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CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: September 16, 2019

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Re: **AGENDA ITEM 6 – Discussion of Monthly 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.

Action Requested: That the Commission review the updates provided in this report.

Section I of this memorandum provides status reports about ongoing policy projects that the Commission has identified as policy priorities as part of its 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 ongoing attention and resources of the Policy Division.

I. Policy Prioritization Plan – Status of Ongoing Initiatives

This section describes the status of the Commission's current policy priorities.

A. Review of the City's Public Financing System

As part of the second phase of the Commission's review of the City's public campaign financing program, the Commission approved an ordinance at its May meeting to increase the amount of funds available to participants, increase the matching rate, and increase the initial spending limits, among other changes. Supervisor Mar introduced the ordinance (File No. 190660) before the Board of Supervisors on June 4th, and the ordinance was assigned to the Government Audit and Oversight Committee. The ordinance was heard by the committee on September 5th, and the committee forwarded the legislation to the full Board with a positive recommendation. Supervisors Fewer and Safai have been added as cosponsors of the ordinance.

Policy will continue to engage with members of the Board and community stakeholders to encourage the ordinance's passage by the full Board.

B. Electronic Filing of the Form 700

All elected officials, board and commission members, department heads, and designated employees of the City must file the Form 700 Statement of Economic Interests to publicly disclose their personal financial interests. Under current regulations, elected officials, board and commission members, and department heads must file the form electronically through the Commission's NetFile system, allowing the disclosed information to be easily searched by the public. However, designated employees file the Form 700 in paper form with their departments.

As reported in the previous Policy Reports, Staff is in the process of planning the project needs and requirements to allow all designated filers to use electronic filing for their required Statements of Economic Interests. While other divisions are in the process of assessing and planning the technology and compliance aspects necessary for implementation of this project, Policy is working with the Department of Human Resources to notify employee bargaining units of the potential change so that they will have the opportunity to meet and discuss the new requirements with Staff. After any discussions with bargaining units is concluded, Policy will draft regulations to implement the e-filing project and will present the regulations at a future meeting of the Commission.

II. Miscellaneous Policy Administrative Projects

This Section describes some of the ongoing work by the Policy division that does not fall within the policy projects identified under the Policy Prioritization Plan. This work includes: advice to Staff and the regulated community regarding the laws administered by the Commission; legislative affairs; media relations; and general program support for various office functions.

A. Pending San Francisco Legislation

1. Initiative Ordinance – “Sunlight on Dark Money Initiative” (Mar)

As described in previous Policy Reports, five members of the Board of Supervisors submitted an initiative ordinance to the Department of Elections that would amend provisions of the Campaign and Governmental Conduct Code to, among other things, prohibit political contributions from persons with a financial interest in a land use matter and change disclaimer requirements for certain political communications. Staff collaborated with the Controller's Office to develop a cost estimate for implementing the ordinance if it is approved by the voters. The ordinance was the subject of a hearing before the Rules Committee, and the Ballot Simplification Committee has approved a final ballot measure digest for inclusion in the voter information pamphlet. The measure will appear on the ballot as Proposition F.

2. File 190660 – Public Financing Ordinance (Mar)

As described in section I.A above, the public financing ordinance approved by the Commission at its May meeting was approved by the Government Audit and Oversight Committee. Staff will continue to provide information to members of the Board and to encourage the ordinance's approval.

B. ACAO Implementation

Provisions of the Anti-Corruption and Accountability Ordinance (ACAO), which was approved by the Commission, the Board, and the Mayor in 2018, became operative on January 1, 2019. As the Engagement and Compliance and EDDA Divisions implement these new provisions, Policy continues to provide guidance and advice. The implementation 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. Update on Relevant Court Decision

In May 2016, the Commission formally urged the City's State Legislation Committee to support California Senate Bill 1107.¹ This bill, which was ultimately signed into law, allowed counties and general law cities to enact public campaign financing programs. The legislation did so by creating an exception to a preexisting provision of state law stating that "a public officer shall not expend, and a candidate shall not accept, any public moneys for the purpose of seeking elective office."² This prohibition was created by Proposition 73, which was passed by California voters in 1988. Although San Francisco was not subject to this prohibition because of its status as a charter law city,³ the Commission supported SB 1107 because it would give other local jurisdictions the ability to enact public financing programs.

On August 26th, the Third District Court of Appeal ruled that SB 1107's allowance of public financing programs is invalid. The case was brought by the Howard Jarvis Taxpayers Association and Quentin Kopp and challenged the ability of the California legislature to create a public-financing exception to a rule that was created through the initiative process. The court found that "[b]ecause Senate Bill No. 1107 expressly conflicts with a primary mandate of the [Political Reform] Act, the ban on public funding of election campaigns, it is invalid."⁴ This ruling does not affect San Francisco's public financing program. However, it is relevant to the Commission's earlier support for SB 1107 and the ability of other municipalities to enact public financing programs.

