

Elections Crisis
3/9/11
Item: VII. B

February 23, 2011

TO: San Jose Elections Commission

FROM: Michael A. Smith, Vice-Chair

SUBJECT: Revised Proposal for Elections Commission FY 2011-12 Workplan

The Elections Commission must develop a FY 2011-12 workplan to be submitted for approval by the City Council's Rules and Open Government Committee. As a follow-up to discussion at the February 9, 2011 commission meeting and a subsequent meeting with staff, I've revised the initial draft workplan and have attached it to this memo for your consideration.

The first page of the attachment documents the revised draft workplan using the template provided by staff. The second page lays out the specified actions along a timeline, which should be helpful when considering the application of resources. Since the beginning of the new fiscal year is still a few months away and there is no FY 2010-11 workplan, I've included the last three months of the current fiscal year in the FY 2011-12 workplan.

The first four objectives in the left column of the draft workplan were taken from the list of Elections Commission duties and responsibilities specified in Section 12.04.070 of the Municipal Code, while the last objective was derived from responsibilities assigned to the Elections Commission in Section 8 of Resolution 75091 (Sunshine Reform Task Force Recommendations). At least one action (middle column) has been listed for each objective.

In considering the first objective (monitoring compliance), I realized that, with the exception of the study where the Investigator was asked to compare lobbyist reports with Councilmember calendars and, indirectly, the MGT study, we haven't really done any active compliance monitoring in the four years I've served on the commission. Reviewing and investigating complaints could be viewed as passive compliance monitoring, but I'm proposing that we consider a more active approach. Personnel within the Clerk's office perform prima facie reviews of campaign disclosure statements and lobbyist reports, and my hope is that we can identify a means for capturing and reviewing basic data from these reviews regarding compliance issues and trends. The idea is to develop a monitoring process, conduct periodic reviews as compliance data becomes available and assess results and effectiveness of the initial reviews near the end of the fiscal year.

The second objective is the commission's "bread and butter" work of investigating alleged violations of Title 12 requirements. I'm proposing a turnaround goal of 30 calendar days, which is the same as the requirement imposed on the Evaluator by Resolution 75640. It could be argued that we should give ourselves a little more time, and we do need a few extra days to prepare for and conduct a hearing after the Evaluator submits the Report and Recommendations, but I recommend that we stick with 30 calendar days for consistency with the Resolution.

For the third objective (making recommendations to the City Council), the first action that comes to mind is the response to Council referrals. I'm proposing a turnaround goal of 120 calendar days for referrals. I don't know if that is exactly the right number, but it seems reasonable and I think it's important that we commit ourselves to some type of goal for timely action. I've also added a specific action for response to Council referrals resulting from the Mayor's Biennial Ethics Review since the general timing of this event is known in advance. The next three actions listed under this objective are steps in the process I've mentioned previously by which we would: (1) identify chapters or sections of Title 12 (e.g., Chapter 12.08, Prohibition of Gifts) that could use editorial "cleanup" for clarification, improved understanding or greater ease of use; (2) prioritize them; and (3) take action in one or two high priority areas (exclusive of regulatory policy issues). Suggested completion dates for these actions were selected to spread the work out over the fiscal year. Finally, the last action listed under this objective is the initial step in a process of studying and possibly recommending action on policy issues (e.g., internet campaign activities and "sponsored" legislation). The idea here is to identify and prioritize possible study areas, but to not take any further action until the next fiscal year.

The fourth objective, regarding settling of challenges, is something that hasn't come up during my tenure on the commission, but should be addressed with an "as required" action.

The fifth objective, regarding complaints alleging improper withholding of public records, results from implementation on a pilot basis of recommendations from the Sunshine Reform Task Force. This is relatively new responsibility, and a case hasn't yet come up, but it should be addressed with "as required" actions.

In summary, the draft FY 2011-12 workplan includes actions supporting Elections Commission duties and responsibilities in the following areas:

- self-initiated actions
 - active monitoring of compliance with regulations
 - "cleanup" of regulations
 - study of regulatory policy issues
- ongoing actions
 - evaluation of alleged Title 12 violations within 30 calendar days
 - response to Council referrals (including those resulting from the Mayor's Biennial Ethics Review) within 120 calendar days
 - challenges to decisions settled as required
 - response to public records complaints within 30 days

I suggest that we continue development of the FY 2011-12 workplan as a three-step process: (1) agree on objectives for the year; (2) develop a list of actions to be taken in furtherance of the stated objectives; and (3) lay out a schedule for completing the actions consistent with the availability of commission and staff resources over the course of the year. It's my hope that all three steps can be completed during the March 9, 2011 commission meeting using the revised draft workplan as a basis.

