



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: September 17, 2018

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Re: **AGENDA ITEM 7 – Policy Report for the September 21, 2018 Meeting**

Summary: This memorandum provides updates on ongoing policy projects, pending local legislation, and other operational projects involving the Policy Division to assist the Commission, the public, and Staff in engaging with the Commission's policy work. This memo includes the California Legislation Tracker as Attachment 1, updated for the month of September.

Action Requested: No action required—informational purposes only.

This memo provides an operational update on the Commission's policy projects. Section I provides brief status reports about ongoing policy projects that the Commission identified as policy priorities as part of its quarterly Policy Prioritization Plan. Section II provides information about ongoing operations and projects that, while not a part of the Commission's Policy Prioritization Plan, regularly require the attention of the Policy Division.

I. Policy Prioritization Plan – Status of Ongoing Initiatives

A. Review of the City's Public Financing System

At its June 2018 meeting, the Commission identified a review of the City's public financing program as its first policy priority. Since June, the Policy Division has been engaged in substantively reviewing the program. Policy conducted extensive outreach efforts to better understand how candidates, treasurers, and members of the public viewed the program's effectiveness and to solicit input as to what changes might be made to further strengthen the program.

Policy held interested persons meetings on July 31st and August 1st to discuss the program and how it might be strengthened. Turnout at both meetings was high, and extensive comments were provided by candidates, treasurers, members of community groups, and other interested members of the public. The meetings were helpful in providing stakeholders with clarity as to how Staff will conduct the program review and providing a better understanding of which features of the program stakeholders see as most vital to the program's success. Generally speaking, the discussion focused on the qualification requirements for candidates, the funding that is available to candidates, and the spending limits that apply to program participants. These meetings served an important "scoping" function to focus Staff's inquiry into specific aspects of the program.

To obtain more detailed feedback from candidates and treasurers about their experiences with the public financing program, Policy designed and distributed two online questionnaires, first for candidates and secondly for treasurers. The questionnaires are designed to elicit additional information that cannot be gathered from candidate filings, such as how much time candidates and treasurers spend to complete a qualifying request, how the availability of public financing affected candidates' decisions as to whether to run for office, and how the qualification requirements affected candidates' decisions as to whether to participate in the program. The questionnaires also solicited input from participants as to how they think the program could be strengthened. Thus far, the response rate for candidates has been modest, but the response rate for treasurers has been more significant, and several participants shared insights that will be helpful in evaluating the program.

Policy has also been engaging with staff in ethics commissions across the country to learn about how other agencies have approached the administration of public financing programs. Some administrative features that Policy is particularly interested in include: the processes for confirming the residency of contributors, the process for calculating and lifting spending limits, the average amount of staff time required for processing public financing requests, and the manner in which agencies allocate staff time between the initial review of a funding request versus subsequent auditing. This cross-jurisdictional view will help guide Staff in how the existing program might be strengthened from an administrative perspective.

Most recently, Policy also has been collaborating with the Electronic Disclosure and Data Analysis Division to use public disclosure data to gain insights into the program's efficacy. Staff are reviewing data regarding public financing requests by candidates, total amounts of public financing allocated to candidates, and general data about campaign spending and outcomes. Staff believes that reviewing the available data may shed light on areas for potential strengthening of the program.

Policy anticipates bringing a statement of initial findings and recommendations to the Commission at its regularly scheduled meeting in October.

B. Review of Campaign Finance Reform Ordinance Regulations

The Commission has identified a review of the supporting regulations for the Campaign Finance Reform Ordinance ("CFRO") as its second policy priority. This project seeks to update and improve existing regulations and develop new regulations to carry out the new requirements created by the Anti-Corruption and Accountability Ordinance. Policy has solicited Staff feedback about the existing regulations and is in the process of aggregating those comments into a set of recommendations.

C. Online Paid Political Communications

The Commission identified research and a possible legislative proposal regarding paid online political communications as its third policy priority. As reported at the Commission's last meeting, Staff have been tracking the development of this nationwide issue over several months, engaging with subject matter experts and reviewing the developing field of literature on this topic. Staff have also contacted other jurisdictions to seek their input and experiences with this issue. Staff continues to monitor jurisdictions such as Washington state and Seattle, which has recently sought to enforce a requirement that certain online platforms archive and make available a record of the paid political ads that they display. This effort could shed light on how successful a similar effort in San Francisco might be.

II. Miscellaneous Policy Administrative Projects

A. Advice Regulations

At the July meeting, Staff presented the Commission with a proposed set of regulations concerning the Commission's opinion and advice procedures. Staff subsequently engaged with stakeholders by holding two interested persons meetings, receiving written and verbal comment on the regulations, and answering questions about the proposed draft. Staff made several changes to the proposed draft, and an amended version of the regulations is set forth in Agenda Item 6.

