



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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**Date:** May 3, 2018

**To:** Members of the Ethics Commission

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

**Re:** **Agenda Item 7 – Introduction of Proposed Policy Prioritization Plan.**

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**Summary:** This memo provides information regarding a proposed Policy Prioritization Plan for the Ethics Commission beginning in FY2018. This new plan, if adopted, would replace the Annual Policy Plan that was in place for FY2017.

**Action Requested:** That the Commission discuss, prioritize its policy priorities as identified in the table in Attachment 1, and adopt a Policy Prioritization Plan at its May 7 meeting for the fiscal year that begins July 1, 2018.

### I. Background

The San Francisco Charter provides, in part, that the Ethics Commission “shall have responsibility for the impartial and effective administration and implementation of the provisions of this charter, statutes and ordinances concerning campaign finance, lobbying, conflicts of interest and governmental ethics.”<sup>1</sup> In addition, the Charter vests the Commission with responsibility

“[t]o make recommendations to the mayor and the board of supervisors concerning (a) campaign finance reform, (b) adoption of and revisions to City ordinances [sic] laws related to conflict of and lobbying laws and governmental ethics and (c) the submission to the voters of charter amendments relating to campaign finance, conflicts of interest and governmental ethics. The Commission shall report to the board of supervisors and mayor annually concerning the effectiveness of such laws.”

In the Commission’s *Blueprint for Accountability*, its budget request for FY2017 and 2018, the Commission identified several overarching priorities going forward, including a strengthened policy focus. This approach recognizes that fully achieving the voters’ mandate requires regular, rigorous assessments of existing laws and their impact, and addressing timely any emerging policy issues through effective legislation and regulation.

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<sup>1</sup> SAN FRANCISCO CHARTER § C3.699-10.

As part of the Commission's heightened policy focus, the Commission's policy division has worked to deepen policy engagement with interested persons, elected officials, and the regulated community in the evaluation and development of policies and regulations. As part of that deeper engagement, the Commission has directed the policy division to embark on numerous policy reviews and programmatic evaluations over the course of the last fiscal year. In order to better balance the policy priorities of the Commission and to better engage the public and other stakeholders, the Commission has recently asked Staff to formulate and rework the Commission's strategic planning and management materials.

In particular, at its March 16<sup>th</sup> meeting, the Commission expressed an interest in Staff reconsidering the presentation and priority of the Commission's proposed and ongoing policy projects. Currently, to help manage the volume and flow of the Commission's policy work over the course of a fiscal year, the Commission had adopted an Annual Policy Plan ("APP"). As part of the Commission's heightened policy focus, the APP was meant to provide transparency and accountability over the Commission's policy objectives and deepen policy engagement with the public. However, ongoing Board sponsored legislative action, Commission directed research, and previously identified programmatic reviews have quickly scaled up the number and scope of the Commission's ongoing and planned policy projects. Because of that increased volume and in order to better meet the Commission's goal of being responsive to interested persons, the regulated community, and elected officials, the Commission proposed that Staff consider adopting a new strategy for the Commission to consider its policy priorities. In completion of that request, Staff has adopted a new template document for the Commission to consider. That document appears as Attachment 1 to this memo.

## **II. General Features of Policy Prioritization**

To help manage the volume and flow of the Commission's policy work over the next year, this memorandum suggests the adoption of a Policy Prioritization Plan that will succeed the Annual Policy Plan in place for FY 2017. The Policy Prioritization Plan includes:

- items the Commission identified in its discussions about its desired policy agenda from previous years that have not yet been completed;
- items initiated by elected officials or members of the public requesting the Commission's policy action and/or input;
- items Commissioners have identified for research and/or evaluation as also warranting review; and
- items Staff have identified as warranting review.

