

Notice
Fair Political Practices Commission
Law and Policy Committee Meetingⁱ
October 7, 2020 10 a.m.
Unapproved Minutes

The Law and Policy Committee was called to order at 10:01 a.m.

- 1. Public Comment for items not on the agenda.**
- 2. Approval of September 9, 2020 Law and Policy Committee Minutes.**

MOTION: To approve September 2020 minutes. Moved by Commissioner Cardenas, seconded by Chair Miadich. Motion approved 2-0.

- 3. Interested Person Feedback on Pre-Noticed Amendments to Regulations Governing Enforcement Processes.**

Dave Bainbridge, General Counsel, explained the two changes made since the previous Law and Policy committee meeting. The first change made to 18361.1 and 18361.4 which removed the reference to a privilege log to make it clear that it is a description of any records that are not produced in response to a request by the respondent in a probable cause proceeding. The second change was made to 18361.4, page 7, to add clear language to explain that a hearing officer can receive evidence after a probable cause conference.

Commissioner Cardenas raised concern on the language in the CPAA letter regarding the scope of the quote publicly available records exception. Dave Bainbridge, General Counsel, replied that defining the terms as public records instead of publicly available would respond to that concern.

Galena West, Chief of Enforcement, stated that the last four administrative hearings have all been unrepresented and there has been no discovery disputes. Ms. West stated these are two different stages and that most of the issues raised are already in the APA.

Chair Miadich stated that the goal is to make the process more efficient from a time standpoint.

Chair Miadich also disclosed that he had a conversation with Emily Andrews, Olsen Remcho, about the regulations at an early stage.

MOTION: To recommend the regulations for adoption with the additional edits provided by the Committee. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 2-0.

4. Interested Person Feedback on Pre-Noticed Amendments to Regulations Governing the Enforcement Division's Streamline and Warning Letter Programs and New Tier Two Streamline Program.

Galena West, Chief of Enforcement, presented a policy memo regarding the streamline regulations that included four decision points.

The first decision point is the criteria for Major Donor Committees and Behested Payment reporting to be included in the streamline program using the two-tier system. Ms. West stated that among other things like monetary thresholds, personal benefit and perceived personal benefit would exclude an individual from streamline consideration. Commissioner Cardenas asked a question regarding the payment maker and if the payment made by an organization and not the individual would include both the individual who may be driving the payment. Ms. West stated that she could make it more inclusive to where it is also the responsible person for the payment. Commissioner Cardenas proposed the exclusion count for the decision maker as well as the entity. Chair Miadich also suggested a clear definition on the standard for perceived personal benefit and when a party appears before a body to limit the application of general legislation.

The second decision point is the criteria to exclude cases by population of the jurisdiction and whether it should be modified. The Committee agreed to include the suggested population criteria into the updated regulations in order to keep the streamline program robust.

The third decision point is the creation of an education diversion program. The Committee agreed having an educational diversion program will allow first time candidates the opportunity to learn from their mistakes rather than get a fine that might deter them from being a part of the process in the future.

The fourth decision point is whether there should be more discretion in the streamline/warning letter program. Ms. West stated having discretion will allow a more fair and equitable treatment of cases that the Commission finds most important. The Committee agreed with this decision point.

Trent Lange, California Clean Money Campaign, stated as the sponsor of the Disclose Act, Clean Money has a list of concerns. Mr. Lange stated he would email in his list of concerns since they are longer than the public comment time frame allowed.

5. Commissioner Code of Conduct.

Commissioner Cardenas suggested clarifying the language in section II discussing Government Code 83105, to help explain that the provision applies through the appointed term even if a Commissioner vacates their seat prior to the end of term.

Commissioner Cardenas discussed the Commissioner Compensation Policy previously voted on by the Commission. He further stated he believed that vote to be a conflict of interest and would like to revisit the decision. Chair Miadich stated that since the item is not agendized, the Committee could agendize and discuss the item at the November Committee meeting.

MOTION: To recommend for adoption with the edits discussed. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 2-0.

6. Behested Payment Discussion.

Karen Harrison, Senior Commission Counsel, discussed the current behested payment reporting process statewide and gave a Staff recommendation of legislative change to amend section

84224 to have state officials e-file directly with the FPPC and allow local officials to treat e-files as original filings.

MOTION: To recommend including behested payment reporting in the 2021 legislative package. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 2-0.

7. Legislative Update.

8. Discussion of items for November 2020 Committee meeting

The Committee agreed to discuss the part-time Commissioner Compensation Policy, streamline regulations, behested payment update including possible language, and a legislation update at the November 2020 Committee meeting.

MOTION: To adjourn. Moved by Commissioner Cardenas, seconded by Chair Miadich. Motion approved 2-0.

The meeting concluded at 12:07 p.m.

ADDITIONAL INFORMATION.

- You may listen to and participate in this committee meeting by teleconference by calling: (877) 411-9748; access code 723284.
- For questions about this meeting, you may contact the Commission Assistant at (916) 322-5660.

ⁱ The Commission has established two separate two-person standing advisory committees, the Budget and Personnel Committee and the Law and Policy Committee, to allow greater participation by individual Commissioners in making recommendations to the full Commission. In recognition of the public's interest in the meetings of these committees, the Commission has directed the committees to allow the public to monitor committee deliberations, whenever possible, by publishing a five-day notice of the meeting and allowing callers to listen to the proceeding with a call-in telephone number. Additionally, the Commission is permitting public participation in the noticed meeting in person or via telephone.

As two-person advisory committees, Bagley Keene Open Meeting Requirements (Government Code Sections 11120 - 11132) do not apply to the committee meeting. However, the Commission will be soliciting public comment before and during the meeting. If you would like to comment on an agenda item prior to the meeting, you may email your comments to the Commission Assistant at CommAsst@fppc.ca.gov. Any comments submitted prior to the meeting will be provided to the committee members for consideration at the meeting.