

[Amending the Charter's ethics provisions to move various provisions into ordinances, to make technical changes, and to clarify ambiguities in existing provisions.]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by amending Sections 4.108, 4.109, 10.101, 15.100, 15.103, 15.105, and Article XVII, deleting sections 15.104, 15.106, 15.108, C8.105 and adding section 18.115 to make technical changes, to move various provisions into ordinances, and to clarify existing provisions.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2003, a proposal to amend the Charter of the City and County by amending Sections 4.108, 4.109, 10.101, 15.100, 15.103, 15.105, and Article XVII, deleting sections 15.104, 15.106, 15.108 and C8.105 and adding section 18.115 to read as follows:

Note: Additions are single-underline italics Times New Roman. Deletions are ~~strikethrough italics Times New Roman~~.

SEC. 4.108. FIRE COMMISSION.

The Fire Commission shall consist of five members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor. *In addition to any other powers set forth in this Charter, the Fire Commission is empowered to prescribe and enforce such reasonable rules and regulations for members of the Fire Department that it deems necessary to provide for the efficiency of the City and County civil service.*

SEC. 4.109. POLICE COMMISSION.

The Police Commission shall consist of five members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Members may be removed by the Mayor.

Notwithstanding any other provision of the Charter, the Chief of Police may be removed by the Commission or the Mayor, acting jointly or separately of each other. *In addition to any other powers set forth in this Charter, the Police Commission is empowered to prescribe and enforce such reasonable rules and regulations for members of the Police Department that it deems necessary to provide for the efficiency of the City and County civil service.*

SEC. 10.101. GENERAL POWERS AND DUTIES.

The Civil Service Commission shall adopt rules, policies and procedures to carry out the civil service merit system provisions of this charter and, except as otherwise provided in this Charter, such rules shall govern applications; examinations; eligibility; duration of eligible lists; certification of eligibles; leaves of absence for employees and officers; appointments; promotions; transfers; resignations; lay-offs or reduction in force, both permanent and temporary, due to lack of work or funds, retrenchment or completion of work; the designation and filling of positions, as exempt, temporary, provisional, part-time, seasonal or permanent; status and status rights; probationary status and the administration of probationary periods, except duration; pre-employment and fitness for duty medical examinations, except for the conditions under which referrals for fitness for duty examinations will be made, and the imposition of new requirements; classification; conflict of interest; and such other matters as are not in conflict with this Charter; provided, however, that the minimum rule for the certification of eligibles shall be the Rule of Three Scores, and provided further that rules for leave due to illness or disability shall be approved by the Board of Supervisors. Changes to the rules may be proposed by members of the Commission, the Executive Assistant or the Human Resources Director and approved or rejected by the Commission. The Commission may, upon ten days' notice, make changes in the rules, which changes shall thereupon be printed and be in force; provided that no such changes in rules shall affect a case pending before the Commission.

The Commission shall have power to institute and prosecute legal proceedings for violations of any civil service merit system or Department of Human Resources provisions of this Charter.

The Commission shall establish an inspection service for the purpose of investigating the conduct or an action of appointees in all positions and of securing records of service for promotion and other purposes. All departments shall cooperate with the Commission in making its investigations and any person hindering the Commission or its agents shall be subject to suspension.

The Commission shall by rule establish procedures to review and resolve allegations of discrimination as defined in Article XVII of this Charter or otherwise prohibited nepotism or favoritism appealed to it pursuant to this section. The determination reached under Commission procedures shall be final and shall forthwith be enforced by every employee and officer.

The Commission shall have the power to inquire into the operation of the civil service merit system to ensure compliance with merit principles and rules established by the Commission. After such inquiry, the Commission may direct the Human Resources Director to take such action as the Commission believes necessary to carry out the civil service provisions of this Charter. In any hearing conducted by the Commission or by any hearing officer it appoints pursuant to this section, the Commission or the hearing officer shall have the power to subpoena and require the attendance of witnesses and the production of records.

The Commission may require periodic reports from the Human Resources Director in a manner and form which it shall prescribe.

