



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

**Date:** December 13, 2017

**To:** Members of the Ethics Commission

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

**Re:** **AGENDA ITEM 7 – Policy Report for the December 18, 2017 Meeting,  
Including Commission’s Policy Plan and Legislative Tracker**

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**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 the year. 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.

Last month Staff introduced a revised Policy Report to better assist the Commission in using the report as a tool to identify and prioritize its planned policy work.

As a reminder, the Commission’s policy and legislative work is 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 action on those matters may be feasible.

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 (“Ordinance”).** At the Commission’s November meeting, the Commission voted to send the Ordinance to the Board of Supervisors. Staff submitted the Ordinance to the Board Clerk on Wednesday, December 5. The Clerk of the Board has processed the legislation which carries an introduction date of January 9, 2018. The ordinance will be submitted subject to the 30-day rule which requires the passage of thirty (30) days prior to the Board, or a committee thereof, holding a hearing on the Ordinance. The 30 days would elapse on February 9, 2017.

Ultimately, if the Commission were to place the Ordinance on the June Ballot it would be required to submit a resolution to the Elections Department after the Commission votes to do so by a 4/5 vote. That vote would need to occur prior to March 2, 2018, which is the deadline for the submission of ordinances. *San Francisco Municipal Elections Code* § 300(b).

Alternatively, placing the Ordinance on the November 2018 Ballot would require a 4/5 vote by the Commission no later than August 3, 2018. Under that scenario, the following Charter language may also have bearing:

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. (*Charter section 15.102, emphasis added.*)

Given this language, the Commission may wish to seek guidance from the City Attorney regarding whether action to place the Ordinance on the November Ballot would require the Commission to act *after* the deadline for submission of ballot questions for the June 2018 election.

**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. The ordinance is pending committee action but currently has no scheduled hearing date.

**Ethics and Sunshine Trainings.** Commission Staff proposed a revised schedule for the ethics and sunshine ordinance trainings that brings them into line with the current requirements for filing of the Form 700. The Commission, by unanimous vote (5-0), at its October 23<sup>rd</sup> meeting, voted to approve the regulations as drafted. 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. The Board’s last day to act on the regulations is December 23, 2017, if no action is taken by that time the regulations automatically take effect. Staff has been working to update the sunshine and ethics training forms and instructions into one comprehensive

document.

**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.

**Proposition T.** On November 8, 2016, the voters of the City and County of San Francisco passed [Proposition T](#). Proposition T becomes operative on January 1, 2018 and amends several provisions of the City's lobbying code. The law bans lobbyists from giving gifts or making contributions to certain City officials. Staff has been engaged in implementing an electronic filing database for use by all persons required to make filings under the new law. Staff is currently testing the disclosure database, which will be operational by the January 1, 2018 operative date of Proposition T.

**Behested Payment Ordinance.** On January 10, 2017, the San Francisco Board of Supervisors voted 11-0 to enact an [ordinance](#) requiring new reporting by City board and commission members of certain payments they request from persons with matters pending before their board or commission. The ordinance becomes operative on January 1, 2018. Staff has been working to update the instructions on the behested payment reporting form and has been providing informal advice on the process and procedures for City Officials to report their "behested" activity.

**Whistleblower Ordinance.** Following its review and analysis of the substantive recommendations contained in the 2014-2015 San Francisco Civil Grand Jury report, the Ethics Commission's proposed changes to strengthen and clarify the City's Whistleblower Protection Ordinance (WPO). The changes were adopted at its meeting on March 28, 2016, and were transmitted to the Board of Supervisors (BOS) on April 11, 2016. BOS President London Breed introduced the Ordinance as sponsor of the legislation on June 14, 2016 (File No.160689). Over a number of months subsequent to that into early 2017, the pending ordinance was further reviewed and revised with input by the Controller's Office Whistleblower Program and the Department of Human Resources. As part of those discussions, the City Attorney's office and Department of Human Resources (DHR) determined that the Ordinance is subject to meet and confer requirements with the City's bargaining units. That process is facilitated by DHR and in November 2017 was assigned to DHR's new Employee Relations Director for scheduling. Separately, under BOS Rule 3.41, President Breed confirmed filing the matter on October 2, 2017, due to six months or more of legislative inactivity. Staff will keep the Commission informed about the status and results of the meet and confer process and after that process has concluded.

## 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 ongoing 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 heard a presentation by Supervisor Kim presenting her campaign finance legislation (File No. [170868](#)). Supervisor Kim has met with several Commissioners and has meetings scheduled to meet with the remaining members of the Commission over the next several weeks. Staff is continuing to meet with Supervisor Kim's office and is preparing to review the draft legislation over the next several weeks in anticipation of amended Ordinance language being released in early 2018. 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 Staff continue 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 of the

Campaign & Governmental Conduct Code and accompanying regulations 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*, in the event that 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 is needed to determine what updates and improvements could improve candidate participation and therefore better support the policy goals for which it was established. Per the Commission's policy directive in November, this review will include a review of provisions that address the possible misuse of public financing.

*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 have been identified by 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 November meeting, the Commission recommended that Staff continue to review and potentially draft legislation to address concerns related to the use of social media to influence elections. Staff has begun compiling background information and is presenting the Commission with an update in Agenda Item 6.

*Recommendation: No action necessary. Staff continues to review the issues as part of an ongoing policy discussion this month under Agenda Item 6.*

- 2) **Prohibition on Use of "Cash-out Proceeds" (Supervisor Farrell Proposal).** At the November meeting, the Commission requested that, as part of their work to learn more about how funds are currently vetted, Staff reach out to the Mayor's Office of Housing and Community Development (MOHCD). Staff is working to schedule a meeting with the Commissioners and MOHCD officials.

*Recommendation: No action necessary. Staff will continue to work on scheduling a meeting with MOHCD, Staff and interested Commissioners.*

- 3) **Independent City Attorney.** At the November meeting, The Commission approved a recommendation to be updated on Staff's research and review of this item for the January Commission meeting.

*Recommendation: No action necessary. Staff is planning research and preparation of an Agenda item for the January 2018 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	
	Commission Independent Counsel Project					SR		EC					
	Policy Planning Project - Annual Policy Plan			IM									
Enforcement	Enforcement Regulations Project	SR	EC		SR		EC	BOS					
Lobbying	Lobbying Code Review										△	SR	
	Lobbying Regulations Review												△
	Expenditure Lobbying Program Review										△	SR	
	Proposition T Regulation Implementation			△		SR		EC					
	Permit Consultant Program Review												△
Campaigns	Public Financing Program Review								SR		EC		
	CFRO Code Review and Revision	SR	EC	EC	EC	EC	BOS	EC					
	Slate Mailer Filings to Ethics Project				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	

△ Planned Project Start  
 SR Staff Review & Public Comment  
 EC Before Commission  
 BOS Before Board of Supervisors

IM Implementation  
 Tentative Dates

Federal, State, or Local	Proposal or Bill (File#)	Sponsors	Date Introduced	Date Last Amended	Date Passed	Procedural Stage	Summary
Local	<a href="#">File No. 170868</a>	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	<a href="#">File No. 170738</a>	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	<a href="#">SB 651</a>	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	<a href="#">AB 249</a>	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	<a href="#">SB 226</a>	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	<a href="#">AB 1333</a>	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	<a href="#">AB 14</a>	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	<a href="#">SB 45</a>	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	<a href="#">AB 664</a>	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	<a href="#">AB 551</a>	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	<a href="#">AB 867</a>	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	<a href="#">AB 187</a>	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	<a href="#">AB 1524</a>	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]