In considering how to distinguish among matters the Commission wishes to prioritize for the coming year – and how that work should be sequenced, all things being equal – several guiding principles to consider are:

- the most significant areas of policy most overdue for examination;
- current programs or policies most in need of evaluation to identify effectiveness gaps;
- relevant emerging issues not yet addressed by existing policies;
- identified legal or policy gaps where the risks posed by those gaps are greatest;

### III. Elements of the Policy Prioritization Plan

A proposed Policy Prioritization Plan appears as Attachment 1. It is designed to illustrate the range of policy issues identified as desired by the Commission, stakeholders, and Staff. It also proposes a rough schedule (or priority) for the sequencing of these issues for the remainder of FY2017 through FY2018. As a planning tool, it is premised on three key goals:

*Advancing the Commission's proactive, independent policy role.* Through its role administering programs, advising and educating about compliance, and auditing and enforcing the laws, the Commission has a critical perspective on when and where the laws may need strengthening to ensure they are effective. An annual process for the Commission to identify the programs and policies most in need of attention will help regularize its processes for ensuring effective legislation and regulation.

*Predictability for Improved Policymaking.* An annual, planned policy agenda can help the general public and those who follow the Commission's policy work to engage effectively on issues they care about. Such a plan can help focus time and efforts on upcoming discussions by providing predictability about when they are likely to be scheduled for review and analysis, Staff outreach and Interested Persons meetings, and consideration by the full Commission. It also can help improve methods and timeframes for public engagement by enabling discussion about information the Commission is seeking, or should be seeking, to promote robust policy discussions.

*Flexibility.* As with any plan, some flexibility is needed to allow for unanticipated isolated projects. This is particularly the case when issues emerge with time sensitivity. Ensuring the Commission can contribute most effectively in shaping public policy demands that its policy priorities allow the scope and pace of its work to adapt when needed. Two items that will continually appear as top priority issues and will require flexibility are *legislative directed action* items and *Commission driven research projects*. Recent items that illustrate this are measures proposed by Supervisors Kim and Cohen regarding campaign activity and research projects directed by the Commission, such as the *Independent Counsel* project or *Online Political Communications* project.

The prioritizing plan generally has three distinct types of policies or projects that the Commission will evaluate, those are:

*Code or Regulation Reviews.* These reviews consist of legal and policy evaluations of an entire set of codes or regulations (e.g., Campaign Finance Reform Ordinance and Campaign Finance Regulations). These reviews are meant to be comprehensive and may identify a broad range of issues from legality concerns to improper cross-references or other syntax issues.

*Program Reviews.* These reviews consist of evaluation of new or existing programs within a subset of a given Code section (e.g., the expenditure lobbying program as a subset of the Lobbying Code). These reviews are meant to evaluate the efficiency and effectiveness of new or existing programs and identify issues regarding compliance burden, effectiveness, enforceability, and related aspects. Staff has identified several programs that require evaluation to determine continued usefulness.

*Individual Project Evaluations.* These projects are isolated legislative directed/required reviews or Commission directed research projects (e.g., campaign finance legislation sponsored by Supervisor Kim

via Ordinance No. 170868). These evaluations can range in time and scope depending on the facts, complexity, and time sensitivity of each issue.

Lastly, to support these aims, the Commission may wish to initiate a practice of gauging the priority level it wishes to assign to policy matters it considers. Whether formal or informal, developing and communicating to Staff and the public how the Commission will prioritize issues can help support continuity and predictability in the work it has planned, while also providing flexibility for incoming matters that may not have been anticipated. To help with this process, Staff has provided a grading system for the prioritization of projects. The grading is based on two factors (Impact and Urgency/Timeliness) scaled from least to most vital on a 1 – 10 numerical scale. For example:

