



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: November 20, 2017

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Policy Analyst

Re: **AGENDA ITEM 8 – Policy Report for the November 27, 2017 Meeting, Including Commission’s Policy Plan and Legislative Tracker**

Summary: This memorandum provides updates on ongoing policy initiatives, legislation, and upcoming projects to assist the Commission, the public, and Staff in addressing planned policy projects for Fiscal Year 2017. It includes the Annual Policy Plan as Attachment 1, updated for the month of November.

Action Requested: That the Commission review its planned and pending policy projects and take action to provide any further direction it may have regarding the priority level or scope of those projects.

This month’s Policy Report presents a slightly modified format to better assist the Commission in using this report as a tool to identify and prioritize the priority level of its planned policy work.

As shown below, updates about the Commission’s policy and legislative work now will be categorized into two sections.

Section I provides brief status reports about ongoing policy initiatives currently before the Commission, or that already have been acted on by the Commission. Where noted, these items also appear as a separate item on the Commission’s monthly agenda. Items noted in Section I are provided for informational purposes only and require no action by the Commission.

Section II is designed to inform the Commission about other planned or pending policy matters, or newly emerging items, to enable it to focus on the relative priority level or scope it desires for a particular issue or set of issues. Given the broad number of policy discussions that can be underway at any given time, Commission action to clarify its sense of priority for these items can be useful for planning purposes and to set expectations for when Staff and Commission focus on those matters may be likely. Where applicable, individual items may include a Staff recommendation to assist the Commission in determining how it would like to see items sequenced for its review and action.

I. Ongoing Policy Initiatives

2017 San Francisco Anti-Corruption and Accountability Ordinance (“AAO”). At the Commission’s October meeting, the Commission voted to approve the AAO with several amendments proposed by Vice Chair Chiu. Staff has worked with Commissioner Chiu to explore and draft those amendments. Staff is presenting a final draft of those amendments for the Commission’s consideration under Agenda Item 7.

Related Informational Item: Private Right of Action Provisions in Local law. During the Commission’s October discussion on the AAO, Commissioner Kopp requested that Staff compile a list of City laws that contain provisions allowing persons to impose a “private right of action,” that is, laws which create rights allowing private parties to bring a lawsuit. A list of those provisions is outlined below:

- Hotel Conversion Ordinance (Administrative Code Chapter 41.20(e))
- Residential Unit Conversion Ordinance (Administrative Code Chapter 41A.5(d))
- Rent Ordinance (Administrative Code Chapter 37.11A)
- Minimum Wage Law (Administrative Code Chapter 12R.7(c))
- Sick Leave Ordinance (Administrative Code Chapter 12W.8(c))
- Residential and Industrial Compatibility and Protection (Administrative Code Chapter 35.6(d))
- Administrative Code section 37.10B
- Housing Code section 503(d) [through section 204(d)]
- Admin Code Section 12V.5(h)
- Police Code, Art. 33B, Section 3300B.5
- Police Code, Art. 33E, Section 3300E.6(a)
- Police Code, Art. 33H, Section 3300H.8(c)(2)
- Police Code, Art. 43, Section 4304(b)
- Public Works Code, Art. 4.1, Section 139

Form 700 – Non-voting Ordinance. The Commission voted to amend and approve the ordinance at its August meeting, and the ordinance was introduced at the Board of Supervisors by Supervisor Peskin on October 3, 2017. Commission Staff proposed a further technical modification to the introduced ordinance to ensure that the Commission would maintain an updated database on its website regarding SEI filings. The technical modification was accepted and the legislation reintroduced, by Supervisor Peskin, on October 31, 2017.

Ethics and Sunshine Training. Commission Staff 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 Commission, by unanimous vote (5-0), at its October 23rd meeting, voted to approve the regulations as drafted. Commission Staff forwarded those regulations to the Clerk of the Board of Supervisors on October 24, 2017. The Board has sixty (60) days to accept or reject the proposed regulations.

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. Staff is developing, for the Commission's consideration, 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 to prepare for an eventual complete e-filing rollout.

II. Planned and Pending Policy Projects

A. Legislation

- 1) **Supervisor Cohen Legislation** (File No. 170738). 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.

Recommendation: No action necessary. Staff is monitoring.

