



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

Date: June 8, 2018

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Legal & Policy Analyst  
Pat Ford, Policy Analyst

Re: **AGENDA ITEM 7 – Policy Report for the June 15, 2018 Meeting, Including  
Commission’s Legislation Tracker**

**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 Legislation Tracker as Attachment 1, updated for the month of June.

**Action Requested:** That the Commission review its planned and pending policy projects and provide any further direction it may have regarding the scope of those projects.

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 approved by the Board and Signed by the Mayor on May 30, 2018. Certain provisions of the law will become operative on June 29, 2018 with the remaining taking operative effect on January 1, 2019.

**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 Commission recommendations, was re-introduced by President Breed on April 3, 2018 and referred to the Rules Committee (“Committee”) for consideration. This ordinance will be considered by the Rules Committee on June 27, 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 toward the goal of providing the Commission with a summary program review at its June meeting. However, current commitments to other projects, including the provision of election-season advice, have pushed the initial presentation of this project to the July Commission meeting.

**Advice Regulations.** The San Francisco Charter provides that any person may request the Commission to issue a written opinion. Additionally, pursuant to the Charter, 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 to help provide guidance on its opinion and advice process. Over time, including the past election season, Staff has encountered an increase in requests for advice and a corresponding increase in time necessary to research and respond to such advice requests. Other Ethics Commissions and similar bodies have adopted advice regulations so that requestors are aware of their obligations and the legal protections that opinions and advice provide. Staff began a review of the Commission’s advice policies and practices and explored advice procedures of other ethics commissions, including the Los Angeles City Ethics Commission, the Fair Political Practices Commission, and the Federal Election Commission. Staff has begun the drafting of advice regulations for the Commission’s eventual consideration and adoption and plan to present an overview of initial draft regulations at the Commission’s regularly scheduled July meeting. In addition, Staff plans to hold an interested persons

meeting within two weeks following the July meeting and will, based on any input from that meeting, provide a second draft of proposed regulations for the August Commission meeting.

**Policy Prioritization Plan.** 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. A memo and proposed priority listing of current policy projects is provided in Agenda Item 6 for the June 15th Commission meeting.

**Online Paid Political Communication.** At the February Commission meeting, Commission Staff updated the Commission on Staff's 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 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 after the Commission determines the priority of projects on the Policy Prioritization Plan.

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

### **A. Legislation**

1) **Supervisor Kim Legislation** (File No. 170868): At its regular meeting on May 7, the Commission approved File No. 170868 by unanimous vote. On May 23, the Rules Committee approved the legislation by unanimous vote. The ordinance is now pending scheduling at the full Board. A date has not been set for the Board's review.

2) **Supervisor Cohen Legislation** (File No. 170738): Supervisor Cohen's legislation would require disclosure of candidate and third-party spending in Retirement Board, Health Service Board and Retiree Health Care Trust Fund Board elections. After discussions and proposed amendments from Staff and the City Attorney's Office, on April 2 Supervisor Cohen asked that the legislation remain active before the Rules Committee. The Rules Committee has set their review of this item for their June 13 regular meeting. This legislation does not require review by the Ethics Commission because its provisions are contained within the S.F. Administrative Code.

## **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 that key provisions of 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.** A comprehensive review of the regulations that interpret and implement CFRO is necessary in order to update and strengthen those regulations. This project will also likely include identifying and developing new regulations to carry out the new requirements that will be created by the Anti-Corruption and Accountability Ordinance. 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 after the Commission determines the priority of projects on the Policy Prioritization Plan.

## **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 2017 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 2018 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 2018 meeting, but, due to ongoing consideration of the ACAO and other priority projects, Staff will not be able to provide an update until after the Commission determines the priority of projects on the Policy Prioritization Plan.

*Recommendation: Staff will provide an update at the Commission's July 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. Staff are waiting for the FPPC to deliver its advice. If the FPPC provides its advice before the June meeting, that document 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 7 - Attachment 1

## Legislative 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		Rules Committee June 13	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		Heard and Passed by Rules on 5/23/18	Ordinance amending the Campaign and Governmental Conduct Code to require candidates to attest to the lack of any coordination with other committees; and that the Voter Information Pamphlet note which candidates have agreed to voluntary spending limits.
Local	<a href="#">180317</a>	Supervisor Breed	4/3/2018		Rules Committee June 27	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.
State	<a href="#">AB 2155</a>	Mullin	2/12/2018		In Senate, Referred to Committee 5/30/2018	Existing law under the act requires advertisements to include prescribed disclosure statements, and defines an advertisement for these purposes. Existing law excludes a number of communications from the definition of advertisement, such as a communication from an organization, other than a political party, to its members. This bill would exclude additional types of communications from the definition of advertisement, including certain electronic media communications requested by the recipient, communications solicited by the recipient, or communications for which inclusion of disclosures would be impracticable or severely interfere with the committee's ability to convey the intended message, as determined by regulations of the Fair Political Practices Commission.
State	<a href="#">AB 2188</a>	Mullin	2/12/2018		Read third time. Passed. Ordered to the Senate. 5/31/18	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 664</a>	Steinorth	2/14/2017		In Committee 5/2/2018	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.
State	<a href="#">SB 1239</a>	Hertzberg	2/15/2018		In Committee 5/17/2018	This bill would generally recast certain provisions governing the processing of campaign reports and statements to provide for the filing, verification, delivery, amendment, retention, and inspection of those documents online or electronically, as prescribed. The bill would repeal the above-mentioned monetary thresholds, thereby making the online and electronic filing requirements applicable to all specified filers. The bill would also repeal various obsolete or extraneous provisions of the act, and would make conforming and other technical, nonsubstantive changes.