



Ethics Commission Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2019-00204

February 25, 2019

Discussion Item 03

Title: Sacramento Ethics Commission 2018 Annual Report

Location: Citywide

Recommendation: 1) Review and comment on the draft Ethics Commission 2018 Annual Report; and 2) pass a Motion forwarding the Annual Report to the City Council.

Contact: Kevin Greene, Government Ethics and Transparency Administrator, (916) 808-7267, Office of the City Clerk

Presenter: Kevin Greene, Government Ethics and Transparency Administrator, (916) 808-7267, Office of the City Clerk

Attachments:

1-Description/Analysis

2-Sacramento Ethics Commission 2018 Annual Report

Description/Analysis

Issue Detail: Sacramento City Code § 2.112.030.A.3 requires an annual report be submitted to the City Council at least annually, regarding the activities of the Commission, with recommendations, if any, regarding the subjects of its purview. The attached draft Annual Report seeks to provide information to the City Council on the Commission Membership, activities of the Commission, and a series of Commission Recommendations to further enhance the efficacy of the Sacramento Ethics Commission.

Policy Considerations: None

Economic Impacts: None

Environmental Considerations: None

Sustainability: None

Commission/Committee Action: None

Rationale for Recommendation: Sacramento City Code § 2.112.030.A.3 requires an annual report be submitted to the City Council at least annually, regarding the activities of the Commission, with recommendations, if any, regarding the subjects of its purview.

Financial Considerations: None

Local Business Enterprise (LBE): None

Sacramento Ethics Commission | DRAFT 2018 Annual Report

Overview

In January 2018, the Sacramento Ethics Commission was seated and held its first meeting. The Commission has met regularly throughout the year (nine meetings in total).

The purposes of the Commission are (1) to review and consider complaints against elected and appointed city officials, and (2) to ensure that those city officials are conforming their conduct to the City's laws and policies. City Code § 2.112.030.A.3 requires that the Commission submit to the City Council, at least annually, a report "regarding the activities of the Commission, with recommendations, if any, regarding the subjects of its purview"

Powers & Duties

The Commission has the power and duty to do the following:

- Review, investigate, and consider complaints alleging violations of the following:
 - City Charter § 35 ("Limitation on future employment")
 - City Code chapter 1.20 ("Code of Fair Campaign Practices")
 - City Code chapter 2.13¹ ("Campaign Contribution Limitations")
 - City Code chapter 2.14 ("Campaign Spending Limits and Public Campaign Financing")
 - City Code chapter 2.15 ("Lobbyist Registration and Reporting Code")
 - City Code chapter 2.16 ("Conflict of Interest")
 - City Code chapter 4.02 ("Code of Ethics")
 - City Code chapter 4.08 ("Sunshine Ordinance")
 - City Code chapter 3 ("Conduct of Members")
 - Council Rules of Procedure, rule 6.E ("Closed Sessions")
- Enforce administrative penalties for violations of the City Code over which the Commission has authority.
- Report to the City Council regarding the Commission's activities.
- Provide annual input to the City Attorney on the list of law firms used by the City Attorney to conduct investigations of sexual-harassment claims against City officials.
- Provide input on the initial selection of an independent and neutral evaluator.
- Make recommendations for subsequent contracts with evaluators.
- Make recommendations regarding the retention or replacement of an evaluator.
- Provide review and input of the City's contract with the Fair Political Practices Commission.
- Provide input and assistance on the selection of candidates for the Sacramento Independent Redistricting Commission.

¹ Because the California Fair Political Practices Commission has been retained to enforce provisions related to campaign-contribution limits, the Commission does not have enforcement authority but will review the efficacy of the contract.

Authority

The Commission was established by the City Council's enactment of City Code chapter 2.112. Its authority extends only to City elected officials, candidates for City elected office, independent expenditure committees, members of City boards and commissions, the City Manager, the City Clerk, the City Attorney, the City Treasurer, the City Auditor, the Independent Budget Analyst, and the Director of Public Safety Accountability.

Commission Staffing

The Commission is staffed by the Government Ethics and Transparency Administrator, Kevin Greene (the Administrator). The position is based in the Office of the City Clerk.

Commission Membership

The following individuals make up the inaugural Commission.

- *Mary-Beth Moylan, 2018 Chair*

Chair Moylan is currently the Associate Dean for Experiential Learning at McGeorge School of Law. She teaches Election law, California Initiative Seminar, Civil Procedure, and Global Lawyering Skills at McGeorge as a member of the faculty. Her experience in practice was in election law and civil practice. Chair Moylan has a great understanding of the work of the Fair Political Practices Commission and has taught campaign ethics as part of her Election law course. Mary-Beth has been a resident of the City of Sacramento since 1994.

