcement process by assigning it to a quasi-independent entity.

Local agencies can have ethics commissions that are charged with enforcing and taking other actions with respect to local ethics laws. Such commissions may also provide advice regarding local ethics laws as well as offer training on such laws.

One question to ponder is whether your city or county needs additional ethics regulations (see "There Ought to Be a Law" at the bottom of this article). California already has a fairly complex array of ethics laws. For an overview of existing state and federal ethics laws, see A Local Official's Ethics Law Reference at www.ca-ilg.org/ethicslaws.

Common local ethics laws include laws that go beyond the minimum standards established in various state laws. These include laws that relate to campaign finance (contribution limits and public financing of campaigns), laws regulating lobbyists, open government or "sunshine" ordinances and more stringent gift rules.

Table 1. Ethics Commission Duties and Responsibilities

San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
<p>Upon a four-fifths vote of its members, commission may submit directly to voters any ordinance relating to conflict of interest, campaign finance, lobbying, campaign consultants or governmental ethics</p> <p>Commission serves as filing officer for state campaign statements</p> <p>Commission may adopt administrative regulations; regulations become effective within 60 days unless vetoed by a two-thirds vote of the board of supervisors</p> <p>Ethics commission authorized to hold hearings to determine whether an elective or appointed city officer warrants suspension or removal for acts of official misconduct</p>	<p>Administers and implements laws concerning campaign finance, lobbying, conflict of interest and governmental ethics</p> <p>Commission also serves as filing officer for campaign statements and is required to conduct audits of those statements</p> <p>Commission may investigate alleged violations of local and state law pertaining to campaign finance, lobbying, ethics and conflict of interest and report to appropriate authorities</p> <p>Commission must maintain a whistleblower hotline</p> <p>Commission authorized to adopt administrative regulations subject to council approval without modification</p> <p>Commission may issue written opinions and advice, the good faith reliance on which can provide immunity from or a defense to subsequent enforcement proceedings</p>	<p>Administers, monitors and enforces city-enacted laws concerning campaign finance, statements of economic interests, conflict of interest and gifts, lobbyist registration and other matters proposed by the commission and adopted by the city council</p> <p>Commission may investigate allegations of violations of city campaign and ethics laws</p>	<p>Monitors compliance with all city campaign and ethics laws</p> <p>Investigates allegations of violations of city campaign and ethics laws</p> <p>Makes recommendations to the city council on city campaign and ethics laws</p>	<p>Administers and enforces the Berkeley Election Reform Act</p> <p>Prescribes forms, publishes manuals and assists other city agencies in connection with the Berkeley Election Reform Act</p> <p>Commission may issue opinions, the good faith reliance on which can provide immunity from subsequent enforcement proceedings</p>	<p>Oversees compliance with all city campaign and ethics laws, including local "sunshine" ordinance, lobbyist registration act, public financing of campaigns, campaign finance act, etc.</p> <p>Makes recommendations to the city council on city campaign and ethics laws</p> <p>Imposes penalties and fines as provided for by ordinance</p> <p>Prescribes forms for reports, statements, notices and other documents related to campaign financing, conflict of interest, lobbying and ethics</p> <p>Sets compensation for the office of city council member, which is reviewed and adjusted annually</p> <p>Conducts investigations, audits and public hearings</p>

Tables provided courtesy of Oakland Ethics Commission

What Do You Want an Ethics Commission to Do?

If creating an independent, regulatory entity would meet your community's goal, the specific duties assigned to ethics commissions tend to fall into one or more of three categories:

1. Overseeing and enforcing local ethics laws and/or codes;
2. Providing advice to local officials on ethics and ethics laws; and
3. Training local officials on ethics and ethics laws.

Most ethics commissions tend to focus on ethics laws as opposed to ethics (values-based conduct that goes above and beyond the minimum requirements of the law). See Table 1 for a list of responsibilities of various ethics commissions in California.

However, one California community experimented with having an ethics commission that enforced its values-based ethics code. The code had examples of what conduct reflecting certain values -- such as fairness, trustworthiness, responsibility and respect -- did and did not look like. The task assigned to the ethics commission in that situation was to assess whether a given conduct fell into the "does not look like" category.

How Should Members Be Selected?

For an ethics commission to achieve the goal of promoting public confidence in its decision-making processes, it needs fair-minded and diligent members who are concerned with equitably enforcing its adopted ethics laws and requirements. This leads to the question of who appoints the members of the ethics commission. Table 2 illustrates how a number of jurisdictions have tried to achieve the goal of appointing fair decision-makers.

Public confidence in the commission's decisions is also enhanced if the commissioners are not participants in the political process that they are charged with regulating. For that reason, a number of jurisdictions impose restrictions on commissioners' participation in elections (see Table 2).

