



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

**Date:** October 19, 2017

**To:** Members of the Ethics Commission

**From:** Kyle Kundert, Senior Policy Analyst

**Re:** **AGENDA ITEM 10 – Policy Report [Policy Plan – Legislative Tracker]**

**Summary:** This memorandum provides updates on ongoing policy initiatives, introduced and enacted legislation, and upcoming projects to assist the Commission, the public, and Staff in tracking pending projects and proposals for Fiscal Year 2017. The updated Annual Policy Plan follows as Attachment 1.

**Action Requested:** No action is required by the Commission, but Staff seeks the Commission's guidance and input on the schedule of the Commission's policy initiatives.

### **Monthly Update on Current Policy Initiatives**

**2017 San Francisco Anti-Corruption and Accountability Ordinance:** Since the Commission's September meeting, Staff continued to research several provisions of the draft ordinance based on the Commission's requests at the September meeting. A memorandum outlining the remaining provisions for discussion since the September meeting appears in Agenda Item 6.

**Form 700 – Non-voting Ordinance:** Upon a motion by Commissioner Kopp, the Commission requested staff to evaluate and provide draft language for the Commission on an ordinance that would restrict members of City boards and commissions from voting on substantive matters if those individuals have not timely filed a Statement of Economic Interest (FPPC Form 700). Such an ordinance was presented to the Commission at its August meeting as Agenda Item 6. The Commission voted to amend the ordinance by removing the exceptions contained therein. The Commission then voted to approve the ordinance as amended. Staff has made the relevant amendments to the ordinance, and the ordinance was introduced at the Board of Supervisors by Supervisor Peskin on October 3, 2017.

**Ethics and Sunshine training:** Currently, certain City officials and employees must complete an ethics and sunshine ordinance training. The ethics training, under California Government Code Section 53235, is required to be completed within one year of assuming office and again within two years of the last training. Under Administrative Code Section 67.33, officials and employees must attest, under penalty of perjury, that they have attended or will attend a

sunshine ordinance training session at least once annually. Commission staff is has proposed a revised schedule for the ethics and sunshine ordinance training that brings it into line with the current requirements for filing of the Form 700. The code section addressing the Form 700 filers requires individuals to complete the Form 700 within thirty days of assuming office and annually thereafter.

Through its review of the ethics and sunshine training provisions, Staff has proposed regulations that align the requirements of the ethics and sunshine training with the form 700 filing requirements to improve the administration of these programs and advance the educational and training outcomes these programs seek to accomplish. Staff has drafted initial regulations to carry out this change in the training requirements and has distributed these drafts to the City Attorney and the Department of Human Resources. A memorandum outlining the proposed regulations appears in Agenda Item 7.

E-filing Form 700 Project: In 2014, the Ethics Commission implemented mandatory electronic filing of the FPPC Form 700 for elected officials, department heads, and members of boards and commissions. Commission Staff is working on regulatory action to expand these electronic filing requirements to all City employees who file a Form 700. Currently, Staff is working to submit to the Commission a set of proposed regulations that will begin to implement and assist in the process of e-filing for all Form 700 filers. The proposed regulations will attempt to address gaps and inconsistencies for current e-filers in order to prepare for an eventual complete e-filing rollout.

Notice of Operative Legislation: On January 1, 2018, two new pieces of legislation will become operative, and both will create new rules that the Commission will enforce. Staff sent notices during the week of October 9<sup>th</sup> that informed interested persons of the major changes to existing law.

One of the new pieces of legislation is Ordinance 001-17, proposed by Supervisor Peskin. On January 10, 2017, the Board of Supervisors voted 11-0 to require behested payments reports by City Board and Commission members under certain circumstances. The ordinance was signed by the Mayor on January 20, 2017. As adopted, the ordinance requires members of boards and commissions who are required to file a Form 700 to disclose if they directly or indirectly request or solicit charitable contributions of \$1,000 from parties or participants (or their agents) while certain matters are pending before that commissioner's board. The disclosure requirement applies to both monetary and non-monetary contributions to a government agency, educational institution, and both 501(c) and Section 527 tax-exempt organizations.

The other new piece of legislation is Proposition T, approved by the voters of San Francisco in the November 2016 General Election. Proposition T will: ban lobbyists from making campaign contributions to elected officials at agencies the lobbyists are registered to lobby and to candidates seeking election to those offices; ban lobbyists from transmitting to those officials and candidates contributions collected from others, a practice commonly known as "bundling;" and, ban lobbyists from giving City officers gifts of any value, including gifts of travel, or making such payments through others.