B. Campaign Finance Research Workshops

During the June 2018 election season, Staff received a high volume of phone calls and email requests from journalists and members of the public inquiring how to conduct research regarding campaign finance in San Francisco. Most inquiries concerned specific questions about publicly available disclosures concerning candidates and measures appearing on the June ballot. The Policy Division has been the primary point of contact for media inquiries directed to the Commission, and in conjunction with the Engagement and Compliance Division and Electronic Disclosure and Data Analysis Division was heavily involved in providing guidance about how to use the Commission's online research tools to answer questions about campaign funding in the City.

In anticipation of similar volume of research inquiries in the weeks leading up to the November 2018 election, Policy, together with Tyler Field of the Electronic Disclosure and Data Analysis Division, developed a workshop to better inform journalists and other members of the public about how to effectively perform campaign finance research regarding San Francisco elections. The workshop explains the fundamental of campaign finance law and disclosure requirements and trains participants in how to use online research tools to effectively review financial disclosures filed by political committees. As an example of the kind of information provided in the workshop, a slide from the workshop presentation is attached at Attachment 2. The slide visually depicts the reporting periods and deadlines for the Form 460 and late reporting period for filing, among other disclosures, Forms 496 and 497. Additionally, to demonstrate the type of resources that the Electronic Disclosure and Data Analysis Division has made available to the public in conjunction with the workshop, a copy of a new webpage explaining how to use the Commission's Data Dashboards is attached as Attachment 3. When viewed online, this webpage displays short videos that visually depict how to use the various features of the Dashboards.

There was broad interest in the workshop, and as of this writing Staff have provided the workshop six times, once each to members of the following organizations: San Francisco Media Corporation (San Francisco Examiner and SF Weekly), San Francisco Chronicle, NBC Bay Area, the Berkeley Graduate School of Journalism and its associated publication the Mission Local, KQED Public Radio, and members of the public at a publicly noticed workshop held at the Commission's offices.

In addition to preemptively answering questions that are likely to arise during the busy election season and thereby supporting the effective use of limited Staff resources, the workshops served to build shared knowledge in the community about the availability of campaign finance data, increase familiarity with the advanced data processing systems that Staff have developed, foster greater understanding of the Commission's role in administering campaign finance disclosure laws, and encourage the public to actively engage with the Commission.

C. Implementation of the Anti-Corruption and Accountability Ordinance

The Anti-Corruption and Accountability Ordinance (the “ACAO”), a piece of legislation that originated with the Commission, was approved by the Board of Supervisors and signed by the Mayor on May 30, 2018. Certain provisions of the ACAO became operative on June 30, 2018 (the remaining provisions will become operative on January 1, 2019). As reported at the Commission’s last meeting, Staff have been engaged in implementing the new provisions of law created by the ACAO. Staff will be working during the remainder of the calendar year to create systems to implement the provisions of the ACAO that will become operative on January 1, 2019, including new disclosures related to behested payments.

As reported previously, Staff provided email notice to all members of City boards and commissions and all elective officers to highlight the changes to City laws that are now operative, including new conflict-of-interest rules. The Commission’s website has also been updated to reflect this new information. One of the new conflict-of-interest rules is Code section 3.207(a)(1), which prohibits City elective officials and members of boards and commissions from using their public positions or offices to seek or obtain anything of value for themselves, their immediate family, or organizations with which they are associated. This rule does not prohibit officials from being associated with community organizations, nor does it prohibit them from seeking things of value for such associated organizations. Rather the Code section merely prohibits officials from *using their public positions or offices* to seek things of value for associated organizations. In other words, an official could engage in fundraising for an organization with which she is associated, but she must refrain from “using her public position of office” to do such fundraising.

On September 11th, Staff received a letter from Supervisors Peskin and Tang citing what the authors had understood was a Staff interpretation of Code section 3.207(a)(1) that prohibited City officials from being on the honorary committees of community organizations because such an affiliation would make them *associated* with the organization. The letter is attached here as Attachment 4. The Supervisors’ letter does make reference to a specific instance of advice by Staff. Staff, however, have not issued advice that gives such a reading to Code section 3.207(a)(1). From the text of the section it is clear that a violation can only occur when an official *uses her public position or office* to seek or obtain a thing of value for an associated organization; mere association alone is not prohibited. It is the case that being on an honorary committee, fundraising committee, leadership board, or other body of a community organization is one manner in which an official could be *associated* with an organization. But, the significance of being *associated* is only that the official may not use his or her public position or office to seek things of value for the organization. The official is free to be on such a committee and may seek or obtain things of value for the organization; she is only prohibited from using her public position or office to do so.