Table 2. Ethics Commission Composition and Restrictions on Commissioner Activities

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Commission Composition	Five members, each serving one six-year term Terms staggered annually	Five members, each serving a five-year term Terms staggered annually	Seven members, each serving up to two four-year terms Terms staggered	Five members, each serving up to two four-year terms Terms staggered	Nine members; each serving a single four-year term Terms staggered	Seven members, each serving a three-year term Terms staggered
Appointment	Appointed by mayor, board of supervisors, city attorney, district attorney and assessor	Appointed by mayor, city attorney, controller, president of council, and president pro tem of council	Appointed by mayor from a pool of candidates Each council member and city attorney nominates seven candidates Mayor's appointments subject to confirmation by city council	Appointed by two-thirds vote of city council	The mayor and each city council member appoint a commissioner Commission terms run concurrently with the elected official's term	Three members appointed by mayor Four members appointed by the entire commission
Qualifications	Mayor's appointee must have background in public records/public meetings; city attorney's appointee must have background in public ethics law; assessor's appointee must have background in campaign finance law; remaining two appointees must represent general public	Must be a registered voter	At least one member must have held elective public office; two must be lawyers; no more than three can be from the same political party Must be a registered voter	Must be a registered voter with some familiarity with campaign laws; one member must be a California attorney	Must be a registered voter	Must be an Oakland resident and registered to vote

Table 2 continued

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Restrictions	<p>Can't hold public office or be an officer of a political party</p> <p>Can't be a city employee, registered lobbyist or campaign consultant</p> <p>Can't participate in a campaign for city office, a ballot measure or publicly endorse a candidate or ballot measure</p>	<p>Can't hold public office or participate in an election campaign</p> <p>Can't run for public office within two years of a commission decision concerning that office</p>	<p>Can't make a financial contribution to, or publicly support or oppose, a candidate for public office</p> <p>Must agree not to run for elective office for 12 months after serving as a commissioner</p>	<p>Can't have a direct and substantial financial interest in any business, work or action by the city</p> <p>May not hold public office while a commissioner</p> <p>May not run for elective office for one year before or after serving on the commission</p> <p>May not endorse or work on behalf of any candidate while serving on the commission</p>	<p>Can't hold or seek election to public office or serve as an officer of any political party</p> <p>Can't participate in or contribute to a Berkeley election campaign</p>	<p>Can't be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city</p> <p>Can't seek election to any other public office or participate in or contribute to an Oakland municipal campaign</p> <p>Can't endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election</p>
Vacancies	<p>Vacancies filled by the appointing authority for the remainder of the term</p> <p>If less than three years remaining on the term, the appointee may serve a new six-year term</p>	<p>Appointments made within 30 days by the appointing authority to fill the unexpired term</p>	<p>Vacancies filled by the mayor from a pool of candidates submitted by each city council member and the city attorney</p>	<p>Appointments must be made within 60 days by the city council to fill the unexpired term</p>	<p>Appointments must be made within 30 days by the appointing authority to fill the unexpired term</p>	<p>A vacancy must be filled no sooner than 30 days and no later than 60 days from the date that the vacancy occurs</p>

What Powers Should the Ethics Commission Have?

Other key decisions that will have to be made in the process of creating an ethics commission are:

- What kind of power should the commission have?
- Will the commission have the power to investigate claims of violations? And
- Can it subpoena records and compel people to testify before the commission?

If the commission's primary function is to enforce ethics requirements, the commission will typically be given the power to impose penalties (usually fines) for violations of laws within its jurisdiction. It may also be given the power to issue orders compelling compliance with ethics laws or enjoining violations. Table 3 explains how various jurisdictions answer these questions.

Table 3. Ethics Commission Powers

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Enforcement Procedures	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential Commission can request appointment of a special prosecutor for criminal enforcement if the city attorney is conflicted	A comprehensive set of complaint procedures exists; investigations and preliminary consideration of complaints are confidential	City council adopts by resolution the commission's complaint procedures	The commission may investigate and hold hearings to determine violations of the Berkeley Election Reform Act Hearings are open to all interested persons	A comprehensive set of complaint procedures exists Changes to commission rules and procedures become effective within 60 days unless vetoed by two-thirds vote of the city council
Conflict With Other Laws		Ethics charter provisions prevail against conflicting local laws				
Subpoena	Yes	Yes	Yes	Yes	Yes	Yes
Laws Over Which the Commission Has Jurisdiction	Campaign Finance Reform Ordinance (includes public matching funds); Campaign and Government Conduct Code; Prohibition of False Endorsement in Campaign Literature Ordinance; Lobbyist Registration Ordinance; Sunshine Ordinance (partial)	Campaign Finance Ordinance (includes public matching funds); Governmental Ethics Ordinance; Municipal Lobbying Ordinance; Post-Employment Ordinance	Election Campaign Control Ordinance; Citywide Ethics Ordinance; Municipal Lobbying Ordinance	Citywide Ethics Code (includes campaign finance, lobbying, revolving door and gift limitations)	Berkeley Election Reform Act	Campaign Finance Act (OCRA); Ethics Code (for city council); Lobbyist Registration Act; Conflict of Interest Code; Sunshine Ordinance; Limited Public Financing Act; False Endorsement in Campaign Literature Act

What Resources Are Available To Support an Ethics Commission?

The commission will typically need staff to assist with its work. The Los Angeles Ethics Commission employs 31 people, but staffing levels vary. Table 4 shows how various ethics commissions are staffed and their associated budgets.