- *Emelyn Rodriguez, 2018 Vice Chair*

Commissioner Rodriguez served as a Senior Commission Counsel with the Fair Political Practices Commission (FPPC), where she was the lead attorney on regulatory, policy, and legislative issues. She authored the state's electronic campaign advertising regulations, among the first of its kind in the country. Commissioner Rodriguez headed the FPPC's first major revamping of lobbying rules in 25 years and worked on regulations involving political legal defense funds. She interpreted, analyzed, and developed draft regulations and legislation in campaign finance, conflicts of interest, lobbying, and ethics laws. After 13 years in state service, Commissioner Rodriguez established her own law firm in 2018, specializing in political, election, lobbying, and First Amendment law.

Commissioner Rodriguez is also a lecturer at UC Davis King Hall School of Law and sits on the Board of Directors at CalAware, a nonprofit community organization promoting transparency in government and civic engagement, as well as on the Community Council (Advisory Committee) of the Children's Receiving Home of Sacramento. Commissioner Rodriguez has lived in Sacramento for 21 years.

- *Deanna Adams*

Commissioner Adams is a Senior Policy Analyst with The Council of State Governments (CSG) Justice Center, a national nonprofit, non-partisan organization that works with local and state governments to develop research-driven strategies to increase public safety and strengthen communities. Prior to this role, Commissioner Adams was a senior policy fellow with the CSG Justice Center and the Chief Probation Officers of California.

She has served as the Director of Friends Outside of Santa Cruz County, a community-based organization that provides evidence-based interventions and reentry services to people in jail and under probation supervision. Commissioner Adams formerly engaged in private practice and served as an AmeriCorps Fellow with the County of Santa Cruz Health Services Agency. Commissioner Adams received her Bachelor of Arts from Whittier College and Juris Doctor from Hofstra University School of Law.

Aside from her professional work, Commissioner Adams enjoys engaging in professional and civic activities. She has held leadership positions within the American Bar Association (ABA) since 2009, including having served as committee chair within the Criminal Justice Section and Section of Science and Technology Law, as well as having served in leadership capacities within the Young Lawyers Division and as an ABA Membership Advocate. Commissioner Adams has received awards for her civic activities, including the U.S. President's Volunteer Service Award in 2012, Volunteer of the Year award from the City of Santa Cruz in 2013, and a Certificate of Special Congressional Recognition for Outstanding and Invaluable Service to the Community from United States Congresswoman Linda Sanchez in 2003.

- *Linda Ng*

Commissioner Ng has worked for the State of California in various capacities for the last 20 years resulting in broad knowledge of the state legislative and budget processes, as well as programs related to California's water resources, affordable housing, public health and safety, small businesses, environmental, and consumer affairs.

Commissioner Ng has extensive community involvement serving two terms on the California Fair Employment and Housing Commission. She served four terms as President of the OCA Sacramento Chapter, and is currently serving as the OCA National Executive Council as its Secretary. Commissioner Ng also served as a former President of the Asian Pacific State Employee Association. She is a graduate of the City of Sacramento's City Management Academy, has been a resident of Sacramento since 1994, and currently lives in the Pocket-Greenhaven area.

- *Susan Underwood*

Commissioner Underwood has been a member of the California Bar since 1977. She was a Deputy Attorney General for almost 30 years, handling litigation for state agencies and advising state boards and commissions. She also served as the Solicitor to the Agricultural Labor Relations Board for two years. She is now retired from state service. She has been active in the community as a Girl Scout leader, PTA member, and member of the B'nai Israel choir. Since 2007, Commissioner Underwood has chaired the Harvard Schools and Scholarships Committee, organizing the mandatory college interviews for Northern California high school seniors applying to her alma mater. She has been a resident of Sacramento since 1978, living in the Land Park area.

Activities of the Commission

The critical activities in the first year were to develop the policies and procedures required for the Commission to conduct its activities under City Code chapter 2.112. The Commission has developed the following foundational documents to further its purposes:

- Ethics Commission Operating Procedures

- Ethics Complaint Intake Form (<http://www.cityofsacramento.org/Clerk/Good-Governance-and-Compliance/File-An-Ethics-Complaint>)
- Ethics Commission Complaint Intake, Independent Evaluator, and Investigation Procedures.
- Ethics Commission Administrative Hearing Procedures

Complaints Received

We received inquiries for Commission review associated with City employees outside of the Commission's jurisdiction. The Administrator provided information to the individuals and indicated that the Independent Auditor's Whistleblower Hotline would be a more appropriate venue.