Attachment 5 is the letter provided to Supervisors Peskin and Tang in response to their September 11 letter. It explains the features of section 3.207(a)(1) as described in the preceding paragraph and invited the Supervisors to engage the Commission and the public in the Commission’s agenda policy discussion if any concern about section 3.207(a)(1) persist.

D. Biennial Conflict of Interest Code Review

As required by State law, every two years City departments must review the list of designated filers and disclosure categories that, taken together, make up the list of individuals who are required to file a Statement of Economic Interests ("Form 700") under the City's Conflict of Interest Code. The purpose of these biennial reviews is to ensure that they are up to date and reflect any changes in the departments' operations or staffing. A proposed update of the Ethics Commission's Form 700 filing requirements is agendaized as Agenda Item 5.

E. Local Regulation of County Central Committee (CCC) Candidate Committees

In response to a research request from the Commission, Policy undertook to provide the Commission with legal analysis regarding whether the Commission was precluded by California law from regulating the conduct of candidate committees controlled by candidates for local County Central Committee (CCC) seats. Finding that California law was not clear on this issue, Staff requested formal written advice from the FPPC on March 22nd. Policy subsequently communicated multiple times with FPPC staff to provide further background and legal analysis to clarify the issues.

On August 30th, an attorney with the FPPC contacted Policy with news that the FPPC would not be issuing formal advice on the CCC question because the answer was not clear and because of the potentially significant impact that the answer could have. FPPC staff believed that a formal opinion from the FPPC itself would be a more appropriate channel for answering the question, and, in response, on September 5th, a formal opinion from the FPPC was requested. On September 11th, the Acting Executive Director of the FPPC, Loressa Hon, informed Staff that she had "determined to grant the request, and the Commission will commence the procedure for opinion issuance." Policy will continue to monitor this process and provide further information to the FPPC and its staff as needed.

F. Pending San Francisco Legislation

1. File No. 180317 (Reforms to Whistleblower Protection Ordinance – Breed)

File No. 180317 would amend the 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 then-Board President Breed on April 3, 2018 and referred to the Rules Committee for consideration. File No. 180317 is now awaiting a future hearing, which has not yet been scheduled.

In early August, Board President Cohen reactivated a file (160689) that predates File No. 180317 and represents an earlier version of the Commission's Whistleblower revision ordinance. This earlier version does not include the changes that reflect deliberations with bargaining units through the meet-and-confer process, nor does it include amendments added through discussions with the Controller's office and the Department of Human Resources. It is imperative that File No. 180317, and not File No. 160689, move forward as the correct version of the ordinance. Following further communications with Policy and staff in Supervisor Cohen's office, on August 28th, File No. 160689 was "filed," and it appears that file will no longer forward and File No. 180317 now has been correctly identified as the current file. Supervisor Cohen's office last week also indicated that Board President Cohen is working to have the Rules Committee schedule it for action in October. Staff will continue to be in communication with the

Supervisor's office in the week ahead to request a meeting with Supervisor Cohen, Chair Chiu, Commissioner Renne, and staff to discuss the importance of File No. 180317 and urge its final adoption by the full Board.

2. File No. 170738 (Disclosures in Trustee Elections – Cohen)

File No. 170738 will require disclosure of candidate and third-party spending in Retirement Board, Health Service Board, and Retiree Health Care Trust Fund Board elections. Pursuant to proposed amendments from Staff and the City Attorney's Office, the Rules Committee amended the legislation on June 11th and continued the file to the call of the chair. The Rules Committee again took up the file at its July 25th meeting, and Policy appeared at the meeting to advocate for a final amendment, which the committee approved before sending the file to the Board. The Board approved the file on the first reading on July 31st and finally approved it on September 4th. As of the time of writing, the ordinance is awaiting approval by the Mayor. This legislation does not require review or approval by the Ethics Commission because its provisions are contained within the S.F. Administrative Code.

3. File No. 170868 (Miscellaneous Ethics Reforms – Kim)

At its regular meeting on May 7, 2018, the Commission approved File No. 170868, which would institute various reforms to the Campaign and Governmental Conduct Code (the "Code"). On June 13th, the Rules Committee continued the file to the call of the chair. The ordinance is now awaiting a future hearing, which has not yet been scheduled.

ATTACHMENT 1

Summary of Bills Watched(California State Legislation)

From California Fair Political Practice Commission

Available at <http://www.fppc.ca.gov/transparency/Legislation.html>

AB 2188 (Mullin D) Political Reform Act of 1974: campaign disclosures: advertisements.