- 2) **Supervisor Kim Legislation** (File No. 170868): At its regular meeting on November 27, 2017, the Commission will hear a presentation by Supervisor Kim (or staff) presenting a substitute draft of the Supervisor's proposed campaign finance legislation (File No. [170868](#)). In addition, Supervisor Kim has requested meetings with individual Commissioners in advance of the meeting to engage on the proposed changes. The Ordinance would amend the Campaign and Governmental Conduct Code to:

- 1) clarify that campaigns must disclose expenditures on social media;
- 2) require committees that make independent expenditures to disclose the original sources of their funds;
- 3) require candidates to attest to the lack of any coordination with other committees;
- 4) require that the Voter Information Pamphlet note which candidates have agreed to voluntary spending limits;
- 5) require the Ethics Commission to complete audits of candidate committees within 24 months;
- 6) modify disclaimer requirements;
- 7) specify filing requirements for social media advertisements; and
- 8) prior to each municipal election, require the Ethics Commission to distribute a pamphlet to San Francisco voters regarding third-party spending.

Recommendation: That the Commission request Staff to review the package of proposals and provide the Commission with its analysis and recommendations to assist the Commission in formulating its policy position on the legislation.

B. Other Planned Projects

Per the Commission's Annual Policy Plan during the remainder of calendar year 2017, Staff are preparing to begin three longer-term projects needed to update and improve various sections and regulations of the Campaign & Governmental Conduct Code that underpin several core programs and operations. As planned, these projects will run simultaneously to one another:

- 1) **Review of Conflict of Interest Code.** This project is planned to ensure key areas within the Conflict-of-Interest Code can be updated and strengthened. Most likely, this project will culminate in a proposed conflict-of-interest ordinance that Staff will present to the Commission.
- 2) **Review of Campaign Finance Reform Ordinance Regulations.** Regulations that interpret and implement CFRO are necessary to update and strengthen those regulations. This project will also likely include identifying and developing regulations to carry out the new requirements proposed in the Commission's *Anti-Corruption and Accountability Ordinance*, for when that ordinance becomes law. Most likely, this project will culminate in a set of regulations that Staff will present to the Commission.
- 3) **Review of the City's Public Financing System.** Analysis of the City's public financing system to determine what updates and improvements in warrants to improve candidate participation and therefore better support the policy goals for which it was established.

Recommendation: That the Commission proceed with these scheduled policy reviews to ensure it can formulate policy positions on these matters in early 2018.

C. Recently Identified Policy Projects

Several additional projects recently have been identified by individual Members of the Commission as matters of interest to be added to the Commission's policy agenda. They are:

- 1) **Social Media and Election Integrity.** At the October meeting, Commission Vice Chair Chiu requested that Staff research and potentially draft legislation to address concerns related to the use of social media to influence elections. Following a local op-ed by former Federal Election Commissioner, Ann Ravel, Staff and Commissioners Chiu and Lee met with Ravel to learn more about the issue and discuss potential options for addressing campaign integrity issues posed by social media platforms. In addition, Staff has begun compiling background information and broadly researching possible policy approaches with the goal of presenting the Commission with an update on the issues at the Commission's December 2017 meeting.

Recommendation: That the Commission proceed with scheduling a Staff update on the issues at its December 2017 regular Commission meeting.

- 2) **Misuse of Public Financing Funds (Supervisor Safai Proposal)** During the summer and again at the October meeting, Commissioner Kopp requested that Staff review and draft language regarding the misuse of public funds as proposed by Supervisor Safai. Staff has begun

compiling data and researching the policy implications of such a provision. As part of that work, Staff has conducted cross-functional meetings internally, and has reached out to other jurisdictions to identify processes in use elsewhere to vet the use of public funds and address misuse in those jurisdictions. Due to competing policy priorities, Staff has not yet identified gaps in current law or drafted its analysis of the proposed language.

Recommendation: That the Commission fold its analysis and review of this item into its review of the City's public financing program scheduled above under Section II Item B3.

- 3) **Prohibition on Use of "Cash-out Proceeds" (Supervisor Farrell Proposal).** At the October meeting, Commissioner Kopp requested that Staff review legislation to prohibit the use of "cash-out proceeds" for use in a political campaign. Staff has begun compiling data and researching the policy implications of such a provision. As part of that work to learn more about how funds are currently vetted, Staff reached out to the Mayor's Office of Housing and Community Development (MOHCD), which provided the following information about a current policy in place that office uses to restrict the use of excess proceeds:

"Cash flow is highly regulated by MOHCD and other lenders. Any surplus cash remaining after making industry-standard payments to the owner/operator goes to repay MOHCD's and other lenders' loans, as well as to make ground lease payments to MOHCD. No "cash-out" opportunities arise through cash flow." "Developers who partner with MOHCD are strictly regulated by a variety of lending entities in addition to MOHCD, and they must return all "excess cash" to MOHCD. Windfall cash extractions from cost savings during construction are not allowed."

