



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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Date: January 14, 2019

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Re: **AGENDA ITEM 6 - Discussion and possible action on monthly Staff Policy Report, including review and possible action on quarterly Policy Prioritization Plan.**

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 January. This month the memo also includes the quarterly Policy Prioritization Plan, which the Commission may update for the third quarter of fiscal year 2019.

Action Requested: That the Commission review the updates provided in this report and determine whether it wishes to see any re-prioritization of its policy priorities for the quarter.

This memo provides an operational update on the Commission's policy projects. Section I provides status reports about ongoing policy projects that the Commission has identified as policy priorities as part of its Policy Prioritization Plan. Section I also contains Staff's recommendation for the Commission's Policy Prioritization Plan for the third quarter of fiscal year 2019.

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 and resources of the Policy Division.

I. Policy Prioritization Plan – Status of Ongoing Initiatives

The following sections describe the status of the Commission's current policy priorities. Staff recommends these policy priorities be retained for the third quarter of fiscal year 2019. As explained under each project below, Staff remains engaged on each project and believes retaining a priority focus on each is necessary to bring these projects to completion.

For reference, Attachment 2 identifies the top three items on the current priority list and provides a complete list of policy projects that the Commission has identified in the past for consideration as potential top priorities.

A. Review of the City's Public Financing Program

At the November 2018 meeting, Policy presented draft regulations and a draft ordinance to implement Staff's recommendations as to how the City's public campaign financing program could be made more effective and workable. The Commission approved the regulations and continued its discussion of the ordinance to allow further time for feedback and response to several questions posed by the Commission. Research and analysis Policy performed in response regarding the draft ordinances is presented along with the draft ordinances under Agenda Item 5.

Barring any adjustment by the Commission of its preferred policy priorities, and in alignment with any formal action the Commission takes on Agenda Item 5 at the January meeting, Staff plans to continue the review of the public financing program as its top policy work. Included among that work during the third quarter of FY2019 will be engaging with members of the Board of Supervisors to encourage passage of the ordinance as adopted by the Commission as Attachment 1 to Agenda Item 5. Staff also plans to implement the newly approved regulations concerning public financing and to work with auditors to examine internal procedures related to Qualifying Requests and Matching Requests and with Engagement and Compliance personnel to update and improve the written resources that are available to program participants.

B. Review of Campaign Finance Reform Ordinance Regulations

This project seeks to update and improve existing regulations and develop regulations to clarify new provisions of the Code created by the Anti-Corruption and Accountability Ordinance. Policy presented a list of recommendations as to how the regulations could be improved at the Commission's December meeting, and is currently preparing draft regulations embodying these recommendations for the Commission's consideration at the regularly scheduled February 2018 meeting.

Staff recommends maintaining this project as a priority during the next quarter to give the Commission the opportunity to fully consider the draft regulations.

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 recommends maintaining this project as a priority during the next quarter. Staff believes that developing additional content for the Commission's website might be an effective way of informing the public about the law regarding these advertisements. Policy staff will pursue this in conjunction with the Engagement and Compliance Division.

II. Miscellaneous Policy Administrative Projects

A. Pending San Francisco Legislation

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

File No. 180317, which amended 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 was approved by the mayor and is now in effect. Further detail about this ordinance is contained in the Enforcement Report under Agenda Item 7.

2. File No. 180934 (Biennial Update to Lists of Form 700 Filers)

An ordinance updating the Form 700 filing requirements for City officers and employees became effective on December 20th. Policy is assisting Engagement and Compliance in ensuring that these changes are incorporated into the filing advice and assistance that Commission Staff provide to Form 700 filers.

B. ACAO Implementation

Policy is collaborating with all other divisions to implement the provisions of the Anti-Corruption and Accountability Ordinance (ACAO) that became operative on January 1, 2019. This process includes new disclosure forms, updates to the Commission's website and candidate guides, and development of regulations to provide more clarity about the new law.

C. Universal Electronic Filing of the Statement of Economic Interests (Form 700)

Policy is collaborating with other divisions to plan for the implementation of universal electronic filing by all individuals who are required to file the Form 700, Statement of Economic Interests. At this stage, Policy is helping to identify project requirements and establish timelines. Policy anticipates that an amendment to existing regulations will be required in order to institute universal electronic filing of the Form 700 and will likely present such regulations to the Commission in the near future.