Current Text: Enrollment: 9/12/2018 [html](#) [pdf](#)

Last Amended: 8/17/2018

Location: 9/12/2018-A. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

The Political Reform Act of 1974, requires specified disclosures in advertisements regarding the source of the advertisement. The act defines "advertisement" for this purpose as a general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures. This bill would modify the disclosures required for electronic media advertisements.

Laws:

An act to amend Sections 84504.3, 84504.4, and 84510 of, and to add Sections 84503.5 and 84504.6 to, the Government Code, relating to the Political Reform Act of 1974.

Support

AB 2155 (Mullin D) Political Reform Act of 1974: campaign disclosures.

Current Text: Enrollment: 9/12/2018 [html](#) [pdf](#)

Last Amended: 8/15/2018

Location: 9/12/2018-A. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing and activities. Current law under the act requires advertisements to include prescribed disclosure statements, and defines an advertisement for these purposes. Current law excludes a number of communications from the definition of advertisement, including electronic media communications for which the inclusion of specified disclosures regarding the funding of the communication is impractical or incompatible with the technology used. 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.

Laws:

An act to amend Sections 84501, 84502, 84504.1, 84504.2, 84504.5, and 84504.3 of, and to add Section 84501.1 to, the Government Code, relating to the Political Reform Act of 1974.

Position: Support

AB 2689 (Gray D) Contribution and gift ban: Senate or Assembly confirmation.

Current Text: Enrollment: 8/24/2018 [html](#) [pdf](#)

Last Amended: 4/17/2018

Location: 8/24/2018-A. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Would prohibit a person appointed by the Governor to an office subject to Senate or Assembly confirmation from making to a Senator or Assembly Member or a controlled committee of the Senator or Assembly Member a gift or contribution during the period between the appointment by the Governor and confirmation by that house. The bill would also apply this prohibition to certain candidates for the Senate or Assembly, as specified.

Laws:

An act to add Section 85705 to the Government Code, relating to the Political Reform Act of 1974.

Position: Support

AB 2880 (Harper R) Political Reform Act of 1974: local enforcement.

Current Text: Enrollment: 8/29/2018 [html](#) [pdf](#)

Last Amended: 6/12/2018

Location: 8/29/2018-A. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

Current law authorizes the Fair Political Practices Commission, upon mutual agreement between the Commission and the Board of Supervisors of the County of San Bernardino, to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local campaign finance reform ordinance of the County of San Bernardino, as specified. Current law also authorizes the Fair Political Practices Commission to enter into such agreements with the City Council of the City of Stockton and the City Council of the City of Sacramento, respectively. This bill would repeal the provisions governing agreements with the Cities of Stockton and Sacramento and would generally authorize the governing body of a local government agency to contract with the Commission for the administration, implementation, and enforcement of a local campaign finance or government ethics law.

Laws:

An act to repeal Section 83123.7 of, and to repeal and add Section 83123.6 of, the Government Code, relating to the Political Reform Act of 1974.

Position: Support

SB 1239 (Hertzberg D) Political Reform Act of 1974: campaign disclosures.

Current Text: Enrollment: 9/6/2018 [html](#) [pdf](#)

Last Amended: 8/13/2018

Location: 9/6/2018-S. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Summary:

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 specified 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 The Political Reform Act of 1974, and would make conforming and other technical, nonsubstantive changes.

Laws:

An act to amend Sections 81004, 81007, 81007.5, 81008, 81009, 81010, 82006, 84101, 84101.5, 84102, 84103, 84108, 84200.8, 84203, 84204, 84204.5, 84211, 84213, 84215, 84219, 84223, 84504.2, 84602, 84605, 84606, 84612, 84615,

85200, 86100, 86103, 86104, 86105, 86107, 86108, 86109.5, 86114, 86116, and 86118 of, and to repeal Sections 84217 and 86109 of, the Government Code, relating to the Political Reform Act of 1974.

