



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: May 3, 2018  
To: Members of the Ethics Commission  
From: Kyle Kundert, Senior Policy Analyst  
Re: **AGENDA ITEM 9 – Policy Report for the May 7, 2018 Meeting, Including Commission’s 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 May.

**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.

### I. Ongoing Policy Initiatives

**2017 San Francisco Anti-Corruption and Accountability Ordinance (“Ordinance”).** (File No. 180280) Following the April 3, 2018 Special Joint Meeting of the Board of Supervisors and

Ethics Commission, the Ethics Commission voted at its April 18, 2018 Special Meeting by a four-fifths majority to approve a revised version of File No. 180280. The Commission made several amendments to the version of File No. 180280 that was approved by the Board of Supervisors at the April 3rd joint meeting. On April 26, 2018 The Ethics Commission transmitted the revised Ordinance to the Board of Supervisors for its consideration and urges the Board to enact this Ordinance into law. The ordinance was referred to the Rules Committee ("Committee") for consideration. The next regularly scheduled Committee meeting is May 9, 2018. Staff have communicated with Supervisor Safai, chair of the Rules Committee, about whether the CAO may be heard at the May 9th meeting.

**Whistleblower Ordinance.** (File No. 180317) An ordinance amending the Campaign and Governmental Conduct Code to provide additional retaliation protections for whistleblowers, establish retaliation protections for City contractors, increase the remedies available for whistleblowers who have suffered retaliation, and establish greater confidentiality protections for whistleblowers' identities. This ordinance, based on recommended legislation of the Commission, was re-introduced by President Breed on April 3, 2018 and referred to the Rules Committee ("Committee") for consideration. This ordinance can be considered by Committee no earlier than May 3, 2018. The next regularly scheduled Committee meeting is May 9, 2018.

**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 an evaluation of provisions that address the possible misuse of public financing. This project began on February 1, 2018. Staff is currently working internally to research and provide a brief framework of the public financing law in its current form. Staff began doing additional external outreach in April of this year towards the goal of providing the Commission with a summary programmatic review at its June meeting. However, current commitments to other projects including the provision of advice and June election deadlines may delay further action on this item until later in

**Advice Regulations.** The San Francisco Charter provides that any person may request the Commission to issue a written opinion and the Commission has authorized Staff to issue informal advice with respect to any person's duties under provisions of the Charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics. The Commission currently has no regulations and limited informational guidance as it relates to the provision of opinions and advice. Staff has recently encountered an increase in requests for advice and has seen a corresponding increase in Staff time related to the response and action on such advice requests. In exploring the issue further, Staff discovered that other Ethics Commissions and similar bodies have adopted advice regulations, procedures, or formal manuals so that requestors are on notice of their obligations and associated legal protections that advice provides. Based on that exploration, Staff began a review of the Commission's advice policy and practices. After reviewing advice procedures of other Commissions, including Los Angeles, the Fair Political Practices Commission, and the Federal Election Commission, Staff began the drafting of advice regulations for the Commission's eventual consideration and adoption. Staff will plan on presenting an initial draft of those advice regulations at the Commission's June 15 regular meeting. Staff will plan on holding an interested person meeting within the two weeks following the June meeting and will, based on any input from that meeting, provide a second draft of proposed regulations for the July Commission meeting.

**Policy Priority Project.** The Commission, at its March 16 meeting, 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 deepen policy engagement with interested persons and assist in the evaluation and development of policies and regulations. 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 volume and in order to better meet the Commission’s goal of being responsive to interested persons, the regulated community, and elected officials, Chair Chiu 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 and act on the Commission’s policy priorities. A memo and proposed priority listing of current policy projects is provided in Agenda Item 7.

**Online Paid Political Communication.** At its February 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 February meeting that they would like Staff to continue its research on this issue and work towards convening stakeholder meetings and a forum of subject matter experts to discuss this issue further. In the interim, Staff has begun contacting other California jurisdictions to seek their input and experiences with this issue. In the medium term, those local jurisdictions, working with this Commission, may ask, via letter, that the Fair Political Practices Commission or other appropriate State body review the issue as well. Staff continues to track ongoing efforts to require disclosure of online political communications, compiling research, and will prepare an update for the Commission at its June meeting.

## **II. Planned and Pending Policy Projects**

### **A. Legislation**

1) **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 memorandum outlining the Commission’s research, issues, and open questions with the current version of the ordinance. Supervisor Kim introduced several of her proposed changes as part of the Anti-Corruption and Accountability Ordinance (ACAO) at the Commission’s Special Joint Meeting of April 3. Staff has been working with the Supervisor’s office to introduce several of the remaining provisions of her original ordinance that were not considered as part of the ACAO. An amended version of File No. 170868 appears as Agenda Item 8.