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date ("TAD"))
1	<b>Ongoing Policy Projects</b>			
1	<b>Public Financing Program Review:</b>  Issue - Deepen impact of laws through a robust advice function - Improve transparency and knowledge-sharing to heighten understanding of the laws - Clarify applicable processes, and timeframes where appropriate, to encourage advice-seeking - Ensure standardized approaches to support consistency in advice  Approaches - Understand what candidates find most challenging - Evaluate elements of successful programs in other jurisdictions - Review and strengthen effectiveness of processes and timeframes - Revisit grant and matching formulas - Develop improved tools and resources to support candidate	9	8	6+ Months: Deliver update at 3 months; Second update at 6 months; any proposed legislative or regulatory action following second update. TAD 11/18.
2	<b>Advice Regulations Project:</b>  Issue - Deepen impact of laws through a robust advice function - Improve transparency and knowledge-sharing to heighten understanding of the laws - Clarify applicable processes, and timeframes where appropriate, to encourage advice-seeking - Ensure standardized approaches to support consistency in advice  Approaches - Evaluate elements of successful programs in other jurisdictions or agencies - Clarify standards for different request types and legal protection afforded	7	9	3-6 Months: Update at 3 months; proposed Commission action at 6 months. TAD 7/18.

Staff looks forward to the Commission's discussion of these issues and to its consideration of the Policy Prioritization Plan as proposed for the fiscal year beginning July 1, 2018.

## Agenda Item 7 | Attachment 1 | Policy Prioritization Plan

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1	<b>Ongoing Policy Projects</b>			
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2	<b>Advice Regulations Project:</b>  Issue - Deepen impact of laws through a robust advice function - Improve transparency and knowledge-sharing to heighten understanding of the laws - Clarify applicable processes, and timeframes where appropriate, to encourage advice-seeking - Ensure standardized approaches to support consistency in advice  Approaches - Evaluate elements of successful programs in other jurisdictions or agencies - Clarify standards for different request types and legal protection afforded	7	9	3-6 Months: Update at 3 months; proposed Commission action at 6 months. TAD 7/18.

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
3	<b>Ongoing Legislative Reviews:</b>  Issue - Ensuring responsiveness to legislative action on subject matters within the Commission's jurisdiction - Support development of strong, workable, and enforceable laws by engaging effectively in legislative development and action  Pending Reviews - Supervisor Kim (File No. 170868) - Supervisor Cohen (File No. 170738) - Supervisor Breed (File No. 180317)	N/A	N/A	N/A: Legislative reviews are highly dependent on the individual legislation requiring review.

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
4	<p><b>Commission Research Requests:</b></p> <ul style="list-style-type: none"> <li>- Requests by individual Commissioners seeking Staff research and legislative language on several projects in FY2017-18 have included:</li> <li>- possible regulation of County Central Committee Regulation</li> <li>- moving Whistleblower Program from Controller to Ethics</li> <li>- development of disclosure approaches for Online Political communications</li> <li>- creation of Independent Counsel for Ethics Commission</li> </ul> <p>Issues</p> <ul style="list-style-type: none"> <li>- Ensuring responsiveness to Commissioners' policy interests while also ensuring policy resources remain aligned with expectations the Commission as a body has expressed collectively as its policy priorities</li> </ul> <p>Approaches</p> <ul style="list-style-type: none"> <li>- Use Commission's regular agenda item for identifying items for future Commission meetings to identify individual Commissioner requests and place those items on the next meeting agenda for the Commission to prioritize as a body.</li> </ul>	N/A	N/A	N/A: Commission requests are highly dependent on the individual action requiring review.
5	<p><b>CFRO Regulations Review:</b></p> <p>Issue</p> <ul style="list-style-type: none"> <li>- new changes to Code require review and possible further definition, interpretation and guidance</li> <li>- regulations should reflect changes in relevant case law and state laws</li> </ul> <p>Approaches</p> <ul style="list-style-type: none"> <li>- review regs to ensure compatibility with current laws</li> <li>- Identify regs impacted by recent legislation</li> </ul>	8	8	3-6 Months: Update at 3 months; proposed Commission action at 6 months. TAD 11/18.



Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
6	<b>Online Political Communications/Social Media:</b> Issue - The increased use of online platforms (particularly social media) for political advertising represents a unique and emerging problem for tracking and auditing political activity.  Approaches - review current impact of online political activity in the City - potential policy hearing to learn from experts in the field - potential legislation to address any identified loopholes in City law	7	7	6+ Months. TAD 9/18.
7	<b>Pending Policy Projects</b>			
7	<b>Governmental Ethics - Conflict of Interest Code Review:</b>  Issue -The Commission has not embarked on a comprehensive review of conflict of interest program. Staff and stakeholders have identified areas that warrant clarification and review.	8	6	6+ Months
8	<b>Financial Disclosure Biennial Code Review:</b>  Issue - The Commission is required, by State law, to review the provisions of their financial disclosure law on a biennial basis. The next required review is during calendar year 2018.	5	9	3-6 Months

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
9	<b>Lobbying Code Review:</b>  Issue - The Commission has not embarked on a comprehensive review of the lobbying program. Staff and stakeholders have identified areas that warrant clarification and review.	8	5	6+ Months
10	<b>Expenditure Lobbying Program Review:</b>  Issue - The expenditure lobbyist program was enacted by Proposition C (2016). The Commission should review the initial data compiled since the programs inception.	6	5	0-3 Months
11	<b>Commission Independent Counsel Project:</b>  Issue - The Commission has identified concerns with having outside counsel represent and consult the Commission given the Commissions unique duty to review the activities of public officials and employees. It has expressed interest in other models.	8	3	0-3 Months

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
12	<b>Permit Consultant Program Review:</b>  Issue - The Permit Consultant program was added by Ordinance 98-14. No significant review of the program has been initiated since its inception.	6	5	0-3 Months
13	<b>E-filing Financial Disclosure Project:</b>  Issue - The Commission has expressed its continuing support for disclosure forms submitted in an electronic format to increase accountability and transparency and ease filer compliance. This project would allow for financial disclosure statements for all designated filers in the City to be filed electronically using the Commission's online filing process.	7	4	6+ Months
14	<b>Campaign Consultant Program Review:</b>  Issue - The Campaign Consultant program was instituted by Ordinance No. 71-00. The program hasn't been significantly reviewed since 2014, with amendments being proposed, but not adopted, in 2011 and 2010.	6	5	0-3 Months

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
15	<b>Developer Disclosure Program Review:</b>  Issue - The Developer Disclosure program was added by Ordinance 98-14. No significant review of the program has been initiated since its inception.	6	5	0-3 Months
16	<b>Behest Payment Disclosure Program Review:</b>  Issue - The Behest Payment Disclosure Program was added by Ordinance 1-17. The Commission has expressed an interest in the continuing evaluation of behested payments for potential future legislative action.	8	1	0-3 Months
17	<b>Sunshine Ordinance Task Force Removal Legislation Project:</b>  Issue - The Sunshine Ordinance was added by Ordinance 265-93 and significantly amended by Proposition G (1999). The Commission has expressed an interest in repealing the provisions of the Sunshine Ordinance that establish the Sunshine Ordinance Task Force in favor of the Ethics Commission or other City body.	8	1	6+ Months

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
18	<b>Governmental Ethics - Conflict of Interest Regulation Review:</b>  Issue - Staff could not identify when the last review of the conflict of interest Code had occurred. Recent law changes at the State and local level require the Commission to embark on a review of current regulations.	8	1	3-6 Months
19	<b>Whistleblower Program to Ethics Commission Jurisdiction Project:</b>  Issue - Commissioner Kopp expressed an interest in repealing the provisions of the Whistleblower Ordinance that gives the Controller's Office the power to review certain whistleblower actions in favor of the Ethics Commission or other City body.	8	1	6+ Months
20	<b>Lobbying Regulations Review:</b>  Issue - Staff could not identify when the last review of the Lobbying Code had occurred. Recent law changes at the State and local level require the Commission to embark on a review of current regulations.	7	1	3-6 Months

Priority	Project	Impact	Urgency/ Timeliness	Proposed Project Timeframe (Target Action Date)
21	<b>Slate-Mailer Project:</b>  Issue - Disclosures of slate-mailers, defined and regulated under State law, are currently filed with the Elections Department. Because slate-mailers are largely campaign-related, they are likely more appropriately handled by the Ethics Commission.	5	1	6+ Months