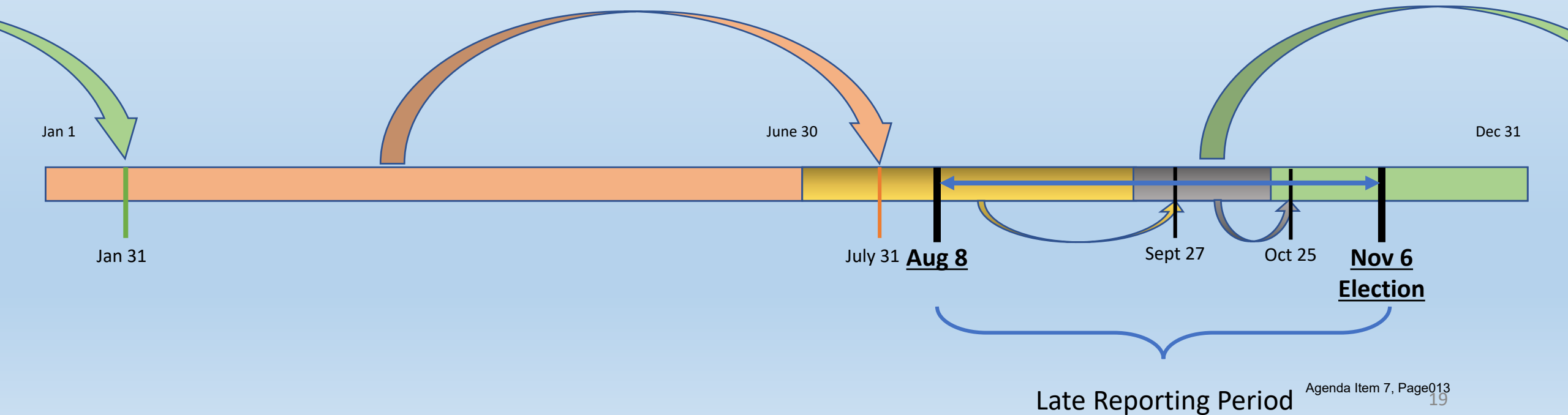
Position: Support

ATTACHMENT 2

Form 460 (Semiannual & Preelection) + 90-Day Late Reporting Period

24-hour reports fill in the gaps between 460 filings

- Much of their contents will appear on the committee's next 460



ATTACHMENT 3



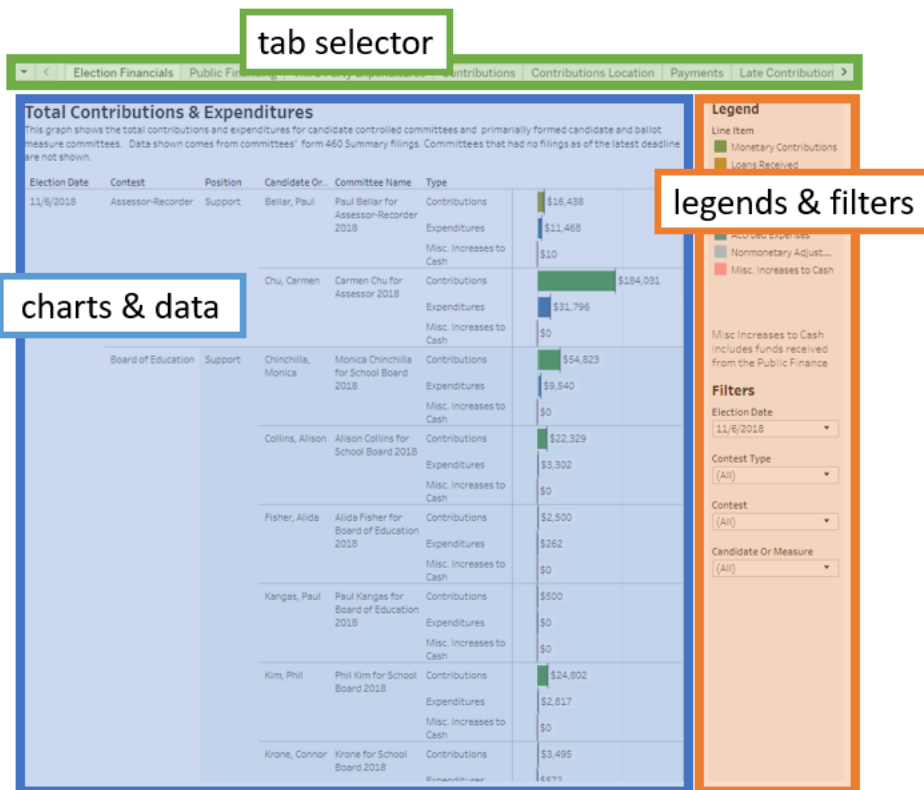
Ethics Commission City and County of San Francisco

How to use the 2018 Campaign Finance Dashboards

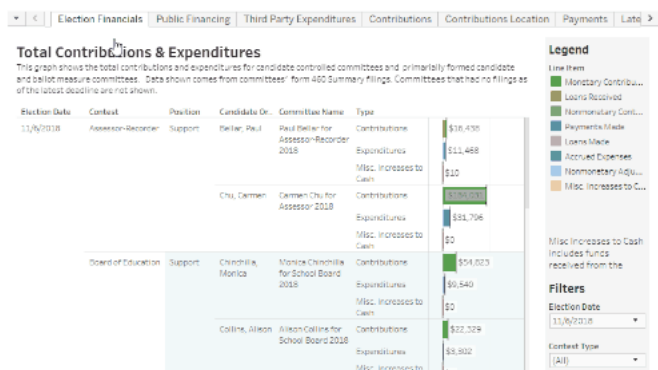
(This page uses animated gifs. Please be patient while they load.) The San Francisco Ethics Commission provides a [dashboard view](#) of campaign finance data.