*Information: A memorandum and recommended action on this item appears in Agenda Item 8.*

## **B. Other Planned Projects**

Per the Commission's Annual Policy Plan during Fiscal year 2018, Staff are preparing to begin several 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. This project was originally scheduled to begin on April 1, 2018. Because of the ongoing consideration of the ACAO, this project has been placed on hold and will begin on June 1, 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) **Independent Ethics Commission Counsel.** At its November meeting, the Commission requested Staff review and research the possibility of a Charter change that would give the Commission its own independent counsel. At its January meeting the Commission clarified the request and asked that it appear as an Agenda item for the March meeting. At the Commission's March meeting staff gave the Commission a memo and draft legislation that would have amended the City Charter to allow the Commission to employ its own counsel. Commissioner Kopp further clarified at the March meeting that he would like to see additional research and information on other City agencies with independent counsel as well as other ethics commissions, outside California, with independent counsel. Staff had planned to prepare an update for the Commission at its April meeting, but, due to ongoing consideration of the ACAO and other priority projects, Staff will not be able to provide an update until the Commission's June Meeting.

*Recommendation: Staff will provide an update at the Commission's June meeting.*

- 2) **Regulating County Central Committees.** At its February and March meetings, Commissioner Kopp requested that Staff explore available options for the Commission to regulate the campaign activity of City elected officials who are candidates for or hold office on County Central Committees. On March 22, 2018, Staff submitted a request for formal advice to the Fair Political Practices Commission ("FPPC") to determine what rules the Ethics Commission has the authority to create regarding County

Central Committees. The FPPC confirmed receipt of the request on April 3rd. If the FPPC provides its advice that will appear as Attachment 2 to this memo.

*Recommendation: None at this time.*

3) **Regulating PAC Activity.** At the Commission's February meeting, Commissioner Renne expressed his desire that Staff research and the Commission pursue a set of rules that would limit certain activity by political action committees (PACs) in San Francisco elections. This project would involve identifying potential rules that would achieve the desired outcomes regarding PAC activities, determining the legal implications of those rules, and determining how to enact these rules into law and how to implement them into operational programs.

*Recommendation: None at this time.*

# Agenda Item 9 | Attachment 1 | Legislation Tracker

Federal, State, or Local	Proposal or Bill (File#)	Sponsors	Date Introduced	Date Passed	Procedural Stage	Summary
Local	<a href="#">171066</a>	Peskin (o/b SFEC)	10/31/2017	3/16/2018	Approved	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="#">File No. 170738</a>	Supervisor Cohen	6/13/2017		Remain Active Request on 4/2/2018	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;
Local	<a href="#">File No. 170868</a>	Supervisor Kim	7/25/2017		Substituted and Assigned on 11/14/2017	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; This ordinance contains other related provisions and other existing laws.
State	<a href="#">AB 2155</a>	Mullin	2/12/2018		Assembly Second Reading 4/30/2018	Existing law defines "mass electronic mailing" to mean sending more than 200 substantially similar pieces of electronic mail within a calendar month. This bill would instead define mass electronic mailing to mean sending more than 50 substantially similar pieces of electronic mail within a calendar month. The bill would define "mass mailing" to mean sending more than 50 substantially similar pieces of mail within a calendar month.
State	<a href="#">AB 2188</a>	Mullin	2/12/2018		Referred to Committee on April 25.	The Political Reform Act requires an electronic media advertisement, other than an Internet Web site, paid for by a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate, to include the text "Who funded this ad?" and a hyperlink to an Internet Web site containing specified disclosures. This bill would require the disclosures on the committee's profile, landing page, or similar location to be on the cover or header photo of the committee's profile, landing page, or similar location and in no less than 10 point font.
State	<a href="#">AB 2882</a>	Harper	2/12/2018		Committee March 19.	The Political Reform Act of 1974 establishes certain limits on the amount of contributions that a person or group can make to a candidate for elective state office, or to a committee. Dues, assessments, fees, and similar payments made to a membership organization or its sponsored committee in an amount less than \$500 per calendar year from a single source for the purpose of making contributions or expenditures are not considered earmarked. This bill would reduce this exception for payments to a membership organization or its sponsored committee to \$100.
State	<a href="#">AB 664</a>	Steinorth	2/14/2017		Referred to Committee 4/19/2018	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.