The Commission may hear appeals from an action of the Human Resources Director in accordance with its rules, including but not limited to:

1. Allegations of discrimination as defined in Article XVII of this Charter.

Notwithstanding any other provisions of this Charter except the fiscal provisions hereof, the

decision of the Commission regarding allegations of discrimination shall forthwith be enforced by every officer and employee;

2. Allegations of fraud; and
3. Allegations of conflict of interest.

No action by the Human Resources Director which is the subject of any appeal shall be stayed during the appeal process except by a majority vote of the Civil Service Commission.

The Commission shall have the power and it shall be its duty to appoint an executive assistant to be the administrative head of the affairs under its control who shall serve at its pleasure; provided, however, that any person who has Civil Service status in the position of executive assistant to the Commission on the effective date of this section as amended shall continue to have Civil Service status in the position of executive assistant under the Civil Service provisions of this Charter. The executive assistant shall periodically report to the Commission on operation of the civil service merit system and may make recommendations to the Civil Service Commission regarding its rules, policies and procedures.

In addition to any other powers set forth in this Charter, the Civil Service Commission is empowered to prescribe and enforce such reasonable rules and regulations for officers and employees of the City and County other than officers and members of the fire and police departments who are subject to the civil service provisions of the Charter that it deems necessary to provide for the efficiency of the City and County civil service.

SEC. 15.100. ETHICS COMMISSION.

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointments shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term.

Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

(a) Restrictions on Holding Office. No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold employment with the City and County and no employee of the Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

~~*For a period of one year upon completing his or her service with the Commission, no member of the Commission may be a lobbyist or campaign consultant, be employed by, or receive any gifts or other compensation from a lobbyist or campaign consultant, or a person who employs someone required to register as a lobbyist or campaign consultant. For purposes of this section, the terms lobbyist and campaign consultant mean persons required to register under the City's lobbyist or campaign consultant ordinances.*~~

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

SEC. 15.103. CONFLICT OF INTEREST.

~~All officers and employees of the City and County shall be subject to all state laws and City ordinances proscribing conflicts of interest and incompatible activities, as well as the provisions of Section C8.105. Any violation of such laws shall be official misconduct and shall be a basis for discipline and/or removal, in addition to any other penalties prescribed by law.~~

Public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner consistent with this trust. The City may adopt conflict of interest and governmental ethics laws to implement this provision and to prescribe penalties in addition to discipline and removal authorized in this Charter. All officers and employees of the City and County shall be subject to such conflict of interest and governmental ethics laws and the penalties prescribed by such laws.

~~SEC. 15.104. PENALTY FOR OFFICIAL MISCONDUCT.~~

~~Any person found guilty of official misconduct shall forfeit his or her office, and shall be forever after disbarred and disqualified from being elected, appointed or employed in the service of the City and County.'~~

SEC. 15.105. SUSPENSION AND REMOVAL.

(a). ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Health Commission, Human Services Commission, Juvenile Probation Commission, Public Utilities Commission, Recreation and Park Commission, Retirement Board, Fine Arts Museums Board of Trustees, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor ~~and removed by the Board of Supervisors for official misconduct~~, and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon~~On~~ such suspension, the Mayor shall immediately notify the Ethics

Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. ~~Hearing by~~ The Ethics Commission shall ~~hold a hearing~~ ~~be held~~ not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b). BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION AND ETHICS COMMISSION. Members of the Building Inspection Commission, the Planning Commission, ~~and~~ the Board of Appeals, ~~the Elections Commission, and the Ethics Commission~~ who were appointed by the Mayor may be suspended and removed pursuant to the provisions of subsection (a) of this section set forth above except that the Mayor may initiate removal only of the Mayor's appointees and the appointing authority shall act in place of the Mayor for all other appointees. ~~Members of the Commission appointed by the President of the Board of Supervisors may be suspended and removed pursuant to the same procedures, except that the President of the Board shall act in place of the Mayor. Members of the Elections Commission and Ethics Commission may be suspended and removed pursuant to the provisions set forth above, except that the appointing authority shall act in place of the Mayor.~~

(c). REMOVAL FOR CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE.