An additional complaint was communicated by voicemail regarding violations of the Brown Act. When the Administrator reached out for additional information, the complainant made no further contact.

There has not yet been a complaint within the Commission's jurisdiction that has been pursued beyond an initial inquiry. The Commission has not received any intake forms through the online process.

2019 Initiatives

- Finalize administrative-hearing procedures
- Approve penalty guidelines
- Approve settlement procedures
- Conduct a public-outreach campaign
- Identify opportunities to improve government ethics and transparency and to evaluate areas where the Commission can make meaningful policy changes moving forward.
- Identify and create training programs relating to ethics, conflicts of interest, and lobbying rules for individuals and groups under the Commission's jurisdiction.
- Provide 2020 election training and guidance

Commission Recommendations

As part of the process to develop procedures for implementing chapter 2.112, the Administrator and Commissioners spent significant time reviewing procedures and best practices of ethics commissions in the following cities: City and County of San Francisco, City of Los Angeles, City of San Diego, City of Oakland, City of San Jose, and City of Riverside (voters in the City of Long Beach approved the creation of an ethics commission in November 2018). Based on this review, the Commission offers the following recommendations.

Independence & Staffing

Two ways in which Commission differs from most other ethics commissions statewide are (1) budget source and guaranteed levels of funding and (2) the reporting structure of staff.

Most commissions are created by city charter and, as such, are independent of the city council and have an independent budget. The benefit of an independent commission that draws its power from a city charter is that it is not beholden for funding or authority to the individuals who are subject to its jurisdiction. The Commission suggests that in the future the City Council consider amending the City Charter to establish an independent Ethics Commission with a guaranteed budget and authority derived from the City Charter, not the City Code.

Second, most California ethics commissions have adopted a staffing structure that is also independent. Staff report to the commissions themselves, not to officers whose positions are subject to commission oversight. Currently, the Commission has a single staff member—the Administrator—and he reports directly to the City Clerk, who is subject to the Commission’s regulation. Since the Administrator makes an initial determination of jurisdiction, and possibly an initial referral to an independent evaluator (whose contract the City Clerk awards), there is the potential in this reporting structure for conflicts of interest to arise. The Commission recommends that this reporting structure be reconsidered and that the Administrator should report directly to the Commission or at least report to more than one elected or appointed official.

Subpoena Power

For the Commission to fulfill its duties as an investigative and enforcement body, it needs the ability to compel testimony and the production of documents related to a complaint. Currently, the City Charter only provides the City Council with subpoena power (City Charter § 34). The Commission would like the City Council to consider a process to grant the Commission subpoena authority, either as a conduit of the City Council or through amendment of the City Charter. The Commission understands that a Charter amendment would require voter approval and so suggests that the City Council consider an interim measure. One suggestion would be an ordinance allowing for the routine delegation of subpoena power when the Commission is sitting as an administrative-hearing adjudicator. The adjudicative function would be the primary role in which the Commission would need authority to compel a witness’s presence or testimony or the production of other evidence.

Hearing Officer

Because the commission is comprised of voluntary Commissioners, and in the course of the commission’s activities may have matters that require more lengthy administrative hearings, the commission asks the City Council to consider amendments to City Code chapter 2.112 to allow the Commission to authorize the use of an administrative hearing officer to conduct administrative hearings. The Commission would continue to be the final decision maker in all complaints brought before the commission. The ability to bring in a hearing officer would allow for flexibility in situations where it appears that a hearing will either be long, politically sensitive (including situations where one or more Commissioners may have conflicts of interest) or require expertise that the Commission does not have.

Education, Training and Policy

The ability for the Commission to guide activities related to ongoing education, training, and compliance of governmental ethics laws in Sacramento would promote the work of the Office of Ethics and Compliance. City Code chapter 2.112 is silent on the Commission’s promoting education and training. Although the Commission believes that education, training, and policy

development fall within the spirit of the chapter 2.112, the Commission asks the City Council to add language to City Code § 2.112.030 (powers and duties) that expressly designates these activities as within the Commission's purview.

Additionally, numerous commissions statewide engage in policy activities to ensure that their jurisdictions remain leaders on governmental ethics and to provide innovative solutions to complex ethical issues. Again, the Commission believes that these activities fall within the spirit of the chapter 2.112, the Commission asks that the City Council consider adding language to City Code § 2.112 that would expressly encourage the Commission to engage in policy activities related to government ethics.

DRAFT