## **Monthly Update on Legislative Items**

### **Local Legislation**

Supervisor Cohen Legislation: Supervisor Cohen introduced legislation on June 13, 2017 that would require the Commission to accept disclosures and enforce rules related to spending in races for the elected positions on the Health Services Board, Retirement Board and Retiree Health Care Trust Fund Board. On September 11, Staff sent a letter of comment to the Clerk of the Rules Committee conveying overall support of the intent and purpose of the legislation but also providing some considerations for the Board of Supervisors to strengthen the proposals, its implementation and enforcement. At its September 13 meeting, the Rules Committee voted to continue the matter. Staff is engaged in on-going discussions with Supervisor Cohen and the City Attorney's office relating to proposed changes to the ordinance.

Supervisor Kim Legislation: Staff has assisted in research and continues to participate in discussions with Supervisor Kim's office as part of the Supervisor's introduction of an ordinance proposing numerous amendments to CFRO. Supervisor Kim introduced that ordinance on July 26, 2017. The ordinance, as currently drafted, would require committees to 1) attest, under penalty of perjury, to the lack of any coordination with other committees; 2) require that the Voter Information Pamphlet note which candidates have agreed to voluntary spending limits; 3) clarify supplemental reporting for the public financing program; 4) require written disclaimers to appear in 14-point font; 5) require that disclaimers be included at the beginning of audio and video advertisements; 6) require that disclaimers include the top four donors to committees, if the donors have contributed \$20,000 or more; and 7) prior to each municipal election, require the Ethics Commission to distribute a pamphlet to San Francisco voters regarding third-party spending. Staff continues to work with the Supervisor's staff, other jurisdictions and subject matter experts to draft responsive and effective comments on the legislation.

### **State Legislation**

Each year, the California State Legislature and the San Francisco Board of Supervisors introduce, debate, and approve legislation to amend the Political Reform Act and local City ordinances, respectively. Staff has previously updated the Commission on individual pieces of legislation pending at either the State or local level. Attachment 2 to this report provides the Commission with a list of pending and passed legislation related to the Commission's areas of jurisdictional oversight.<sup>1</sup> The following provides a more in-depth analysis of three (3) bills passed at the State level, which will impact the Commission's enforcement and administration of local law.

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<sup>1</sup> The Commission has oversight, via San Francisco Charter Section 15.102, of "ordinances related to campaign finances, conflicts of interest, lobbying, campaign consultants and governmental ethics".

Chaptered Legislation: AB-249: AB 249 (the “Bill”) replaces AB 14 and is the new version of California *DISCLOSE* Act.<sup>2</sup> The Bill revises and amends language from 2016's AB 700 that were perceived as creating loopholes in previous versions of the legislation. The Bill, generally, changes the content and format of disclosure statements required on specified campaign advertisements in a manner that generally requires such disclosures to be more prominent. Further, the Bill establishes new requirements for determining when contributions are considered to be "earmarked."<sup>3</sup>

#### Key Provision(s)

The Bill has three key provisions:

- 1) Requires ads to show the three (3) largest funders of \$50,000 or more in large clear type on a solid background. The rule applies to all ballot measure ads and to ads about candidates paid for by outside groups.
- 2) On television and video ads disclosures must be shown on a solid black background on the bottom 1/3 of the screen for a full 5 seconds. Each funder must be clearly listed on a separate line in a large Arial font, and in easy to read mixed case (not all capital letters).
  - a. The rule applies to, print ads, mass mailers, robocalls, and online ads. Radio ads and robocalls must clearly name the two largest funders, as opposed to the three top funders for other ads.
  - b. The disclosure requirements do not apply if the mass mailing, mass electronic mailing, or telephone call is paid for by an independent expenditure.
- 3) Uses new earmarking rules to identify original donors of ballot measure ads so they have to display the true funders instead of misleading names even if funders try to hide behind multiple layers of organizations. The new rules also apply to independent expenditure ads when funders identify the specific committee that pays for the ad.

#### Impact on Local Law

Currently, City law requires, in Campaign and Governmental Conduct (C&GC) Code Sections 1.161-163, that certain committees include disclosures in political advertisements, including the name of the committee paying for the advertisement and the committee's major sources of funding. Commission Staff are continuing to evaluate what changes to City law may be necessary to avoid duplicative or conflicting laws. Staff is working to inform impacted parties of

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<sup>2</sup> The *DISCLOSE* Act was originally submitted to the California legislature in 2014/15 and again in 2016 as AB700. The Act advanced a strict regime for political advertisements to clearly state the source of the advertisement funding.

<sup>3</sup> An earmarked contribution is a contribution originally given to a political committee with instructions to designate, or “earmark”, that contribution for another political campaign.

the pending changes and is working with the Fair Political Practices Commission (“FPPC”) to send out a guidance document. The following items will impact current City law:

- 1) Cal. Gov. Code Sections 84501(c) and 84503 change the disclaimer requirements for advertisements paid for by recipient committees via independent expenditures. State law previously required that the top two contributors giving over \$50,000 be disclosed. AB 249 changed this to the top three contributors giving over \$50,000. This will impact San Francisco law, because C&GC Code Section 1.161(a)(1) makes reference to the Political Reform Act’s “two major contributor[]” requirement. This reference must be updated to reflect the change to three contributors.

