

INFORMATIONAL BRIEF

Exploring Areas for Ethics Reform in Los Angeles

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Research Question

The purpose of this brief is to explore potential ethics reforms as informed by the ethics structure of other cities with comparable population sizes as Los Angeles. Academic literature on the structure of ethics regulatory bodies is explored, followed by a deeper dive into San Francisco's recent ethics reforms. This brief ends with an examination of the commissioner appointment process, recusal process, budget guarantee approach of several large cities, and ability to hire independent legal counsel.

The exploration here is less about ethics codes (e.g., personal disclosure, post-employment, outside employment/income, and conflicts of interest) to ensure transparency and accountability and more about the Commission's ability to act on its authority and independence.

Background

Ethics reform attempt to increase public confidence in the city council by empowering the ethics commission. The LA Ethics Commission was established in 1991 (Proposition H) in response to financial disclosure scandals¹ and was part of a wave of public demand for ethics reforms sweeping many states and major cities since the 1960s. The Ethics Commission covers ethics training/education, campaign finance oversight, lobbying oversight, conflicts of interest, whistleblowing, and issuing of advisory opinions (Glass 1997). Every few years, the Commission provides the Mayor and Council a report with their assessment of the effectiveness of the city's ethics laws (see Simmons, Roland, & Kelley-DeWitt 1998). For a short discussion on the details of LA's ethics package, see Simmons et al. (1998). Los Angeles applied a stricter version of the state's ethics legislation² and was seen as "the most comprehensive civic reform package proposed since the Progressive Era" and exalted as "a model for the nation" (Lewis 1993, 151).

¹ Scandals are a common driving force behind the creation of ethics legislation given public backlash, but are insufficient for long-term, comprehensive ethics reform (see Goodman, Holp, and Ludwig 1996 and Wechsler 2012).

² The Political Reform Act of 1974, the Ethics in Government Act of 1990, the Postgovernment Employment Restrictions Act of 1990, & California's Fair Political Practices Commission. See Simmons et al. (1998).

Literature

Given that LA's ethics structure was regarded as a model for others, it limits the number of other cities/jurisdictions we can draw from in our attempts to strengthen the Ethics Commission. Much of the ethics literature regards the promotion of ethical behavior by elected officials. Moreover, the lack of systematic studies and diversity of states' and cities' approaches to ethics limits the development of best practices and judgment about which commissions are more/less effective than others (Maletz & Herbel 2000; Menzel 2005, and Simmons et al. 1998).³ Nonetheless, there are important insights to note from the few case studies of states/cities.

At the request of the Senate Local Government and Ethics Committees, Simmons et al. (1998) undertook a survey of local ethics ordinances and examined which localities had addressed ethical issues and whether their ethics ordinances were compatible with state standards and other local jurisdictions. A major finding from this report was the diversity in standards adopted by local jurisdictions and the limited scope of regulations that were adopted among those that adopted any ethics regulations at all. When jurisdictions did adopt ordinances, they tended to merely mirror the requirements of the Political Reform Act.

Of the 40 localities Simmons et al. (1998) surveyed that had adopted ethics policies, only 6 had created ethics boards including Los Angeles and San Francisco. And on the "effectiveness" criteria of *independence, adequate funding, and enforcement power*, Los Angeles was the only city to meet all three.⁴ A common deficiency in the ethics bodies of other cities and states, according to Herrmann (1997), is inadequate budgets to fulfill their responsibilities and enforcement.⁵

It is important to note that even when established by constitutional or charter amendment ethics commissions are vulnerable to being undermined if they are denied rule-making power, enforcement power, or deprived of a sufficient budget (Maletz & Herbel 1998, 29). Created post-Katrina, New Orleans' Ethics Review Board had ample enforcement authority but after being ill counseled in 2012, misunderstood its own legal authority and therefore fell short of fulfilling its charter-driven responsibilities (i.e., failed to recommend improvements, failed to enforce, violated transparency principles, among more) (Marcello 2016). Weaknesses of the Florida Commission on Ethics included poor ethics training and an inability to prevent the use of complaint filing to influence election outcomes (Williams 1996).

³ Some localities' ethics bodies are regulated by their state; others self-regulate. See Fording, Miller, & Patton 2003.