SAN JOSE ELECTIONS COMMISSION
Workplan for FY 2011-12

| Objective for FY 2011-12 | Actions | Timeframe |
|---|--|---|
| <p>Monitor compliance with all campaign and ethics ordinances in Title 12 of the Municipal Code</p> | <ul style="list-style-type: none"> - Develop process for identifying and monitoring Title 12 compliance issues and trends based on data gathered in the city clerk's prima facie review of campaign disclosure statements and lobbyist reports - Perform periodic compliance reviews as data becomes available - Assess results and effectiveness of initial compliance reviews and identify possible process revisions and/or follow-up actions | <p>Apr - Jun 2011 Jul '11 - Jun '12 Apr-May 2012</p> |
| <p>Review and investigate allegations of violations of Title 12 and take enforcement action where appropriate</p> | <ul style="list-style-type: none"> - Review and evaluate each allegation of a Title 12 violation per Resolution 75640 and take appropriate enforcement action within 30 calendar days | <p>Ongoing</p> |
| <p>Make recommendations to the city council with regard to campaign and ethics regulations and policies</p> | <ul style="list-style-type: none"> - Provide recommendation(s) within 120 calendar days for each campaign or ethics issue referred by the city council - Provide recommendation(s) within 120 calendar days for each issue identified in the mayor's biennial ethics review and referred by the city council - Conduct stakeholder outreach to identify specific Title 12 chapters or sections in need of revision for clarification, improved understanding or greater ease of use (exclusive of policy issues) - Evaluate results of stakeholder outreach and prioritize identified chapters or sections for review and possible revision - Review at least one high priority chapter or section and submit to the city council a draft ordinance with recommended revisions - Identify and prioritize areas of campaign and ethics regulations/policies to consider for self-initiated future study and possible action | <p>Ongoing Jan - Apr 2012 May - Aug 2011 Sep - Nov 2011 Dec '11 - Jun '12 Apr - May 2012</p> |
| <p>Settle challenges to commission decisions in accordance with Section 4.24.050 of Title 4</p> | <ul style="list-style-type: none"> - Settle challenges to commission decisions as required | <p>Ongoing</p> |
| <p>Respond to complaints alleging that public records or some parts of records are being withheld improperly</p> | <ul style="list-style-type: none"> - Review and evaluate each public records complaint as required and respond within 30 calendar days - If intentional or repeated public records violations are found, consider recommending corrective action to the appropriate council appointee | <p>Ongoing Ongoing</p> |

SAN JOSE ELECTIONS COMMISSION
Workplan Timeline for FY 2011-12

| ACTION | 2011 | | | | | | | 2012 | | | | | | | |
|---|---------|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|-----|
| | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun |
| Develop process for identifying and monitoring Title 12 compliance issues and trends based on data gathered in the city clerk's prima facie review of campaign disclosure statements and lobbyist reports | Ongoing | | | | | | | | | | | | | | |
| Perform periodic compliance reviews as data becomes available | Ongoing | | | | | | | | | | | | | | |
| Assess results and effectiveness of initial compliance reviews and identify possible process revisions and/or follow-up actions | Ongoing | | | | | | | | | | | | | | |
| Review and evaluate each allegation of a Title 12 violation per Resolution 75640 and take appropriate enforcement action within 30 calendar days | Ongoing | | | | | | | | | | | | | | |
| Provide recommendation(s) within 120 calendar days for each campaign or ethics issue referred by the city council | Ongoing | | | | | | | | | | | | | | |
| Provide recommendation(s) within 120 calendar days for each issue identified in the mayor's biennial ethics review and referred by the city council | Ongoing | | | | | | | | | | | | | | |
| Conduct stakeholder outreach to identify specific Title 12 chapters or sections in need of revision for clarification, improved understanding or greater ease of use (exclusive of policy issues) | Ongoing | | | | | | | | | | | | | | |
| Evaluate results of stakeholder outreach and prioritize identified chapters or sections for review and possible revision | Ongoing | | | | | | | | | | | | | | |
| Review at least one high priority chapter or section and submit to the city council a draft ordinance with recommended revisions | Ongoing | | | | | | | | | | | | | | |
| Identify and prioritize areas of campaign and ethics regulations/policies to consider for self-initiated future study and possible action | Ongoing | | | | | | | | | | | | | | |
| Settle challenges to commission decisions as required | Ongoing | | | | | | | | | | | | | | |
| Review and evaluate each public records complaint as required and respond within 30 calendar days | Ongoing | | | | | | | | | | | | | | |
| If intentional or repeated public records violations are found, consider recommending corrective action to the appropriate council appointee | Ongoing | | | | | | | | | | | | | | |