¹ See Attachment 1.

² CAL. GOV'T CODE § 85300 (amended by Chapter 837).

³ See *Johnson v. Bradley*, 4 Cal. 4th 389 (1992).

⁴ *Howard Jarvis Tax Payers Assoc. v. Newsom*, No. C086334, slip op. at 18 (Cal. Ct. App. Aug. 26, 2019).

ATTACHMENT 1



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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May 2, 2016

State Legislation Committee
Attn: Andrew Dayton
Deputy Director of Legislative & Government Affairs
Office of Mayor Edwin M. Lee
andrew.dayton@sfgov.org

Re: Ethics Commission Action to Support Senate Bill 1107

Dear Mr. Dayton and Committee Members:

This correspondence brings to your attention recent action by the Ethics Commission ("Commission") on a matter of State legislation, which the Commission also encourages the State Legislation Committee to consider and support. At its April 25, 2016 meeting, the Commission voted 4-0 to support California Common Cause in its request for support of Senate Bill 1107 ("SB1107"), and to call upon the City's State Legislation Committee to also formally back SB1107. Attached for reference are materials California Common Cause provided for the Commission's review.


SB1107 seeks to amend State law so that counties, general law cities, districts and the state may establish public financing for candidate elections. In 1988, the voters approved Proposition 73, which prohibited the use of public funds for candidate campaigns – including public financing programs. The California Supreme Court later held, *see Johnson v. Bradley*, 4 Cal. 4th 389 (1992), that Charter cities such as San Francisco could establish public financing programs, notwithstanding state law. But State law continues to prevent many other local and state jurisdictions from establishing public financing programs.

As the agency responsible for administering the voter-established public financing system in San Francisco, the Ethics Commission endorses the goal of allowing jurisdictions throughout California to create similar public financing systems should they desire to do so.

I will be attending this Thursday's meeting of the State Legislation Committee and would be happy to answer any questions. If I can provide any additional information in the interim, please feel free to contact me at (415) 252-3100.

Thank you for your time and consideration.

Sincerely,


LeeAnn Pelham
Executive Director

Attachments



www.commoncause.org

April 7, 2016

The Honorable Ben Allen
State Capitol, Room 2054
Sacramento, CA 95814

RE: Senate Bill 1107 – Accountable Elections – SUPPORT

Dear Senator Allen,

On behalf of California Common Cause and our members, I am writing with a letter of support for Senate Bill 1107, which would restore control to local governments and the state to enact new options for election campaign funding. Thank you for your leadership on this bill.

Voters are increasingly concerned about political mega-donors in our elections. According to recent polls, 76% of Americans say money has a greater role on politics than in the past,¹ 83% think that money has too much influence in American political campaigns today,² and 87% believe that campaign finance should be reformed so that a rich person does not have more influence than a person without money.³

To address voters' concerns, governments are increasingly considering new approaches to campaign financing. In November 2015, voters in Maine and Seattle approved ballot measures that put power back into the hands of voters and small donors. In Maine, 55% of voters approved strengthening that state's Clean Elections Act, which provides public funds to candidates for state office. In Seattle, 63% of voters approved creating a program to offer public financing for local candidates.

In fact, six California cities *already* had laws similar to those recently approved by voters in Maine and Seattle. Los Angeles, San Francisco, Sacramento, Long Beach, Oakland, and Richmond offer limited public funds to match small campaign donations. These laws amplify the voices of everyday Californians who make small contributions and provide candidates with an alternative to relying on large donors.

Unfortunately, such programs are currently prohibited in other California jurisdictions. Unlike charter cities, state law bans counties, districts, general law cities, and the state from offering public campaign funds, under a provision enacted by Proposition 73, a 1988 initiative that toughened election laws.

Much has changed since 1988 when it comes to campaign finance. Voters in 1988 could have not envisioned the multi-million dollar SuperPACs that exist in 2016. It is time for the Legislature and voters to bring our campaign finance laws into the 21st century.

SB 1107 would remove the ban on voluntary public campaign financing programs. Because the ban was originally instituted by ballot initiative, the bill would refer the issue to the ballot for voters' approval.

SB 1107 *would not* create a public financing program or require any government to offer public financing. It would not spend any public funds or raise any taxes or fees. It would simply remove the ban and permit local governments or the state, if they so choose, to enact laws that create public financing programs. By removing the ban, local governments would have the flexibility to tailor policies to local

concerns and conditions, while requiring basic protections for fairness and accountability. Governments would not be required to take any action: SB 1107 would simply restore local control to decide.