⁴ Even while operating with a budget at half of the requested level (Simmons et al. 1990, 34).

⁵ The Oklahoma Ethics Commission currently faces uncertainty given underfunding: https://tulsaworld.com/news/state-regional/government-politics/leaders-concerned-about-the-future-of-the-oklahoma-ethics-commission/article_6708b5f8-4da4-11ee-b3f6-7772cc84b1dd.html

Examples of reforms other jurisdictions have undertaken to improve their ethics structure include Seattle reducing the influence of money on politics by instituting public financing legislation (Van Noy 2000), Houston adopting a zero-gift policy to deter unethical behavior (Fain 2002), empowering the Texas Commission to issue recommendations on salaries for major state offices (Maletz & Herbel 2000), and an independent ethics commission in Kentucky (Mackey 1996). An agenda for ethics reform for New Jersey recommended an independent state ethics commission, conferring the commission more enforcement powers, penalties for ethics transgressors, ethics training, regular ethics audits, anti-nepotism laws, post-employment restrictions, transparency in contracting, and a zero-tolerance policy on the acceptance of gifts (Franzese & O’Hern 2006).

Overall, there is little literature on the ethics reforms of other cities and states. Most of that literature is from the 1990s and 2000s and, accordingly, regards their jurisdictions’ early stages of adopting ethics codes, regulations, and legislation. While other jurisdictions’ ethics reforms and experiences are insightful, LA’s Ethics Commission covered many of those areas at its establishment.⁶ Thus, for our purposes and interests in empowering an ethics commission that already has a package of ethics codes, we are limited in our ability to draw from existing literature.

A Focus on San Francisco

It may be instructive to turn to the experience and governance structure of San Francisco. Recently, San Francisco has been engaged in an effort to reform the city’s ethics laws and the decision-making role of the Ethics Commission in the ethics amendment process. While San Francisco’s Ethics Commission has charter authority to place ordinances directly on the ballot, it only exercised this authority twice between the period of 2013 and 2022.⁷ In contrast, the Board of Supervisors placed 80 of the total 115 measures in this period.⁸

Considering ongoing investigations into corrupt and unethical activity in city governance, the Ethics Commission undertook a comprehensive review of the city’s conflict of interest rules in three phases beginning in 2020: (1) behested payments,⁹ (2) gifts to individuals/departments, (3) strengthening essential ethics provisions.¹⁰

⁶ While covering many areas, it may still be the case that loopholes and outdated structures and practices need to be addressed, as San Francisco’s Ethics Commission has recently fought for: <https://sfethics.org/ethics/2023/08/ethics-commission-votes-to-place-ethics-reform-package-on-march-2024-ballot.html>

⁷ Proposition C in 2015 requiring registration and monthly reports for expenditure lobbyists, and Proposition T in 2016 restricting gifts and campaign contributions from lobbyists.

⁸ See Table 5, page 23, of Heidorn, Miller, & Nadon (2023).

⁹ Payments made by someone at the request of a public official or employee, usually to a nonprofit organization.

¹⁰ Bribery rules, disclosure of personal, professional, and business relationships, among other areas of ethics code such as the unstandardized penalty provisions across the ten chapters of ethics code and vulnerability to unilateral legislative amendment by the Board of Supervisors.

On August 18, 2023, the Ethics Commission discussed placing on the March 2024 ballot an ethics reform package that amended the Campaign and Governmental Conduct Code to:¹¹

- expand gift prohibitions for City officers and employees;
- expand rules prohibiting bribery;¹²
- require ethics training for Form 700 filers;
- prohibit members of the public from acting as intermediaries for City officers and employees with respect to certain prohibited gifts;
- impose personal liability on City officials for failure to disclose certain relationships;
- create generally applicable incompatible activity rules;
- require the Ethics Commission and Board of Supervisors super-majority approval for amendments to certain ethics-related ordinances; and,
- appropriate \$43,000 from the General Reserve in Fiscal Year 2023-24 to fund administrative costs required to implement the ordinance.