General Interaction

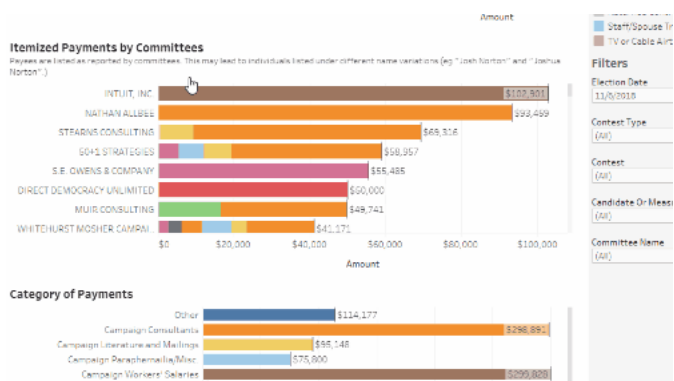
On each dashboard there is an area that displays charts & data and an area showing the legends and filters available.



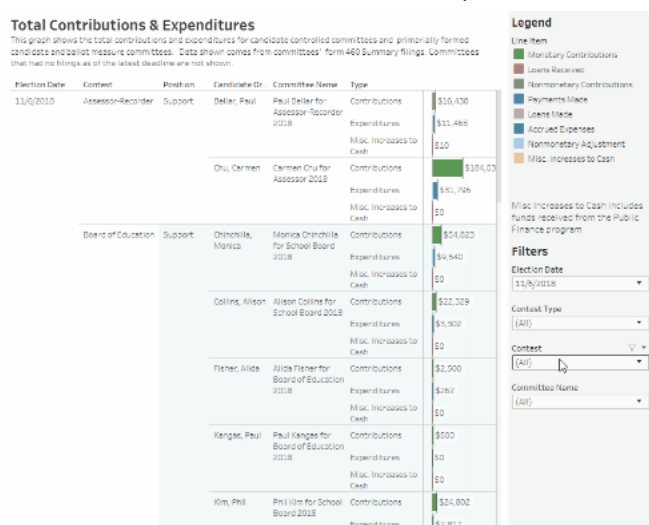
There are several different views into the data which you can switch between using the tab selector at the top.



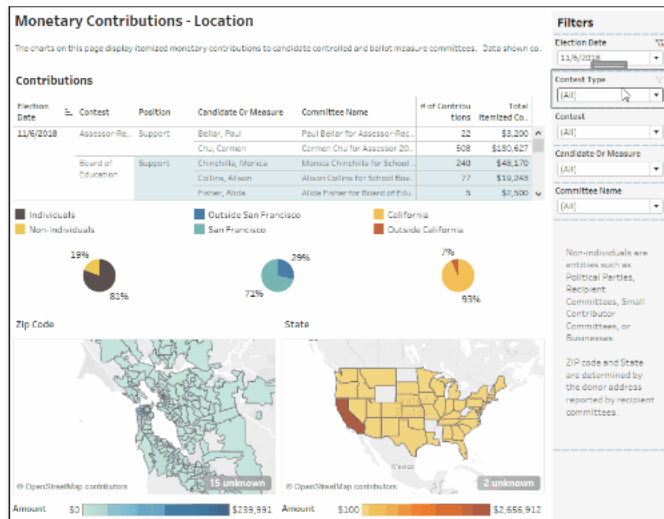
Many charts have additional information in tooltips which appear by hovering the mouse pointer over chart elements.



Using the filters you can limit the view of the data to specific levels of interest. Here, we limit the data to committees in the race for Board of Supervisors District 2, and then clear the filter.