Studies of existing public financing programs have found they reduce the need to fundraise while increasing the diversity of donors. A 2006 study for the San Francisco Ethics Commission found that the city's public financing program "reduces fundraising pressures on candidates, and that this most likely means that candidates have more time to spend discussing issues."⁴ A 2012 study by the Brennan Center for Justice and the Campaign Finance Institute of New York City's public financing system found that it "help[s] bring participants into the political process who traditionally are less likely to be active" and "gives candidates an incentive to reach out to a broader and more diverse array of constituents," thus "strengthening the connections between public officials and their constituents."⁵

SB 1107 also includes two other commonsense reforms to increase the accountability of our elections:

Prohibits foreign contributions to state and local candidates: Currently, foreign corporations and governments may not donate to ballot measure campaigns, but current law does not ban contributions to candidates. SB 1107 would extend the ban to prohibit foreign corporations and governments from donating to state or local candidates, enforceable by the state Fair Political Practices Commission.⁶

Winds down campaign funds of convicted officials: Under current law, if an elected official is convicted of a felony that includes the abuse of their office, such as bribery or embezzlement, they are disqualified from running for office again. In these rare but serious cases, SB 1107 would require the convicted official to return any unused campaign funds to donors or pay past debts, and forfeit any surplus funds after six months to the state's general fund. (Legal defense funds would not be affected.)

For these reasons, California Common Cause strongly supports SB 1107 and we urge its expeditious passage. Please contact me at nheidorn@commoncause.org or (916) 443-1792 if you have any questions.

Sincerely,



Nicolas Heidorn
Policy and Legislative Counsel
California Common Cause



Gavin R. Baker
Open Government Program Manager
California Common Cause

¹ Pew Research Center, "Beyond Distrust: How Americans View Their Government," Nov. 23, 2015, <http://www.people-press.org/2015/11/23/6-perceptions-of-elected-officials-and-the-role-of-money-in-politics/>.

² "Americans' Views on Money in Politics," *The New York Times*, June 2, 2015, <http://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>.

³ Greg Stohr, "Bloomberg Poll: Americans Want Supreme Court to Turn Off Political Spending Spigot," *Bloomberg Politics*, Sept. 28, 2015, <http://www.bloomberg.com/politics/articles/2015-09-28/bloomberg-poll-americans-want-supreme-court-to-turn-off-political-spending-spigot>.

⁴ "Evaluating San Francisco's Partial Public Campaign Funding Program After Two Elections," May 12, 2016, http://www.sfgov3.org/ftp/archive/agencies/ethics/www.sfgov.org/site/uploadedfiles/ethics/campaign_finance/Goldman_School_report_5_06.pdf.

⁵ Brennan Center for Justice and Campaign Finance Institute, *Donor Diversity Through Public Matching Funds*, 2012, http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

⁶ Federal law already prohibits campaign contributions by foreign nationals to state and local candidates; see 52 U.S.C. § 30121. By adding this provision to state law, SB 1107 would enable state enforcement of the prohibition.

Restore Local Control to Enact Election Accountability Policies

In the wake of the U.S. Supreme Court's *Citizens United* decision, local governments are increasingly reviewing their campaign finance ordinances in order to ensure the accountability of their elections. However, most California local governments *do not* have the option to offer any public funding to electoral campaigns, under an existing statewide ban.

Currently, six charter cities provide limited public funding to match small campaign contributions. These programs provide candidates with an alternative to relying on large campaign contributions and amplify the voices of everyday Californians who make small donations.

Unfortunately, other local governments are prohibited from offering public campaign funding, due to a provision adopted nearly 30 years ago as part of Proposition 73 (1988). While charter cities such as L.A. are exempt under the state Constitution, general law cities, counties, districts, and the state government are covered by the current state ban.¹ In fact, after voters in Sacramento County enacted public financing, the courts struck it down under Prop. 73.²

<i>Status of public campaign financing in California jurisdictions</i>		
Enacted	Not prohibited by state law	Prohibited by state law
<ul style="list-style-type: none">• City of Los Angeles• City and County of San Francisco• City of Long Beach• City of Oakland• City of Richmond• City of Sacramento	<ul style="list-style-type: none">• Other charter cities	<ul style="list-style-type: none">• Counties• General law cities• Special districts• State

SB 1107 (Allen/Hancock) would remove the ban on voluntary public campaign financing programs, subject to voter approval. Programs would have to meet basic criteria for fairness and accountability. SB 1107 *does not* create, or require any government to create, any public campaign financing program – it simply restores the option for local governments and the state.

Additionally, SB 1107 includes two other commonsense provisions to increase election accountability. The bill would require elected officials, who under current law are banned from running for office due to conviction of a specified felony such as bribery, to forfeit their campaign funds within six months, after paying debts or returning contributions, other than legal defense funds. SB 1107 also would extend the current prohibition against foreign corporations or governments contributing to ballot measure campaigns to also include candidate campaigns, and would increase the maximum fine for violating that prohibition.

¹ *Johnson v. Bradley*, 4 Cal. 4th 389 (1992).

² *County of Sacramento v. Fair Political Practices Comm'n*, 222 Cal. App. 3d 687 (1990).