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# Ethics Commission

## *An Independent Body with the Power to Enforce Local Ethics Laws*

“As regulatory agencies, ethics commissions serve a vital role in a democratic government. They work to ensure voters’ trust in policymakers and political institutions by monitoring compliance with ethics laws and ensuring ethical conduct by those under their jurisdiction.”

-- Megan Comlossy, Center for Ethics in Government (2011)

### **Sacramento needs an Independent Ethics Commission.**

Ethics rules, according to the Institute for Local Self-Government, help ensure that “personal interests play no role in a public servant’s decision.” However, when ethics laws are unknown, ignored, or unenforced, it undermines public confidence and increases cynicism in government. Ethics commissions can play an important role in educating officials and the public about local ethics rules, monitoring compliance, and enforcing penalties when these rules are broken. Of the ten largest cities in California, five (Los Angeles, San Diego, San Jose, San Francisco, and Oakland) have created independent ethics commissions. It’s time for Sacramento to do the same.

### **Principle 1: A primary responsibility of the Commission is to educate officials and the community about the city’s ethics laws, facilitate compliance, and foster a culture of ethical decision-making.**

The primary purpose of an ethics commission is to make sure city officials and the public understand city and state ethics laws and to foster a culture of ethical decision-making. Often, when officials violate ethics laws it is not out of malice, but simply because they were not aware of their obligations. Ethics commissions help provide this education, for example by: publishing clear and accessible pamphlets and manuals; holding staff trainings and public presentations; and providing written and oral advice upon request. An ethics commission should also strive to facilitate compliance with the law, for example by reminding officials and candidates of filing deadlines or preparing checklists that officials can use prior to making certain government decisions. Finally, ethics commissions are uniquely positioned to study the ethical climate in a city and propose legislative changes to the city council that can improve the quality of city decision-making.

Government ethics matters. It matters in crafting good public policy, and it matters to the public. Because ethics in government is a core city value, Sacramento should have a body dedicated to building up a city hall culture where compliance with ethics laws comes easily.

### **Principle 2: The Commission has oversight and enforcement authority over traditional ethics-related laws.**

Another purpose of ethics commissions is to ensure that ethics laws are followed. Our review of the ten largest cities in California found that, in cities without ethics commissions, including Sacramento, there is no local enforcement of government ethics laws. While local officials, for example the city attorney, could in theory enforce these laws, in practice they rarely do for practical and political reasons. For example, if a city attorney brought an action against the city manager or a member of the city council, it could jeopardize her working relationship with that person, her department’s budget, and even her job.

Instead, cities that do not have ethics commissions are almost entirely reliant on the state Federal Political Practices Commission (FPPC) to enforce government ethics laws. There are significant limitations to relying on

state enforcement. First, the FPPC will only enforce state ethics laws found in the Political Reform Act and certain campaign finance laws; the FPPC will not enforce any local ethics laws that are either stricter than state law or address uniquely local concerns. Second, the FPPC's jurisdiction includes all of state government plus more than 550 cities and counties – it does not have time to actively oversee or investigate what is occurring locally.

Ethics commissions ensure that local ethics laws are enforced and provide the local oversight that the FPPC cannot. Not surprisingly, a review of the top ten cities in California --five of which have ethics commissions and five of which do not-- shows that there is virtually no enforcement in cities without commissions (average of 0.5 fines/year) as opposed to cities with commissions (average of 8 fines/year). As Gary Winuk, former head of enforcement at FPPC, explains:

*“Local Ethics commissions play a vital and increasingly important role in ensuring government disclosure and accountability. The FPPC does a tremendous job, but must cover the entire State with a staff of less than 30 people. Local commissions complement the FPPC by having a dedicated focus on local issues and compliance. It also allows for local tailoring of ethics and campaign rules to address specific issues of concern in the community.”*

While enforcement is typically a small part of an ethics commission's overall activities, it is an important one: first, to deter anyone who would intentionally violate government ethics laws and, second, to give the public confidence that the ethics rules represent something more than words on a paper. The Commission's jurisdiction would extend to traditional ethics-related laws, including laws governing conflicts-of-interest, moonlighting, financial interest disclosure, gifts, use of public resources, campaign finance, post-public service employment, lobbying, public meetings, and public records.

### **Principle 3: Ethics Commissioners are selected for their ability to be fair and impartial.**

An Ethics Commission cannot operate effectively unless the public and city officials have confidence in the impartiality and fairness of commissioners. Commissioners must themselves be above reproach; those who have potential conflicts of interest should be excluded from serving. In particular, Sacramento's commission should follow the model of other cities and prohibit commissioners, or their immediate relatives, from being candidates for office, lobbyists, city employees, city contractors, or major campaign donors.

### **Principle 4: The Commission is established in the City Charter and is independent of political control.**

Ethics commissions promote public trust by providing independent guidance to public officials and review of their actions. Because of the sensitive nature of their work, most local ethics commissions are created in the city charter to prevent interference with, or retaliation against, the commission. Without such protection, for example, a commission could be abolished in the middle of an investigation. Equally important is protecting staff and commissioners from individual retaliation: First, Commissioners should have the sole power to select and remove their executive director. Second, Commissioners should only be subject to removal for cause, for example neglect of duty or misconduct.

### **Principle 5: The Commission has dedicated funding.**

For an Ethics Commission to be effective, it must have staff and resources to educate officials about their ethical responsibilities, and investigate and bring enforcement actions where appropriate. However, because of their oversight role, ethics commissions are possible targets for defunding in tough budget times. In Oakland, the budget of the Ethics Commission was slashed during the recession and the Commission had no staff for a period of 18 months, causing the commission to effectively cease operating. Sacramento's Commission should have a guaranteed minimum number of staff, to prevent this from occurring.

### **Principle 6: The Commission provides robust due process protections and protects individuals' privacy.**

As with any body with adjudicatory powers, the Ethics Commission must have strong due process protections to ensure that people are not unfairly accused of violations. The Ethics Commission will not open a public investigation unless it has probable cause to believe a violation of city ethics laws has occurred. As is the case with

other commissions across the state, preliminary review of allegations that do not warrant formal investigation will be kept confidential to the maximum extent allowable by law.

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