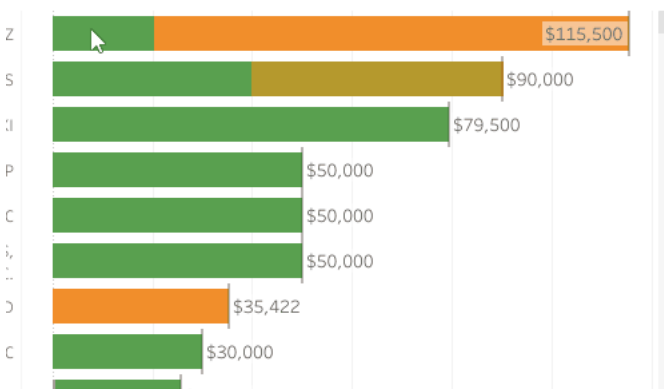
The filters change the data behind every view on the page.



Some tables have a hierarchy built in, which you can use to “roll-up” the data to that level. On a table, hover over the column headings with the mouse and click on the +/- icon that appears. In the following animation, we “roll-up” committee financials to the entire contest level, and then expand out to individual committees.

Election Date	Contest	Position	Candidate Or..	Committee Name	Type	
11/6/2018	Assessor-Recorder	Support	Bellar, Paul	Paul Bellar for Assessor-Recorder 2018	Contributions	\$16,438
					Expenditures	\$11,468
					Misc. Increases to Cash	\$10
			Chu, Carmen	Carmen Chu for Assessor 2018	Contributions	\$184,031
					Expenditures	\$31,796
					Misc. Increases to Cash	\$0
	Board of Education	Support	Chinchilla, Monica	Monica Chinchilla for School Board 2018	Contributions	\$54,823
					Expenditures	\$9,540

On certain chart elements (generally ones that represent individual transactions), clicking the element will show a link to a pdf of that filing. Itemized transactions may include a link to a Google search for the contributor's name.



Was this page helpful?

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Scan with a QR reader to access page:



<https://sfethics.org/ethics/2018/08/how-to-use-the-2018-campaign-finance-dashboards.html>

ATTACHMENT 4



AARON PESKIN
DISTRICT 3 SUPERVISOR



KATY TANG
DISTRICT 4 SUPERVISOR

September 11, 2018

Daina Chiu, Chair, Ethics Commission
LeeAnn Pelham, Director, Ethics Department
25 Van Ness Ave # 220
San Francisco, CA 94102

Dear Chair Chiu and Director Pelham,

Earlier this year, the Board of Supervisors unanimously passed the Anti-Corruption and Accountability Ordinance (the "ACAO"), Board File No. 180280. As signatories to this letter, we led that legislative process and shepherded the ACAO to its successful vote. It has recently come to our attention that the Ethics Department has issued an interpretation of Section 3.207(a)(1) that would deviate from the legislative intent of its author and of the Board of Supervisors. We write now to address that errant interpretation and request that you take action to correct it.

Section 3.207(a)(1) of the Campaign and Governmental Conduct Code prohibits City elected officials, board members and commissioners from using their public position or office to "seek or obtain anything of value for ... an organization with which he or she is associated." What it means for an elected official, board member or commissioner to be "associated" with an organization is set forth in Section 3.203, as follows:

"any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an agent or employee." (*See* Campaign and Govt. Conduct Code, Section 3.203.)

In spite of the clear Section 3.203 definition of what it means to be "associated" with an organization, Ethics Department staff has suggested an interpretation of "associated" as used in Section 3.207(a)(1) which expands that definition to absurd effect – namely, to prohibit any outside organization from listing a City official's title in any Honorary Committee, even if that official has no direct or indirect interest in the organization.

By way of context, Supervisors and other City officials are routinely asked to add their names to "Host" or "Honorary" Committees for events held by organizations that do great work in San Francisco. Authorizing the use of our name and title is a routine method of indicating our support for the mission statements of those organizations, even if we are not involved with the organization, much less attending the event. We derive no personal or tangible benefit from lending our support in this manner.

As the principal advocates for moving the ACAO through the Board's legislative process, we are personally knowledgeable of the intent of this legislation. Barring City officials from being named in Honorary Committees is not a reasonable interpretation of that intent. Further, it would be an absurd result to hold any City official legally accountable for the actions of third party organizations which they do not control.

We suspect that not a single Supervisor would have voted to support this legislation had they known that this was the effect of Section 3.207(a), and we hope that you will take necessary steps to correct this unintended interpretation of the Code.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron Peskin and Katy Tang". The signature is fluid and cursive, with the names joined together.

Aaron Peskin and Katy Tang

ATTACHMENT 5



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

By Electronic Mail Only

DAINA CHIU
CHAIR

September 14, 2018

QUENTIN L. KOPP
VICE-CHAIR

The Honorable Aaron Peskin, Supervisor, District Three
The Honorable Katy Tang, Supervisor, District Four
San Francisco Board of Supervisors

PAUL A. RENNE
COMMISSIONER

1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689

YVONNE LEE
COMMISSIONER

Dear Supervisors Peskin and Tang:

NOREEN AMBROSE
COMMISSIONER

Our office has received your letter dated September 11th (copy attached for reference) in which you describe what you believe is an incorrect interpretation by Ethics Commission Staff of a provision of the Campaign and Governmental Conduct Code (the "Code"). With this letter, I hope to provide added clarity about the provision in question.