Chaptered Legislation: AB-187: AB-187 requires a recipient campaign committee that makes contributions or independent expenditures of \$5,000 or more in support of or in opposition to the qualification of a single local initiative or referendum measure to file a campaign disclosure report, as specified.

Key Provision(s)

AB-187 has two key provisions:

- 1) Requires a recipient committee to file a campaign disclosure report each time it makes contributions totaling or independent expenditures totaling \$5,000 or more to support or oppose the qualification of a single local initiative or referendum measure within 10 business days of making the contributions or expenditures.
- 2) Requires the report to be filed with the local filing officer in the jurisdiction in which the local initiative or referendum measure has been proposed, and requires the report to include specified information, including information about the identities of contributors to the committee, and the amount they contributed to the committee, as specified.

Impact on Local Law

Currently, City law requires any committee raising or spending funds to support or oppose a measure during the circulation of the measure to file supplemental campaign statements with the Commission. Committees file supplemental campaign statements on the 5th and 20th day of every month in which a measure is circulating in the City, and on the 5th day of the month following the end of the circulation period if necessary to disclose contributions received or expenditures made during the signature-gathering period. AB-187 would require the disclosure of committee contributions made for the purpose of supporting or opposing the qualification of local measure each time a committee makes contributions or independent expenditures aggregating \$5,000 or more within ten (10) days of reaching the aggregated threshold.

Chaptered Legislation: AB-551: AB-551 prohibits certain former local government officials, for a year after leaving that position, from appearing before or communicating with their former agency, for compensation, as an independent contractor for another government agency.

Key Provision(s)

AB-551 contains a single key provision:

- 1) Prohibits a local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district, for a year after leaving that position, from appearing before or communicating with their former agency, for compensation, as an independent contractor for another government agency.

Impact on Local Law

Currently, City law prohibits any former officer or employee of the City and County, after the termination of their employment, from making communications with the intent to influence another City officer or employee. This prohibition lasts for one year after the termination of employment with the City and/or County. AB-551 would, arguably, extend the prohibition contained in San Francisco Government Ethics Ordinance Section 3.236 to include a prohibition on acting as an independent contractor on behalf of another government agency before that persons former or any other agency of the City and County.

Overview of Upcoming Projects

During the remainder of calendar year 2017, Staff will commence three long-term projects intended to improve the code sections and regulations that underpin the Commission's operation. These projects will run simultaneously to one another.

Review of Conflict of Interest Code: Staff will review the Conflict-of-Interest Code to identify areas for strengthening and updating. Most likely, this project will culminate in a proposed conflict-of-interest ordinance that Staff will present to the Commission.

Review of Campaign Finance Reform Ordinance Regulations: Staff will also review the regulations that accompany CFRO for the purpose of strengthening and updating those regulations. This project will also include the development of regulations to carry out the new requirements of the 2017 San Francisco Anti-Corruption and Accountability Ordinance, if that ordinance becomes law. Most likely, this project will culminate in a set of regulations that Staff will present to the Commission.

Review of the City's Public Financing System: Staff will review the City's public financing system to determine the current state of the system and whether the system continues to effectuate the purposes for which it was originally implemented. Many new public financing systems have been implemented and analyzed since the last review of the City's public financing system was completed in 2006 by graduate students at UC Berkeley's Goldman School of Public Affairs.

## San Francisco Ethics Commission - Annual Policy Plan

Fiscal Year 2018 (July 1, 2017 - June 30, 2018)

Policy Issue or Topic		July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
General	Policy Summit Convened by Ethics Commission											△	SR
	Annual Budget and Status Report											△	EC
	Policy Planning Project - Annual Policy Plan			IM									
Enforcement	Enforcement Regulations Project	SR	EC	SR		EC							
	Probable Cause Determination Process Review	SR	SR			EC							
Lobbying	Lobbying Code Review										△	SR	
	Lobbying Regulations Review												△
	Expenditure Lobbying Program Review										△	SR	
	Proposition T Regulation Implementation			△	SR		EC						
	Permit Consultant Program Review										△	SR	
Campaigns	Public Financing Program Review	SR	SR		SR		EC	SR	EC				
	CFRO Code Review and Revision	SR	EC	EC	EC	EC	BOS	EC					
	Slate Mailer Filings to Ethics Project	SR	SR										
	Behest Payment Disclosure Review				△	SR	EC						
	CFRO Regulation Review				△	SR	EC						
	Campaign Consultant Program Review										△	SR	
Ethics	E-filing for Form 700 Project	SR			SR					EC			
	Ethics Code Review				△	SR	EC	SR	EC				



Planned Project Start



Staff Review &amp; Public Comment



Before Commission



Before Board of Supervisors



Implementation



Tentative Dates