The March 2024 election ballot will include an Ethics Commission measure focused on gifts, training, and other ethics laws.¹³ These ballot measures come after years of review, and once meet-and-confer obligations with city bargaining units concluded, allowed the Ethics Commission to vote to place these ordinances before voters in the March 2024 election. In addition to ethics training and stricter gift-giving and bribery prohibitions, additional components of reform include:

- Prohibiting members of the public from “acting as intermediaries” for city officials receiving inappropriate gifts;
- Making city officials personally responsible for not disclosing “certain relationships;”
- Creating “generally applicable incompatible activity rules;” and,
- Requiring supermajority approval from both the Board of Supervisors and the Ethics Commission in order to pass ethics-related amendments.¹⁴

Inspiration for the latter component above was the idea that ethics laws should be better protected from unilateral amendment by requiring involvement from the Ethics Commission in that decision-making process. Not only does the Ethics Commission have the ability to place measures directly on the ballot by a 4/5 vote,¹⁵ but now, with voter approval in 2024, it could fully engage in the legislative process to amend ethics-related ordinances. Thus, aside from

¹¹ <https://sfethics.org/ethics/2021/11/government-ethics-and-conflict-of-interest-review.html>

¹² These would align SF’s bribery laws closer with federal bribery law.

¹³

<https://sfethics.org/ethics/2023/09/meeting-summary-summary-of-matters-discussed-and-actions-taken-at-ethics-commissions-september-8-2023-regular-meeting.html>

¹⁴ For local coverage see

<https://sfstandard.com/2023/08/25/san-francisco-gift-giving-bribery-corruption-scandal-ballot-measure-2024-ethics-commission/>

¹⁵ San Francisco Charter Sec. 15.102. Rules And Regulations.

strengthening ethics code and standardizing penalties for violations, San Francisco's ethics structure and reform efforts present two areas (placing measures directly on the ballot & engaging in the ethics amendment process) that could benefit and strengthen LA's Ethics Commission.

Additional Reform Topics to Consider

Other areas to consider for reform given the literature reviewed, the recent reform efforts in San Francisco, and recent developments with the LA Ethics Commission, include (1) the Commission's appointment process, (2) the recusal policy/process, (3) the Commission's budget and capacity to fulfill its responsibilities, and (4) the power to hire independent legal counsel. Each of the following subsections ends with suggested paths for reform given the analysis presented.

Appointment Process

Currently, the Mayor, the City Attorney, the Controller, and the President of the Council are the appointing authorities for LA's 5-member ethics commission. This mirrors the composition of the state's Fair Political Practices Commission and its multiple appointing authorities¹⁶ (Simmons et al. 1998).

The worksheet below compares the appointment process of the ethics bodies of 11 of the largest cities/jurisdictions. Most jurisdictions have ethics commissions/boards with 5 or 7 members and no alternates. There is a diverse approach in appointing authority from providing staffing for 1 ethics officer (LACMTA), to the mayor appointing all commissioners (Philadelphia; Chicago), to a distribution of appointing authority among several city officials (LA; SF; NYC; LB; Jacksonville), to judicial advisory boards (Phoenix), and local organizations representing specified communities (Houston; Metro Council of Nashville; Jacksonville).¹⁷ Most jurisdictions include additional selection criteria where the appointee must have a particular professional background or be a representative of an identified community. Nonetheless, council confirmation is required in all cities.

Paths for reform based on this include increasing the number of commissioners (or adding alternates) as well as expanding the appointing authorities to include community organizations. This could take the form of direct appointment by a board of community organizations or indirectly, where community organizations develop a pool of qualified potential commissioners from which existing appointing authorities must choose. Moreover, a process could be developed

¹⁶ Appointing authorities: Governor, State Controller, Secretary of State, and Attorney General.

¹⁷ Jurisdictions that involve community input in the selection of commissioners additionally include Atlanta, Miami-Dade County, Milwaukee, New Orleans, Santa Fe, Jackson County, Minneapolis, and Palm Beach County.

where commissioners are elected rather than appointed; none of LA's counterparts currently have such a process, however.¹⁸

Recusal Policy/Process

Many jurisdictions examined include ethics codes relating to disclosing conflicts of interest and withdrawal or recusal of ethics commissioners. While other jurisdictions not examined here, such as some state ethics commissions, do allow commissioners to participate and vote despite having conflicts of interest, none of the jurisdictions in the worksheet below allow for voting.