LEEANN PELHAM
EXECUTIVE DIRECTOR

Your letter communicated your belief that Commission Staff have issued an interpretation of Code section 3.207(a)(1) that "prohibit[s] any outside organization from listing a City official's title in any Honorary Committee" and "bar[s] City officials from being named in Honorary Committees." Your letter states that it is Commission Staff's position that merely being listed as a member of an organization's honorary committee is a violation of Code section 3.207(a)(1). This is simply not the case.

Your letter makes no reference to specific informal advice provided by Commission Staff that may have led to this conclusion, nor does it reference advice provided by the City Attorney's office to that effect. Unfortunately, this makes it difficult to squarely address the specific action by Commission Staff to which you referring.

As you will recall, as a general matter, Commission Staff may provide informal advice, pursuant to the City Charter, to "any person with respect to that person's duties under provisions of this charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics." Separately, the City Attorney's office provides legal advice to City officials about best practices for complying with state and local ethics laws, and from time to time the City Attorney's office will consult with Commission Staff regarding the meaning of provisions of the Code before providing such legal advice. As you know, providing advice to regulated persons about how to comply with any provision of City law is a highly fact-dependent and situation-specific matter.

The conclusion relayed in your letter fails to take into account a factor that is highly relevant to the policy question you have raised regarding section 3.207(a)(1): the use of one's public position or office. Code section 3.207(a)(1) prohibits any City elective officer or member of a board or commission from "us[ing] his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated." This language clearly does not create an overarching prohibition against an official merely being associated with an organization. Rather, it

prohibits an official from using her public position or office to seek anything of value for an organization if the official is associated with that organization. Setting aside for a moment what it means for an official to be associated with an organization, the presence of an association alone would not constitute a violation of Code section 3.207(a)(1). Instead, it would entail that the official is prohibited from *using her office* to fundraise or seek other goods for the organization in question.

At its heart, Code section 3.207(a)(1) is concerned with when it is inappropriate for an official to use her public office to direct things of value to organizations; it is not a rule that prohibits associations between City officials and community organizations. In fact, Code section 3.207(a)(1) would not prohibit an official from both being associated with an organization *any* fundraising for that organization. It merely prohibits the official from *using her public position* to do the fundraising.

As discussed above, whether an official is *associated* with an organization and whether the official's actions constitute *using public office* to seek anything of value for the organization are highly fact-specific inquiries. Additionally, the Code section does not regulate the conduct of organizations, as your letter suggests is the belief of Commission Staff. This section only concerns the actions of the City officials. Given the language of Code section 3.207(a)(1), staff will not advise, nor has Staff advised, that merely being on an honorary committee or otherwise being associated with a community organization would be impermissible under Code section 3.207(a)(1).

Given the Commission's duty and authority under the Charter to carry out "the impartial and effective administration and implementation of the provisions of th[e] charter, statutes and ordinances concerning campaign finance, lobbying, conflicts of interest and governmental ethics," the Commission and Staff will provide advice to any person who inquires about his or her duties under Code section 3.207(a)(1) under a specific set of circumstances. In furtherance of this role, Staff will administer the section as a prohibition on officials using their public offices to seek things of value for themselves, their family members, or organizations with which they are associated, as stated in the language of the Code section.

It is an indicator of the importance of the Commission's interpretive and administrative function that any amendments to Article III, Chapter II of the Code must be approved by Commission. This approval requirement signals a clear legislative role of the Commission concerning amendments to the Government Ethics Ordinance and further buttresses the Commission's role in discerning the intent of the Code. The Anti-Corruption and Accountability Ordinance, which originated with the Commission and created Code section 3.207(a)(1), required the approval of the Commission. Should further clarification of the Commission's interpretation be necessary, the Commission is also authorized under the Charter to promulgate implementing regulations.

Should you remain concerned with the effects of Code section 3.207(a)(1), your participation in the Commission's agendaized policy development discussions is always welcomed. The Commission plans to consider a set of regulations in the near future that will, among other things, address various rules created by the Anti-Corruption and Accountability Ordinance, and we invite your engagement in that process.

Sincerely,
LeeAnn Pelham
LeeAnn Pelham
Executive Director

cc: Ethics Commission Chair Daina Chiu
Attachment