It's also important to understand that indirect costs will be associated with supporting an ethics commission. Ethics commission staff will likely work closely with the agency counsel's office and possibly with the agency auditor. For example, in Berkeley, the city clerk's office also provides administrative support to the ethics commission.

Table 4. Ethics Commission Staffing and Resources

	San Francisco Ethics Commission	Los Angeles Ethics Commission	San Diego Ethics Commission	San Jose Elections Commission	Berkeley Fair Campaign Practices Commission	Oakland Ethics Commission
Number of Staff (full-time equivalents)	12	31	6	No staff (city clerk's office provides administrative assistance as needed)	No staff (city clerk's office provides administrative assistance as needed)	20
Annual Budget	\$1,382,441	\$2,600,000	\$1,021,106	No separate budget	No separate budget	\$279,644
Commission & Staff Relations	Commission appoints and may remove the executive director at will Executive director has power to appoint and remove other commission employees City attorney is the commission's legal advisor	Commission appoints and may remove the executive director at will Executive director has power to appoint and remove other commission employees City attorney is the commission's legal advisor; however, commission may employ or contract staff counsel on matters involving the conduct of the city attorney, his or her office, or his or her election campaign	Commission appoints the executive director, subject to confirmation by the city council Executive director serves at the pleasure of the commission	Committee meetings staffed by the office of the city clerk City council has authority to retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints filed with the commission. The city council must appropriate funds for this purpose City attorney provides legal advice but does not participate in investigations or review of complaints	City provides the commission with staff who act in accordance with commission policies and regulations	City manager, or his or her designee(s), provides the commission with staff assistance as necessary to permit the commission to fulfill its functions and duties

Is an Ethics Commission Right For Your Jurisdiction?

A variety of decision-making processes are used to decide whether a community needs an ethics commission. Some jurisdictions assign the task of making recommendations on these issues to an ethics committee or task force. The task force's recommendations are presented to the city council or board of supervisors, who then evaluate whether these recommendations should be adopted, adopted with modifications or subjected to further study and analysis. In charter cities and counties, the proposal may be put before the

voters as a charter amendment. Voters can also use the initiative process to propose a matter for the ballot.

Another option is for community groups to collaborate with a local agency on a ballot measure. This hybrid approach helps create a proposal that reflects community concerns as well as the technical expertise of the public agency about how to craft a measure that addresses such concerns.

Conclusion

Local agencies have a number of tools available to them to promote a culture of ethics and compliance with ethics laws in their jurisdictions. An ethics commission is one such tool. Like all tools, there are tasks that ethics commissions can perform well, while other ethics-related functions may be better achieved by other measures. For more information about the range of tools available to local agencies to promote ethics in public service, visit the Institute for Local Government's Ethics Resource Center at www.ca-ilg.org/erc.

There Ought to Be a Law -- Wait, There Is One!

Sometimes a jurisdiction will find itself evaluating whether to form an ethics commission or other ethics-related entity when it is experiencing a scandal. Leaders may feel under pressure to "do something" to prevent future scandals. To respond effectively, it can be helpful to identify exactly what caused the scandal to occur and tailor the response accordingly.

Sometimes the scandal will be that someone is charged with violating an ethics law. Under such circumstances, the solution may not be more laws or even more law enforcement. The solution may be stepped-up training. Such training may be helpful if the prevailing sense is that someone made an ignorant mistake (either not knowing something was against the law or not realizing the consequences of getting caught). Greater attention to creating a culture of ethics within the jurisdiction and sensitizing the voters to the need for considering ethics as a criteria in elections may also be solutions (see "Santa Clara infuses Ethics Into Campaigns" regarding the city's "Vote Ethics" efforts).

In other cases, there may not have been a perceived violation of the law but a perceived lack of enforcement. If this is the situation, keep in mind that there may be multiple enforcement mechanisms. For example, the Political Reform Act allows for private enforcement if the Fair Political Practices Commission does not take action on a complaint. Moreover, under the federal law that protects the public's right to "honest services" from its public officials, many violations of state ethics laws can also be prosecuted by the U.S. Attorney's Office as a form of mail or wire fraud (or if money was involved, even income tax evasion).

Alternatively, the scandal may be that someone did not engage in conduct that should necessarily send them to jail or cause them to pay a fine; they just exercised very poor judgment. Or it could be a form of conduct that is very difficult to regulate (for example, issues related to free speech). This is where an aspirational, value-based code of ethics can help, particularly if it is accompanied by a well-defined, consistently implemented program to highlight the importance of the code as a guide for everyday conduct by public officials that reflects the community's expectations. Visit www.ca-ilg.org/ethicscodes for more information on this approach.

In short, it's important when facing demands that one "do something" about an ethics issue to choose a course of action reasonably tailored to fixing the problem that gave rise to the issue. Otherwise, one faces the specter of further erosions of the public's trust and confidence if a remedy, while well-intended, proves ineffective in preventing a repeat occurrence.

This piece originally ran in *Western City Magazine* and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

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Endnote:

¹ National Conference of State Legislatures, Ethics Committees and Ethics Commissions: What's the Difference? Available at http://www.ncsl.org/programs/ethics/whats_the_difference.htm.