



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

**Date:** January 16, 2018

**To:** Members of the Ethics Commission

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

**Re:** **AGENDA ITEM 8– Policy Report for the January 19, 2018 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 January.

**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.

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.

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## 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 was submitted, on January 9, 2018 to the Rules Committee, 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. At the urging of Chair Keane and Vice-Chair Chiu Staff requested that the 30-day rule be waived by Board President Breed so that the Rules Committee could act on the Ordinance at the earliest possible date. Staff is working with Board President Breed and Rules Committee Chair Safai to determine a date that the Ordinance could be scheduled for action. The Rules Committee next meets on Wednesday, January 17. The Rules Committee meets bi-monthly on the first and third Wednesday of the month.

**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 was assigned to the Rules Committee and is pending committee action but currently has no scheduled hearing date. The Rules Committee next meets on Wednesday, January 17.

**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 rules went into effect on December 23<sup>rd</sup>, 2017. Staff finalized training forms and instructions the week of December 25th. Staff is working on a finalizing an education and training schedule to ensure compliance with the new 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 developed a proposed regulation that will begin to implement and assist in the process of e-filing for all Form 700 filers. The proposed regulation comes before the Commission today as Agenda Item 7. The proposed regulation addresses gaps discovered by Staff for current e- filers and prepares the Commission and Staff 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 implemented an electronic filing database for use by all persons required to make filings under the new law. Staff rolled out the disclosure database the week of January 1, 2018. Staff continues to notify regulated persons and is working to update and provide training materials impacted by the law.

**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 developed a proposed regulation that will require behested payment reports to be submitted electronically as required in the ordinance and in conformance with the Commission policy. The proposed regulation comes before the Commission today as Agenda Item 6. Staff has finalized instructions for submitting the behested payment report and is finalizing an electronic reporting system pending the Commission's approval of the regulation above.

**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 several 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.

The Commission, at its December 2017 meeting, expressed an interest in placing a WPO on the June 2018 Ballot. The Commission asked the City Attorney's office to determine whether the Commission could place a WPO on the June 2018 Ballot. Commission Chair, Peter Keane, asked that an update be given to the Commission on the status of the WPO for the January 2018 Commission meeting. Staff, via Agenda Item 4, has outlined the changes made to the WPO since the Commission's approval in March 2016 and asks the Commission to review the amendments pending further Commission action.

## 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 confirmed, the week of January 8, 2018, that the legislation is still pending re-drafting by the City Attorney's based on Staff's letter of September 11.

*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](#)). Staff, at the request and approval of Chair Keane and Vice-Chair Chiu, submitted to Supervisor Kim, on December 29, 2017, a letter outlining the Commission's research, issues, and open questions with the current version of the ordinance. Commission Staff is continuing to monitor the legislation and is working with the Supervisor's office to schedule in-person meetings related to Staff's memorandum.

*Recommendation: No action necessary. Staff is monitoring.*

### B. Other Planned Projects

Per the Commission's Annual Policy Plan during calendar year 2018, 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. Staff is currently recommending that this project tentatively begin on April 1, 2018.
- 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. Staff is currently recommending that this project tentatively begin on February 1, 2018.

*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 December meeting, Commission Staff updated the Commission on its progress in reviewing current issues related to the use of social media in elections. The Commission relayed at the December meeting that they would like Staff to continue its research on this issue and potentially convene a forum of subject matter experts to discuss this issue further. Staff has begun compiling background information and will present the Commission with an update at the Commission February meeting.

*Recommendation: No action necessary. Staff continues to contact interested persons, subject matter experts and review relevant research. Staff will provide an update at the Commission's February meeting.*

- 2) **Prohibition on Use of "Cash-out Proceeds" (Supervisor Farrell Proposal).** Commission Staff scheduled a meeting with the Mayors Office of Housing and Community Development ("MOHCD") and Commissioner Kopp to discuss MOHCD's policies and rules related to the use of cash-out proceeds.

*Recommendation: No action necessary. Staff and Commissioner Kopp met with MOHCD on January 12. Staff awaits Commission direction.*

- 3) **Independent City Attorney.** At the November meeting, The Commissioner 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 awaits Commission direction.*

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						
	Policy Planning Project - Annual Policy Plan			IM									
Enforcement	Enforcement Regulations Project	SR	EC		SR		EC	EC	BOS				
Lobbying	Lobbying Code Review												△
	Lobbying Regulations Review												△
	Expenditure Lobbying Program Review												△
	Proposition T 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	BOS	EC				
	Slate Mailer Filings to Ethics Project				SR								
	Social Media and Election Integrity Project				SR		EC	SR	EC				
	CFRO Regulation Review										△	SR	
Ethics	Campaign Consultant Program Review												△
	E-filing for Form 700 Project		SR				SR				EC		
	Ethics Code Review												△

△ 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 Passed	Procedural Stage	Summary
Local	<a href="#">File No. 170868</a>	Supervisor Kim	7/25/2017		Pending Committee Action	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; This ordinance contains other related provisions and other existing laws.
Local	<a href="#">File No. 170738</a>	Supervisor Cohen	6/13/2017		Pending Committee Action	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="#">AB 664</a>	Steinorth	2/14/2017		1/11/2018 - Read second time and amended.	Would prohibit a parent, grandparent, sibling, child, or grandchild of an elected officer or a candidate for elective office from receiving, in exchange for goods, services, facilities, or anything of value other than money rendered, compensation from campaign funds held by a controlled committee of that officer or candidate which exceeds the fair market value of that item.
State	<a href="#">AB 774</a>	Harper	2/15/2017		Reconsideration granted - No date set	The Political Reform Act of 1974 prohibits a foreign government or principal, as defined, from making a contribution or expenditure in connection with a ballot measure. The act also prohibits a person or committee from soliciting or accepting a contribution from a foreign government or principal for this purpose. This bill would expand the scope of these prohibitions by also prohibiting a government, principal, or national from making a contribution or expenditure, and a person or committee from soliciting or accepting this type of contribution, in connection with an election.
State	<a href="#">AB 1524</a>	Brough	2/17/2017		Reconsideration granted - No date set	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.
State	<a href="#">SB 529</a>	Nguyen	2/16/2017		Reconsideration granted - No date set	Current law requires filing officers to hold nomination documents and signatures in lieu of filing fee petitions for a specified time. Current law limits public access to these documents and allows only for the public to view them.This bill would require that nomination documents and signatures in lieu of filing fee petitions be furnished promptly upon request, and it would clarify that a member of the public need not request these records pursuant to the California Public Records Act.
Local	<a href="#">171066</a>	Peskin (o/b SFEC)	10/31/2017		Pending Committee Action	Ordinance amending the Campaign and Governmental Conduct Code to disqualify members of City boards and commissions who have not filed their Form 700s (Statements of Economic Interests), Sunshine Ordinance Declarations, and Certificates of Ethics Training from participating in or voting on matters before their boards and commissions, and to modify the Ethics Commission’s reporting requirements regarding the filing of Form 700s.
Local	<a href="#">180001</a>	SFEC	1/9/2018		Pending Committee Action	Ordinance amending the Campaign and Governmental Conduct Code: Anti-corrutpion and Accountability Ordinance: