



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: February 11, 2019

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Re: **AGENDA ITEM 9 - Staff Policy Report**

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 February.

Action Requested: No action is required by the Commission, as this item is for informational purposes only.

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.

A. Review of the City's Public Financing System

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 two ordinances to allow further time for feedback and to respond to several questions posed by the Commission. The draft ordinances, along with drafts representing alternate approaches, appear under Agenda Item 8.

Staff plans to continue the review of the public financing program as its top policy work. The second phase of this project will incorporate a review of more fundamental components of the program, including the levels of funding available to candidates, the matching funds ratios, qualification requirements, and the overall format of the program (which is currently a hybrid model, involving an initial grant followed by matching funds). This undertaking will also include production of the public financing report required by Sec. 1.156 after each election in which candidates received public financing. It also may culminate in an ordinance being proposed to the Commission. Also included among the second phase of the review project will be engaging with members of the Board of Supervisors to encourage passage of any ordinance adopted by the Commission as part Agenda Item 8, implementation of newly operative regulations concerning public financing, collaborating internally with auditors to examine Qualifying Requests and Matching Requests procedures, and collaborating with the Engagement and Compliance team 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. Due to a focus on additional research and feedback over the past month, Policy plans to draft regulations embodying these recommendations for presentation for the Commission's consideration at the regularly scheduled March 2018 meeting.

C. Online Paid Political Communications

The Commission has 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. Work on this priority project over the next quarter will include developing additional content for the Commission's website as an effective way to help inform 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. 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. Commissioner Request Regarding State Legislation

At the Commission's regularly scheduled January 2019 meeting, Commissioner Kopp requested additional information regarding California Senate Bill 71, which is currently pending before the California State Senate. This bill would prohibit state and local candidates and elected officials from using money held by their candidate committees or legal defense funds for purposes of filing, defending, or settling claims under Chapter 6 of the California Fair Employment and Housing Act, which prohibits various forms of discrimination.

To help the Commission better understand the contents and background of SB 71, Staff has attached a fact sheet from the bill's sponsor, a sponsorship letter from the FPPC, and memorandum from FPPC staff. Those documents are attached to this memorandum as Attachment 2.

ATTACHMENT 1

Summary of Bills Watched

Created by the California Fair Political Practice Commission

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

[AB 201](#) ([Cervantes D](#)) Political Reform Act of 1974: campaign disclosure: mass text messages.

Current Text: Introduced: 1/14/2019 [html](#) [pdf](#)

Location: 1/14/2019-A. PRINT

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

Summary:

Would declare the intent of the Legislature to enact legislation establishing disclosure requirements for campaign-related mass text messages that include the name or image of a candidate for elective office or refer to a ballot measure.

Laws:

An act relating to the Political Reform Act of 1974.

[AB 220](#) ([Bonta D](#)) Political Reform Act of 1974: campaign funds: childcare costs.

Current Text: Introduced: 1/16/2019 [html](#) [pdf](#)

Location: 2/4/2019-A. E. & R.

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, including the use of campaign funds for specific expenditures. The act prohibits the use of campaign funds to pay for professional services not directly related to a political, legislative, or governmental purpose. This bill would authorize the use of campaign funds to pay for child care expenses resulting from a candidate or officeholder engaging in campaign activities or performing official duties.

Laws:

An act to amend Section 89513 of the Government Code, relating to the Political Reform Act of 1974.

AB 225 (Brough R) Political Reform Act of 1974: campaign funds: childcare costs.

Current Text: Introduced: 1/16/2019 [html](#) [pdf](#)

Location: 2/4/2019-A. E. & R.

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, including the use of campaign funds for specific expenditures. This bill would provide that campaign funds may be used to pay for child care provided for a candidate's dependent child if the costs are incurred as a direct result of campaign activity.

Laws:

An act to amend Section 89513 of the Government Code, relating to the Political Reform Act of 1974.

AB 322 (Gallagher R) Political Reform Act of 1974: online filing and disclosure system.

Current Text: Introduced: 1/30/2019 [html](#) [pdf](#)

Location: 1/30/2019-A. PRINT

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

Summary:

Would require a local government agency to post on its internet website a copy of any specified statement, report, or other document filed with that agency in paper format. This bill would require that the statement, report, or other document be made available for four years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill would impose a state-mandated local program.

Laws:

An act to add Section 84616 to the Government Code, relating to the Political Reform Act of 1974.

AB 359 (Melendez R) Political Reform Act of 1974: postgovernment employment.

Current Text: Introduced: 2/4/2019 [html](#) [pdf](#)

Location: 2/4/2019-A. PRINT

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

Summary:

The Political Reform Act of 1974 prohibits a Member of the Legislature, for a period of one year after leaving office, from acting as a compensated agent or attorney for, or otherwise representing, any other person by making appearances before, or communications with, the Legislature or its committees, Members, or officers or employees, if the appearance or communication is made for the purpose of influencing legislative action. If the Member resigns from office, this prohibition applies from the effective date of the resignation until one year after the adjournment sine die of the session in which the resignation occurred. This bill would extend the time periods for these prohibitions for a Member of the Legislature to 5 years.

Laws:

An act to amend Section 87406 of the Government Code, relating to the Political Reform Act of 1974.

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

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

Location: 1/16/2019-S. E. & C.A.

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.

ATTACHMENT 2

Senate Bill 71

Senator Connie M. Leyva (D-Chino)

SUMMARY

Senate Bill 71 would prohibit legal defense and campaign funds from being used to pay or reimburse an elected official or candidate for legal fees associated with violations of the Fair Employment and Housing Act, including sexual harassment and discrimination.

BACKGROUND

Current law authorizes elected officials and candidates to use campaign and legal defense funds to pay for the legal expenses that may arise directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties. Under the Political Reform Act, attorneys' fees and other costs related to administrative, civil, or criminal lawsuits may only be paid with campaign funds if the case is directly related to a political, legislative, or legal purpose.

In March 2018, the Fair Political Practices Commission (FPPC) withdrew an advice letter¹ sent to and requested by former Senator Tony Mendoza that permitted him to use legal defense and campaign funds to defend himself against claims of sexual harassment that arose during his status as an elected official.

Following its withdrawal of the advice letter, the FPPC reexamined its policies pertaining to the use of legal defense and campaign funds to pay for legal costs associated with protecting candidates and elected affiliates from claims brought under the Fair Employment and Housing Act.

PROBLEM

The withdrawal of the advice letter has left a gap in FPPC policy related to whether or not legal defense and campaign funds can be used to pay or reimburse

an elected official or candidate for legal fees associated with violations of the Fair Employment and Housing Act.

SOLUTION

To remove any ambiguity, Senate Bill 71 will prohibit the use of legal defense and campaign funds for fines, penalties, judgments, or settlements associated with violations of the Fair Employment and Housing Act, including sexual harassment and discrimination.

Individuals that commit acts of sexual harassment or discrimination should not be able to avoid the personal and financial consequences of their actions merely because of their status as an elected official or candidate and access to political contributions.

STATUS

Introduced – January 9, 2019

SUPPORT

California Fair Political Practices Commission
(Sponsor)

CONTACT

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¹ *Mendoza Advice Letter A-18-009* (rescinded, March 2018), California Fair Political Practices Commission.



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 22, 2019

The Honorable Connie Leyva
California State Senate
State Capitol, Room 4061
Sacramento, CA 95811

**RE: Senate Bill 71 (Leyva) – Clarify the Use of Campaign and Legal Defense Funds
Related to Violations of California’s Fair Employment and Housing Act - SPONSOR**

Dear Senator Leyva

At the December 20, 2018 meeting of the bipartisan Fair Political Practices Commission, the FPPC voted to sponsor legislation that would amend the Political Reform Act to clarify the proper use of funds from campaign and legal defense committees. Under Senate Bill 71, campaign and legal defense committees would be prohibited from expending any funds related to the legal costs of defending or filing a claim related to violations of California’s Fair Employment and Housing Act.

Current law authorizes elected officials and candidates to use campaign and legal defense funds to pay for the legal expenses that may arise directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder’s governmental activities and duties. Under the Political Reform Act, attorneys’ fees and other costs related to administrative, civil, or criminal lawsuits may only be paid with campaign funds if the case is directly related to a political, legislative, or governmental purpose.