Eight of the 11 examined jurisdictions include ethics codes specifying the conditions for the removal of ethics commissioners. Mainly, commissioners can be removed by (1) their appointing authority or the mayor and with concurrence from the city council, or (2) failing to attend 3 consecutive meetings or two-thirds of meetings in a year. LA stands apart from all other jurisdictions in that LA additionally specifies a process of divestiture for board members and commissioners with 3+ recusals in a year, where the Ethics Commission must determine if the individual has an ongoing or frequent conflict that necessitates divestiture. It is unclear, however, if this process applies to ethics commissioners or if this process is simply a power/duty the Commission has for all other city board members and commissioners.

In the case that this process of divestiture and removal upon the 3rd recusal does not already apply to ethics commissioners, this would be a recommended reform. Certainly, no other jurisdiction with comparable populations has any such recusal policy/process over ongoing conflicts of interest. Otherwise, adding removal provisions for absences would align LA with other jurisdictions, although unrelated to ongoing conflicts of interest.

Approaches to a Guaranteed Ethics Budget

The worksheet additionally shows different approaches to guaranteeing a budget for Ethics Commissions, where the information was available. LA's ethics budget is currently determined by the city council, as it is in San Francisco, Chicago, Philadelphia, and Jacksonville. According to Wechsler (2013, 544), "The Los Angeles City Charter requires an automatic annual appropriation of \$2 million into a public campaign financing trust fund, which is administered by the city's ethics commission."

Philadelphia also allows for the Commission to appeal to the Court to ensure the city council provides sufficient funding. Jacksonville's approach makes use of fees on all contracts with the city. Other approaches to guaranteeing a budget include setting a minimum amount (CA Fair

¹⁸ The only deviation from the aforementioned appointing authorities is Long Beach, where first round of selected commissioners selects the remaining commissioners via an application process.

Political Practices Commission; Michigan), setting the budget to a percent of the general budget (New Orleans; Alabama; NYC's IBO), and guaranteeing a minimum number of staff (San Diego).

By 2013, NYC's Conflicts of Interest Board attempted to anchor their budget to a specified percentage of another city agency's budget, in step with the way the NYC Independent Budget Office (IBO) guaranteed their budget in the charter.¹⁹ However, the city charter makes no mention of this in the way that it does for the IBO, so it is unclear if this attempt succeeded.

Paths to guarantee an appropriate and sufficient budget for the Commission to fulfil its responsibilities can go in a variety of directions. However, establishing a particular amount that can change with inflation or anchoring the budget to a percent of the total city budget may be the best approach to maintain an effective and independent ethics commission.

Power to Hire Independent Legal Counsel

Eight of the 11 jurisdictions examined provide information on the legal counsel the ethics commission receives and their ability to seek independent counsel. The jurisdiction's City Attorney (or jurisdiction equivalent attorney) tends to be the identified body that provides legal services (LA; SF; Houston; Long Beach; Metro Council of Nashville; Jacksonville).

In Long Beach, the City Attorney is the sole and exclusive legal advisor to all city commissions. Some jurisdictions additionally, but minimally, specify that the Commission can seek external legal counsel, particularly upon the City Attorney having a conflict of interest (LA; SF; Houston). The Los Angeles Charter specifies that the City Attorney is the default legal counsel but were the Attorney to have a conflict of interest, the Ethics Commission can request the appointment of a special prosecutor. Based on Charter language, it seems that only in New York City and Philadelphia can the ethics boards select their own independent legal counsel, specifying that the Commission "shall appoint a counsel to serve at its pleasure."

Given other cities' practices of assigning the City Attorney to legally advise the Ethics Commission and the few cities that delineate if and when the Commission can seek independent counsel, a path for reform in Los Angeles would entail allowing the Commission to seek its own legal counsel without the constraint that the City Attorney should first have a conflict of interest.

¹⁹ IBO's budget must be at least 10% of the budget of the Office of Management and Budget (Wechsler 2013, 544).