In addition to the policies outlined above, San Francisco Administrative Code, Chapter 12G prohibits the use of public funds for political activity by recipients of city contracts, grants, and loans. The Controller is required to annual audit persons and/or entities that enter into contracts, grant agreements, or loan agreements with the City. Based on this initial analysis, it appears that further policy development by the Commission may not be warranted.

Recommendation: That the Commission table, or set aside, further review and analysis of this item pending completion of other priority projects as noted above.

- 4) **Sunshine Ordinance Task Force Removal.** At the October meeting, Commissioner Kopp requested that Staff research and potentially draft legislation to remove a provision of the City's Administrative Code that established the Sunshine Ordinance Task Force ("SOTF"). The Sunshine Ordinance Task Force was established by Chapter 67 of the San Francisco Administrative Code. The purpose of the Task Force is to protect the public's interest in open government and to carry out the duties enumerated in Chapter 67 of the San Francisco Administrative Code.

Recommendation: That the Commission table, or set aside, further review and analysis of this item pending completion of other priority projects as noted above.

- 5) **Independent City Attorney.** At the October meeting, Commissioner Kopp requested that Staff research and potentially draft a Charter Amendment to allow the Commission to appoint or otherwise hire its own independent legal counsel for the Commission. Staff previously updated the Commission regarding the possibility of independent legal counsel at its [June 2017 meeting](#). Staff has begun compiling information and researching the policy implications of such a change in preparation for an update to the Commission at its December meeting, as requested.

Recommendation: That the Commission proceed with scheduling a Staff update on the issues at its December 2017 regular Commission meeting.

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
	Sunshine Ordinance Task Force Removal Project				SR		EC						
	Commission Independent Counsel Project				SR		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	EC		SR						EC		
	CFRO Code Review and Revision	SR	EC	EC	EC	EC	BOS	EC					
	Slate Mailer Filings to Ethics Project	SR			SR								
	Social Media and Election Integrity Project				SR		EC	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	

△ Planned Project Start

IM Implementation

SR Staff Review & Public Comment
EC Before Commission
BOS Before Board of Supervisors

 Tentative Dates

Federal, State, or Local	Proposal or Bill (File#)	Sponsors	Date Introduced	Date Last Amended	Date Passed	Procedural Stage	Summary
Local	File No. 170868	Supervisor Kim	7/25/2017	7/25/2017			Ordinance amending the Campaign and Governmental Conduct Code to 1) require candidates to 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.
Local	File No. 170738	Supervisor Cohen	6/13/2017	6/13/2017			Ordinance amending the Administrative Code to require disclosure of candidate and third-party spending in Retirement Board, Health Service Board and Retiree Health Care Trust Fund Board elections ["Trustee Elections"]; set late filing fees and penalties for violations;
State	SB 651	Allen	2/17/2017	9/18/2017		Inactive	Would require that a state or local initiative, referendum, or recall petition that requires voter signatures and is paid for by a committee, as specified, to include a disclosure statement that identifies the name of the committee, any top contributors, as defined, and the date the top contributors to the committee were calculated. The bill would require that the disclosure be updated within 14 days of any change in the identities of the top contributors. The bill would require a committee that employs one or more paid circulators, as defined, to ensure that the paid circulators use petitions with the updated disclosure within 21 days.
State	AB 249	Gomez	1/30/2017	6/20/2017	10/7/2017	Chaptered	Current law, the Political Reform Act of 1974, provides for the comprehensive regulation of campaign financing and activities. The act requires a committee that supports or opposes ballot measures to name and identify itself using a name or phrase that clearly identifies the economic or other special interests of its major donors of \$50,000 or more. The act also requires that the identity of a common employer shared by major donors be disclosed. This bill would repeal these provisions. This bill contains other related provisions and other existing laws.
State	SB 226	Hertzberg	2/2/2017	8/21/2017	10/15/2017	Chaptered	The Political Reform Act of 1974 requires a slate mailer organization that sends a slate mailer or other mass mailing that identifies itself or its source material as representing a nongovernmental organization with a name that would reasonably be understood to imply that the nongovernmental organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, to disclose in the slate mailer or mass mailing must disclose the total number of members in the organization identified in the slate mailer or mass mailing. This bill, with regard to this category of slate mailers and mass mailings, would require the slate mailer organization to disclose on the mailing, in a specified format, whether the slate mailer organization represents public safety personnel.
State	AB 1333	Dababneh	2/17/2017	5/26/2017		Held Under Submission	Would require every local government agency that maintains an Internet Web site to prominently post on its Internet Web site, as specified, a notice of any upcoming election in which voters will vote on a tax measure or proposed bond issuance of the agency. The bill would also require every local government agency that publishes an electronic newsletter to include the notice in the electronic newsletter. By imposing new duties on local government agencies, the bill would impose a state-mandated local program.
State	AB 14	Gomez	12/5/2016	5/1/2017		Policy 1st House	The act requires a committee that supports or opposes ballot measures to name and identify itself using a name or phrase that clearly identifies the economic or other special interests of its major donors of \$50,000 or more. The act also requires that the identity of a common employer shared by major donors be disclosed.This bill would repeal these provisions.

