



Structural Considerations in Establishing an Ethics Commission

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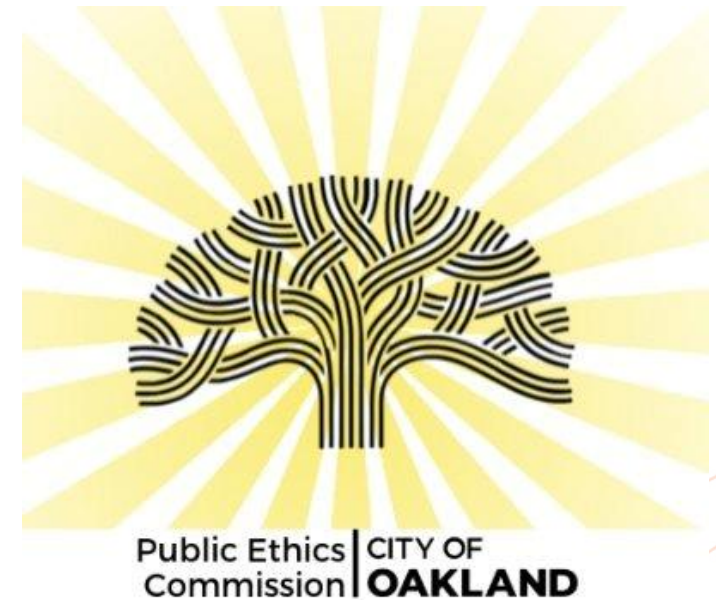
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**Views are my personal views and not those of McGeorge School of Law.*

About me

- Law Professor (present)
- Previously:
- Executive Director, Oakland Public Ethics Commission
- Chief Consultant, Senate Elections Commission
- Policy and Legal Director, California Common Cause



Models to Look At



Ethics Commissions with Staff:

- FPPC
- **Los Angeles (City)**
- **San Francisco**
- **Oakland**
- **San Diego (City)**
- Orange County

Ethics Commissions without Staff:

- San Jose
- **Sacramento**
- **Long Beach**
- Berkeley
- Chula Vista
- Pomona
- Riverside

Key Considerations for a Strong Ethics Commission



Define the
Commission's Mission &
Mandate



Ensure Political
Independence



Provide Sufficient Tools
& Resources



Define the Commission's Mission & Mandate

*The mission gives the Commission a **North Star** to align its activities and role. Making clear the minimum duties of the Commission helps to clarify that mission and protects the Commission's **jurisdiction** and **independence**.*

Mission: Narrow or Broad?

- **Traditional/Narrow Mission:**

- **Los Angeles:** *“The commission shall have responsibility for the **impartial and effective administration and implementation** of the provisions of the Charter, statutes and ordinances concerning campaign financing, lobbying, conflicts of interest and governmental ethics.*

- **Broader Mission:**

- **Oakland:** *Dual role to promote “**fairness, openness, honesty and integrity** in City government” and “**more inclusive, representative, and accountable democracy** in Oakland.”*

Duties

- ***Typical general enumerated duties:***

- *Enforcement, education and prevention, advice, administer programs, serve as filing officer, policy review, policy innovation*

- ***Specific enumerated duties (& others as assigned):***

More Typical:

- *Government Ethics*
- *Campaign Finance*
- *Lobbying*
- *Administer Public Finance*
- *Filing Officer Duties (Campaign Finance, FPPC Forms, Lobbying)*

Less Typical:

- *Transparency Laws*
- *Elected Official Salary-Setting*
- *Local Redistricting Commission Applicant Vetting*
- *Council Non-Interference*
- *Council Rules of Procedure*



Ensure Political Independence

*Ensuring the Ethics Commission is **independent** and **neutral**, and is perceived that way by officials and the public, is critical for its success and public trust.*

Designation

- Designate, in the Charter, that the Commission is “independent” or “autonomous”
 - **San Diego:** “The Ethics Commission is an **independent** body that monitors, administers, and enforces the City’s governmental ethics laws...”
 - **Oakland:** “There is hereby established a Public Ethics Commission as an **autonomous** department of the City...”

Staff Independence

- Executive Director should be responsible for ***hiring all staff***.
- Executive Director should be ***hired by***, and be ***removable at will*** by, the Commission.
- Staff (and Commissioners) should be prohibited from being involved in the ***county political process*** (campaigning/donating)

Jurisdiction	Executive Director Selection	Executive Director Removal
FPPC	Commission appoints	Commission removes
Los Angeles (City)	Commission appoints	Commission removes
San Diego (City)	Commission appoints	Commission removes
San Francisco	Commission appoints	Commission removes
Oakland	Commission nominates 2-3 candidates; City Administrator appoints from nominees	Commission removes

Commissioner Independence

- **Diversify** who appoints commissioners (not just one official); consider Commission **self-appointments**
 - **FPPC (5)**: Governor: 2; AG: 1; SOS: 1; Controller: 1 (**max 3 of same party*)
 - **Oakland (7)**: Mayor: 1; City Attorney: 1; City Auditor: 1; Self-Selected: 4
- Require Commissioners to meet certain **eligibility criteria** to remove the risk of bias
 - **Oakland**: no recent political candidates, major donors, lobbyists...
- Require strong **during & post-service restrictions** on current/former commissioners
 - **Sacramento**: cannot for 1 year: register as a lobbyist, receive a no-bid contract, become paid staff to an elected official...; cannot for 4 years: run for City office

Commissioner Independence

Jurisdiction	Diverse Appointers	Party Diversity	Self-Selection	Eligibility Qualifications	Indiv. Cm'r Prof. or Civic Reqs.	During-Service Restrictions	Post-Service Restrictions
FPPC	YES	YES	No	Low	No	HIGH	No
Los Angeles (City)	YES	No	No	Low	No	HIGH	LOW
San Diego (City)	No	YES	No	MEDIUM	YES	HIGH	LOW
San Francisco	YES	No	No	Low	YES	HIGH	No
Oakland	YES	No	YES	HIGH	YES	HIGH	LOW
Sacramento	No	No	No	HIGH	YES	HIGH	HIGH
Long Beach	YES	No	YES	Low	YES	HIGH	No
Orange County	YES	No	No	HIGH	No	HIGH	No



Provide Sufficient Tools & Resources

*Ensuring the Commission is equipped with **sufficient resources** and **tools** to is critical to its effectiveness as a watchdog agency and to ensuring public confidence in its work.*

Minimum Resources

THE OAKLANDSIDE

Oakland's tiny government watchdog sparked an FBI investigation. Why is it neglected?

The Public Ethics Commission helped break two major scandals last year involving Oakland mayors. But budget cuts and a systemic lack of investment from city leaders are taking a toll.

The San Francisco Standard

Politics

Mayor Breed accused of gutting San Francisco Ethics Commission after FBI probe

Staffing could be slashed by almost half at the watchdog commission if the mayor's budget plans are approved.

- Requiring the Commission to annually request resources harms a Commission's appearance of *impartiality*, can create the risk or appearance that the Commission is being *politically undermined*, and create *conflict* between the Commission and officials

Protected Resources

- To ensure the *effectiveness* and *independence* of the ethics Commission as a watchdog, it should have some form of guaranteed funding.
- 3 Models:
 - **Oakland:** Mandatory *minimum staffing*, but waivable as part of a general budget reduction with declaration of “extreme fiscal necessity” (Measure OO, 2024)
 - **San Diego:** Requires Council to “allocate *funds sufficient* for the Commission to carry out [its] responsibilities” (Measure D, 2024)
 - **Los Angeles (City):** *Minimum appropriation* that adjusts “each fiscal year based on the change to City’s revenues,” but adjustment waivable with declaration of “exigent circumstances.” (Measure ER, 2024)

Staffing

- Provide some ***discretion*** in how the Commission is staffed
 - **Los Angeles (City):** “The expenditures of the commission shall not require prior approval of City offices or personnel where the expenditures are within the Commission’s budget”
- Commission should have ***in-house counsel*** and the ability to ***contract for legal services*** independent of County Counsel
 - **FPPC/San Diego:** Have in-house counsel and the ability to contract out

Other Traditional Tools

- **Guarantee** power to:
 - Conduct *investigations* and *audits, subpoena* witnesses and records, and hold *administrative hearings*
 - *impose penalties*, including *administrative fines*
 - *(Also review Charter for any language limiting fine amounts. E.g. LA has fining authority up to \$15k. Oakland fines are set in each ordinance.)*
 - *Seek injunctive relief*
- **Avoid** being overly prescriptive on process in Charter



Thank you.

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