Ethics Commission Comparison											
	Los Angeles	San Francisco	NYC	Chicago	Houston	Phoenix	Philadelphia	Long Beach	LACMTA	Metro Council of Nashville & Davidson County	Jacksonville
Appointing Authorities	4: Mayor, City Attorney, Controller, & Council President	5: Mayor, Board of Supervisors, City Attorney, District Attorney, & Assessor	3: Mayor, Public Advocate, & comptroller.	1: Mayor	4: Organizations representing the legal, labor, and medical communities, & the City Council	1: Judicial Selection Advisory Board	1: Mayor	3: Mayor, City Auditor, & 1st Round of Commissioners (who select remaining commissioners via application process)	1: LACMTA Board	7: Organizations representing women, labor, legal, commerce, African American, and immigrant/refugee communities.	7: Mayor, Council President, Sheriff, Public Defender, Chief Judge, State Attorney, and Ethics Commission (3 of 7)
Criteria for Selection of Appointee	✓	✓	✗	✗	✓	✓	✗	✓	✗	✓	✓
Selection by Community?	✗	✗	✗	✗	✓ (3 of the 7 seats)	✗	✗	✗	✗	✓ (all 7)	✓
Number of Commissioners	5	5	5	7	7	5	5	7	1, with 7 FTEs	7	9
Alternates	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Years per Term Served	5 years / 1 term	6 years / 1 term / staggered	6 years / 2 term / staggered	4 years / 1 term / staggered	2 years / staggered	5 years / 1 term	5 years / 2 terms	4 years / 2 term. But, Mayoral & Auditor appointees's 1st term is 2 years.	-	3 years	3 years / 2 terms / staggered
Vacancies Filled Within X Days	30 days	-	60 days. Automatic confirmation after 45 days of Council inaction.	-	30 days. After 30 days authority becomes the city council's.	"as soon as may be expedient to do so"	30 days	60 days	-	-	30 days
Subject to Council Approval?	✓	✓	✓	✓	✓	✓	✓	Only Mayor's & Auditor's appointees.	✗	✓	✓
Recusal/Withdrawal Process											
Recusal/Withdrawal Code	Yes	Yes	Yes	Yes	No	No	No	Yes	-	-	-
File Disclosure	Yes	Yes	Yes	Yes	-	Yes	-	Yes	Yes	-	-
Allow Voting	No	No	No	No	-	No	-	No	No	-	-
General Removal or Due to Frequent/Ongoing COI	Removal by Mayor & concurring council. For all other boards/commissions: 3+ recusal submissions in 1-year requires Ethics Commission to determine if there is ongoing conflict & if divestiture is needed.	By respective appointing authority & subject to BoFS concurrence; unrelated to number of COIs.	By respective appointing authority. Divestiture evaluation for COI for public servants.	Mayor, with consent of remaining board members.	Mayor, with consent of remaining board members.	Removal by affirmative vote of 7 city council members.	Removal by Mayor and 2/3 of council.	-	-	Failure to attend/participate in 3 consecutive meetings or 2/3 of meetings in a year = removal.	-
Budget/Size/Capacity											
Set Minimum Amount											
Percentage of General Budget											
Percentage of Another Agency's Budget			✓								
Fee on Contracts											✓
Guaranteed Minimum # of Staff											
EC Appeals to Court											
Determined by Mayor/City Council	✓	✓		✓			✓	✓			✓
2023 Budget	\$4.42 million (2022-23) / \$5.43 million (2023-24)	\$6.55 million	\$2.5 million (2022) / \$3 million (2023)	\$916,559	-	-	\$975,196 (2022)	\$200,000 (2022) / \$100,000 (2023)	\$1.6 million (2022) / \$2.1 million (2023)	-	\$630,000
Independent Counsel	The City Attorney shall provide legal services to the commission. Notwithstanding Section 275, the commission may employ or contract for staff counsel to give advice to the commission ... Upon City Attorney conflict of interest, the Commission may request the appointment of a special prosecutor.	City Attorney is the legal advisor, but outside counsel can be attained under certain COIs.	Board shall appoint a counsel to serve at its pleasure	-	The Commission may request the City Attorney provide legal advice or may request special outside counsel from City Council.	-	The Board shall appoint a counsel to serve at its pleasure and shall use the services of the Law Department.	City attorney shall be the sole and exclusive legal advisor of the City, the City Council and all City commissions.	-	The metropolitan attorney shall furnish legal assistance to the board.	The General Counsel, with the assistance of all appropriate and available offices of the City, shall assist the Ethics Commission in the investigation of complaints.

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