



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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Date: June 8, 2018

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Legal and Policy Analyst

Re: **Agenda Item 6 – Introduction of Proposed Policy Prioritization Plan**

Summary: This memo provides information regarding a proposed Policy Prioritization Plan for the Ethics Commission for FY2019. This new plan, if adopted, would update the Commission's existing plan of policy priorities.

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 June 15 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."¹ 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 interest 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, 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 timely addressing any emerging policy issues through effective legislation and regulation.

¹ 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, other City departments, the regulated community and the public 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 ensure the ongoing policy work of the Commission is closely aligned with the current policy priorities of the Commission as a whole, Chair Chiu has asked that the Commission be provided with further tools and recommendations from Staff for its consideration in formulating and managing its ongoing policy work.

The Commission, at its March 16 meeting, expressed an interest in a presentation and discussion of its ongoing policy projects and those that have been proposed to enable it to confirm what its policy priorities will be for the coming year. Since mid-2016, to help manage the volume and flow of the Commission's policy work over the course of a fiscal year, the Commission has used an Annual Policy Plan ("APP"). As part of the Commission's heightened policy focus, the APP was developed to provide an anticipated schedule for the evaluation and development of policies and regulations and help promote policy engagement with those interested issues expected to be considered. More recently, additional Board-sponsored legislative action and Commission-directed research has added to previously identified programmatic reviews, thereby quickly scaling up the number and scope of the Commission's ongoing and planned policy projects. Because of that, Chair Chiu proposed a focused discussion enabling the Commission to review its policy priorities and ensure those priorities reflect alignment with the current goals the Commission as a policy body. In response to that request, Staff has developed a new template for the Commission to consider and potentially adopt for using in prioritizing its policy priorities going forward.

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 new tool, a Policy Prioritization Plan, to succeed the previous 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; 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, all things being equal, how that work should be sequenced—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; and
- identified legal or policy gaps where the risks posed by those gaps are greatest.

III. Elements of the Policy Prioritization Plan

A. Purpose

A proposed Policy Prioritization Plan appears as Attachment 1. It is designed to illustrate the range of policy issues identified by the Commission, Staff and interested stakeholders. It also proposes a rough schedule (or priority) for the sequencing of these issues 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, engaging with the regulated community, 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 isolated, unanticipated 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.

B. Types of Projects

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 designed to be fairly broad and are meant to be comprehensive. They may identify a broad range of issues, for example from legal and policy concerns to out of date 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 more focused and are meant to evaluate the efficiency and effectiveness of a particular new or existing program. This work typically would evaluate issues regarding compliance effectiveness, enforceability, and assess the balance of a program's burdens with the benefits it provides. Staff has identified several programs that would benefit from this particular type of evaluation.

Individual Project Evaluations. These projects are more 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 scope and time depending on the facts, complexity, and time sensitivity of each issue.

C. Format of the Proposed Plan

To effectively evaluate and complete the various policy projects that the Commission may wish to pursue, Staff recommends the use of the Policy Prioritization Plan as a tool for the Commission to determine in what order it wishes to roughly place projects in order of priority, thereby signaling to the public and to Staff which projects it intends as those for its highest focus. To help with this process, Staff has proposed a general ranking system to assist with the relative prioritization of projects based on two factors: (1) impact and (2) urgency/timeliness. The impact of a project refers to the potential to effect fundamental and significant policy change. The urgency and timeliness of a project reflects the degree to which the project's impact is dependent on the project being completed in a relatively short timeframe.

Each factor is scaled from least to most vital on a scale of 1 to 10. The excerpt below provides an example of how projects and these ranking criteria appear on the proposed plan:

Priority	Project	Impact	Urgency/ Timeliness	Staff Commitment & Project Timeframe (Target Action Date ("TAD"))
	Ongoing Policy Projects			
1	Public Financing Program Review: Issue - Reduce barriers to participation and ensure a unique and diverse base of support. - Improve transparency and knowledge-sharing to heighten understanding of the laws - Clarify applicable processes, and timeframes where appropriate, to encourage participation - Ensure standardized approaches to support consistency 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 awareness	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. <div style="border: 1px solid red; padding: 5px; margin: 5px;"> A 9 in the "Impact" category indicates that the project will significantly alter a set of laws or related program requirements. </div> <div style="border: 1px solid red; padding: 5px; margin: 5px;"> An 8 in the "Urgency/Timeliness" category indicates that the project has imminent significance or has specific time-constraints. </div>

This example of a policy project is a comprehensive review of the City's public financing system. A brief description of the issues giving rise to the project are identified, and it lists a general overview of the approaches Staff would likely pursue. Staff's suggestions as to the project's impact and urgency are provided in the columns, as well as an estimate of how long the project timeframe and associated Staff commitment.