ATTACHMENT 1

Summary of Bills Watched

Created by the California Fair Political Practice Commission

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

SB 71 (Leyva D) Political Reform Act of 1974: campaign expenditures: limitations.

Current Text: Introduced: 1/9/2019 [html](#) [pdf](#)

Location: 1/9/2019-S. RLS.

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

Summary:

The Political Reform Act of 1974 authorizes certain candidates and elective officers to establish a separate legal defense fund campaign account to defray attorney's fees and other related legal costs incurred in the defense of the candidate or elective officer who is subject to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officers' governmental activities and duties, as specified. This bill would prohibit the expenditure of funds in a legal defense fund campaign account to pay or reimburse a candidate or elected officer for attorney's fees or other legal costs, as specified, in connection with claims of unlawful practices made pursuant to specified provisions of law.

Laws:

An act to amend Sections 85304 and 85304.5 of, and to add Section 89523 to, the Government Code, relating to the Political Reform Act of 1974.

1/14/2019 11:27:13 AM

ATTACHMENT 2

Policy Prioritization Plan (PPP)

Ongoing Policy Projects

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| 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 - Develop improved tools and resources to support candidate awareness - Pursue legislative, regulatory, and administrative approaches to improve Program | 9 | 8 | 6+ Months |
| 2 | CFRO Regulations Review: Issue - Changes to Code require review and possible updating, definitions, interpretations, and guidance in regulations - 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 - Draft proposed new regulations for Commission consideration | 8 | 8 | 3 Months |

Policy Prioritization Plan (PPP)

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|----------|---|---|---|----------|
| 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 advertising in the City - create new online content to inform public about laws regarding online political communications | 7 | 7 | 2 Months |
|----------|---|---|---|----------|

Potential Policy Projects

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| | Create Limit on Contributions to IE Committees: Issue - A proposal to limit contributions to committees that make independent expenditures to \$5,000, unless the contribution comes from a limited contributor committee Approach - A copy of draft ordinance language provided by stakeholders is provided as Attachment 2 - Assess legal and logistical dimensions of creating this rule | 7 | 7 | 3 months |
| | 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. | 6 | 5 | 6+ Months |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|--|--------|------------------------|---|
| | 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 |
| | 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 program's inception. | 6 | 5 | 2-3 Months |
| | Commission Independent Counsel Project: Issue - The Commission has identified concerns with having the City Attorney's office represent and consult the Commission, given the Commission's unique duty to review the activities of public officials and employees and the City Attorney's dual roles of advising both the Commission and regulated public officials. Approach - The Commission has expressed interest in having its own Commission counsel. | 9 | 6 | 2-3 Months |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| | 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 | 2-3 Months |
| | 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 |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| | 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 2010 and 2011. | 6 | 5 | 2-3 Months |
| | 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 | 2-3 Months |
| | Behested Payment Disclosure Program Review: Issue - The Behest Payment Disclosure Program was added by Ordinance 17. The Commission has expressed an interest in the continuing evaluation of behested payments for potential future legislative action. | 6 | 1 | 2-3 Months |
| | 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 administering the Ordinance. | 8 | 1 | 6+ Months |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| | Governmental Ethics - Conflict of Interest Regulation Review: Issue - Staff could not identify when the last review of the conflict of interest regulations had occurred. Recent law changes at the state and local levels may require changes to current regulations. | 7 | 3 | 3-6 Months |
| | 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 administering the Ordinance. | 8 | 1 | 6+ Months |
| | Lobbying Regulations Review: Issue - Staff could not identify when the last review of the Lobbying regulations had occurred. Recent law changes at the state and local levels may require changes to current regulations. | 5 | 2 | 3-6 Months |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|---|--------|------------------------|---|
| | 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 may be more appropriately handled by the Ethics Commission. | 5 | 3 | 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 Cohen (File No. 180317) | N/A | N/A | N/A: Legislative reviews are highly dependent on the individual legislation requiring review. |

Policy Prioritization Plan (PPP)

| Priority | Project | Impact | Urgency/ Timeliness | Staff Commitment & Project Timeframe |
|----------|--|--------|------------------------|---|
| | Commission Research Requests: Issues - 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 Approaches - 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 | N/A: Commission requests are highly dependent on the individual action requiring review. |