Federal, State, or Local	Proposal or Bill (File#)	Sponsors	Date Introduced	Date Last Amended	Date Passed	Procedural Stage	Summary
State	SB 45	Mendoza	12/5/2016	7/17/2017	10/16/2017	Chaptered	The Political Reform Act of 1974 prohibits sending mass mailings at public expense. The act defines “mass mailing” as over 200 substantially similar pieces of mail not including form letters or other mail that is sent in response to an unsolicited request, letter, or other inquiry. An existing regulation adopted by the Fair Political Practices Commission prescribes criteria for mass mailings that are prohibited by the act and for mass mailings that are permissible under the act. This bill would codify this regulation. The bill would additionally prohibit a mass mailing from being sent, at public expense, within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot, except as specified.
State	AB 664	Steinorth	2/14/2017	4/18/2017		Policy 1st House	The Political Reform Act of 1974 prohibits a spouse or domestic partner of an elected officer or a candidate for elective office from receiving, in exchange for services rendered, compensation from campaign funds held by a controlled committee of the officer or candidate. This bill would extend this prohibition to also include a grandparent, sibling, child, or grandchild of an elected officer or a candidate for elective office.
State	AB 551	Levine	2/14/2017	4/18/2017	9/7/2017	Chaptered	The Political Reform Act of 1974 prohibits, for a period of one year after the official leaves his or her position, elected and other specified local officials who held positions with a local government agency, as defined, from acting as agents or attorneys for, or otherwise representing, for compensation, any other person, by appearing before, or communicating with, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency. Current law excludes from this prohibition appearances and communications by a board member, officer, or employee of another local government agency, or an employee or representative of a public agency, as specified, in which the individual is appearing or communicating on behalf of that agency. This bill would specify that the one-year prohibition applies to independent contractors of a local government agency or a public agency who are appearing or communicating on behalf of that agency.
State	AB 867	Cooley	2/16/2017	4/17/2017	10/13/2017	Chaptered	Would recast the provisions that define the term “contribution” for purposes of the Political Reform Act of 1974, including provisions describing behested payments that are not contributions and the reporting requirements for behested payments, as defined. The bill would also make technical, nonsubstantive conforming changes. This bill contains other related provisions and other existing laws.
State	AB 187	Gloria	1/19/2017	3/23/2017	9/7/2017	Chaptered	The Political Reform Act of 1974 provides that if a committee receives contributions totaling \$2,000 or more in a calendar year and is subject to a specified reporting requirement, that committee is required to file online or electronically with the Secretary of State each time it makes contributions of independent expenditures of at least \$5,000 to support or oppose the qualification or passage of a single state ballot measure. This bill would additionally require a committee to file a report each time it makes contributions or independent expenditures aggregating \$5,000 or more to support or oppose the qualification of a single local initiative or referendum ballot measure.
State	AB 1524	Brough	2/17/2017	2/17/2017		Policy 1st House	Would prohibit, within 90 days preceding an election, the sending of a mass mailing by either (1) a candidate, or on his or her behalf, if the candidate’s name will be on the ballot at that election, or (2) an agency, if a measure on the ballot at that election will have a direct financial impact on the agency, except as specified. This bill contains other related provisions and other existing laws.

[illegible]

<http://www.legislature.ca.gov/quicklinks/glossary.html>