Because policy projects inevitably vary due to their complexity and urgency in the level of resources necessary for any given project to be completed, the plan also identifies a likely commitment of Staff resources to complete the project. As shown in the example above, the public financing project shows a high level of Staff resources, given that the public financing project has a six-plus month review and evaluation timeframe with potentially several more months of drafting and engagement to follow. As noted in Attachment 1, the PPP shows other projects requiring less significant project timeframes and Staff resource commitment. Project timeframes, for ease of reference, are typically limited to three categories of commitment: 6+ months (high), 3-6months (medium), and 0-3 months (low). A clear assessment of a policy project's scope, complexity, and time sensitivity all are factors to be closely considered identifying the relative priority order of projects and their sequencing.

As indicated in Attachment 1, based on these criteria and considerations, Staff recommends that the public financing project remain the Commission's top priority, warranting the most significant focus of its policy work in the coming months.

D. Implementation and Updates

Once the Commission has finalized the Plan, that Plan will guide policy activity at the Staff level and our ongoing efforts to inform and engage the public in our policy work. To ensure the Commission's policy goals can be achieved with current resource levels, we recommend that the Commission identify one to two major policy projects, and two to four minor projects for the coming fiscal year.

We plan to continue regular updates to the Commission as to the progress of ongoing policy projects.

Staff looks forward to the Commission's discussion of this proposed approach and to the Commission's adoption of a plan to guide its desired policy work for the coming fiscal year.

Agenda Item 6 - Attachment 1

Policy Prioritization Plan

Priority	Project	Impact	Urgency/ Timeliness	Staff Commitment & Project Timeframe
	Ongoing Policy Projects			
1	Public Financing Program Review: Issue - Reduce barriers to participation and ensure a unique and diverse base of support. - Improve transparency and knowledge-sharing to heighten understanding of the laws - Clarify applicable processes, and timeframes where appropriate, to encourage participation - Ensure standardized approaches to support consistency 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 awareness	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.
	Potential Policy Projects			
2	CFRO Regulations Review: Issue - new changes to Code require review and possible further definition, interpretation and guidance - regulations should reflect changes in relevant case law and state laws Approaches - review regs to ensure compatibility with current laws - Identify regs impacted by recent legislation	8	8	3-6 Months: Update at 3 months; proposed Commission action at 6 months. TAD 11/18.

Priority	Project	Impact	Urgency/ Timeliness	Staff Commitment & Project Timeframe
3	Online Political Communications/Social Media: 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.
4	Governmental Ethics - Conflict of Interest Code Review: 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
5	Financial Disclosure Biennial Code Review: 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	Staff Commitment & Project Timeframe
6	Lobbying Code Review: 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
7	Expenditure Lobbying Program Review: 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
8	Commission Independent Counsel Project: 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	Staff Commitment & Project Timeframe
9	Permit Consultant Program Review: 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
10	E-filing Financial Disclosure Project: 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
11	Campaign Consultant Program Review: 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	Staff Commitment & Project Timeframe
12	Major Developer Disclosure Program Review: 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
13	Behested Payment Disclosure Program Review: 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
14	Sunshine Ordinance Task Force Removal Legislation Project: 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	Staff Commitment & Project Timeframe
15	Governmental Ethics - Conflict of Interest Regulation Review: 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
16	Whistleblower Program to Ethics Commission Jurisdiction Project: 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
17	Lobbying Regulations Review: 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	Staff Commitment & Project Timeframe
18	Slate-Mailer Project: 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
	Projects As Needed Based on Commission Consensus			
	Ongoing Legislative Reviews: 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	Staff Commitment & Project Timeframe
	<p>Commission Research Requests:</p> <p>Issues</p> <ul style="list-style-type: none"> - 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 <p>Approaches</p> <ul style="list-style-type: none"> - 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. 	N/A	N/A	<p>N/A:</p> <p>Commission requests are highly dependent on the individual action requiring review.</p>