In March 2018, the Fair Political Practices Commission (FPPC) withdrew an advice letter¹ sent to and requested by former Senator Tony Mendoza that permitted him to use legal defense and campaign funds to defend himself against claims of sexual harassment that arose during his status as an elected official.

Following its withdrawal of the advice letter, the FPPC reexamined its policies pertaining to the use of legal defense and campaign funds to pay for legal costs associated with claims brought under the Fair Employment and Housing Act. The FPPC concluded the withdrawal of the advice letter left a gap in FPPC policy related to whether legal defense and campaign funds can be used to pay or reimburse an elected official or candidate for legal fees associated with violations of the Fair Employment and Housing Act.

¹ Mendoza Advice Letter A-18-009 (rescinded, March 2018), California Fair Political Practices Commission.

To remove any ambiguity, Senate Bill 71 will prohibit the use of legal defense and campaign funds for legal expenses, fines, penalties, judgments, or settlements associated with violations of the Fair Employment and Housing Act, including sexual harassment and discrimination.

For these reasons, the FPPC is proud to sponsor SB 71 and looks forward to working with you on this important legislation. If you have any questions, please contact Phillip Ung, Director, Legislation and External Affairs at (916) 322-7635 or pung@fppc.ca.gov.

Sincerely,



Loressa Hon
Acting Executive Director



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To: Commissioner Hatch, Chair of Law & Policy Committee

From: Phillip Ung, Director, Legislative and External Affairs

Subject: Attachment 8: Prohibition on Use of Funds; Harassment and Discrimination RN 19 01038

Date: December 12, 2018

Background

At the March 2018 meeting, the Commission rescinded the [Mendoza Advice Letter A-18-009](#). The letter concluded then-Senator Tony Mendoza may establish a legal defense fund to defray attorney's fees related to a claims of wrongful termination, proceedings related to Senate Resolution 69 (2018), and a subsequent civil proceeding should one be filed. The letter had also stated Mr. Mendoza may use campaign and legal defense funds to defend himself from claims of sexual harassment that arose directly out of his activities, duties, or status as a candidate or elected officer.

The Act authorizes certain candidates and elective officers to establish legal defense funds to defray attorney's fees and other related legal costs in defense of a candidate who is subject to one or more civil, criminal, or administrative proceedings arising directly out of conduct of an election campaign or performance of governmental activities and duties.

The Act permits expenditures that confer a substantial personal benefit must be directly related to a political, legislative, or governmental purpose. The Act prohibits the use of campaign funds for fines, penalties, judgements, or settlements.

Analysis

This bill does the following:

1. Prohibits funds from legal defense funds, defined under the Act, from being used to pay or reimburse a candidate or elected officer for attorney's fees or other legal costs in connection with claims of unlawful practices defined under the Fair Employment and Housing Act. This would include expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.
2. Prohibits the use of campaign funds from being used to pay or reimburse a candidate or elected officer, or any individual with authority to approve campaign expenditure for attorney's fees or other legal costs in connection with claims of unlawful practices defined under the Fair Employment and Housing Act. This would include expenses for filing a claim, defending a claim, and payment of a penalty or settlement related to a claim.

Rationale

The rescission of the *Mendoza Advice Letter* has left a potential gap in the Commission's policy of whether the payments or reimbursements are permitted for claims related to violations of the Fair Employment and Housing Act. This gap can be filled through the passage of this proposed bill that will expressly prohibit such payments and reimbursements.

Fiscal Impact

Minor and absorbable. The Commission will update manuals, the website, and communicate the new prohibition to the regulated community.

Legislative Counsel has keyed the as a state-mandated local program which generally requires the state, under the California Constitution, to reimburse local agencies and school districts for certain costs mandated by the state. However, no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of [Section 17556 of the Government Code](#).

Staff Recommendation

1. Recommend the Commission approve the Legislative Counsel draft as presented;
2. Adopt a sponsorship position; and
3. Authorize Commission staff to retain an author for bill introduction.