(1) Removal. The Mayor must immediately remove from office any elective official convicted by a court of a crime involving moral turpitude, ~~and failure of the Mayor so to act shall constitute official misconduct on his or her part.~~ Any appointee of the Mayor or the Board of Supervisors ~~guilty of official misconduct or~~ convicted by a court of a crime involving moral turpitude must be removed by the Mayor or the Board of Supervisors, as the case may be, ~~and failure of the Mayor or any Supervisor to take such action shall constitute official misconduct on their part.~~ Any member of the Elections Commission or Ethics Commission ~~guilty of official misconduct or~~ convicted by a court of a crime involving moral turpitude must be removed by their appointing authority, ~~and failure of the appointing authority to act shall constitute official misconduct on his or her part.~~ Removal under this subsection is not subject to the procedures in subsection (a) and (b) of this section.

(2) Penalty for Failure to Remove. Failure to remove an appointee as required under this section shall be official misconduct.

(d). OTHER OFFICERS. Officers and employees not identified in subsections (a) and (b) may be removed for official misconduct as follows:

(1) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority may be removed for official misconduct by the appointing authority and must be removed upon conviction of a crime involving moral turpitude.

(2) For cause appointees. Officers and employees who by law may be removed only for cause, or who hold office for a specific term of years and therefore may be removed only for cause, may be removed by their appointing authorities for cause based on official misconduct and must be removed upon conviction of a crime involving moral turpitude.

(e). DISQUALIFICATION.

(1)(A) Any person who has been removed from any federal, state, county or city office or employment upon conviction of a crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, county or city office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2)(A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (e)(1)(B) and provide notice of such disqualification in writing to the City officer or employee. Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn a decision to apply the disqualification provisions of subsection (e)(1)(B).

(B) The provisions of subsection (e)(2)(A) shall not apply to: (i) a determination made by a court, an administrative body or an administrative hearing officer that a City officer or employee has engaged in official misconduct or a crime of moral turpitude; (ii) any City employee who is eligible to appeal his or her removal to the San Francisco Civil Service Commission; (iii) any City officer removed pursuant to subsection (a) or (b) of this section; or (iv) any person removed from office or employment with any federal, state, county or city government for having engaged in official misconduct or a crime of moral turpitude

(f). OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

~~SEC. 15.106. — DUAL OFFICE HOLDING.~~

~~Any person holding an office under the City and County with an annual salary in excess of \$2,500 whether by election or by appointment, who shall, during his or her term of office, hold or retain any other office with such a salary under the government of the United States, the State of California, or the City and County shall be deemed to have thereby vacated the office held by him or her under the City and County.~~

~~SEC. 15.108. — EMPLOYMENT OF FORMER MAYOR OR SUPERVISOR.~~

~~No person shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors for appointment to any full-time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.~~

ARTICLE XVII: DEFINITIONS

For all purposes of this Charter, the following terms shall have the meanings specified below:

“Business day” shall mean any day other than a Saturday, Sunday or holiday on which governmental agencies are authorized by law to close.

“Confirm” or “confirmation” shall mean the approval by a majority of the members of the Board of Supervisors.

“Discrimination” shall mean violations of civil rights on account of race, color, religion, creed, sex, national origin, ethnicity, age, disability or medical condition, political affiliation, sexual orientation, ancestry, marital or domestic partners status, gender identity, parental status, other non-merit factors, or any category provided for by ordinance.

“Domestic partners” shall mean persons who register their partnerships pursuant to the voter-approved Domestic Partnership Ordinance.

“Elector” shall mean a person registered to vote in the City and County.

“For cause” shall mean the issuance of a written public statement by the Mayor describing those actions taken by an individual as a member of a board or commission which are the reasons for removal, provided such reasons constitute official misconduct in office.

“General municipal election” shall mean the election to be held in the City and County on the Tuesday immediately following the first Monday in November in odd-numbered years.

“Initiative” shall mean (1) a proposal by the voters with respect to any ordinance, act or other measure which is within the powers conferred upon the Board of Supervisors to enact, any legislative act which is within the power conferred upon any other official, board, commission or other unit of government to adopt, or any declaration of policy; or (2) any measure submitted to the voters by the Mayor or by the Board of Supervisors, or four or more members of the Board.

“Notice” shall mean publication in an official newspaper (as defined by ordinance), and a contemporaneous filing with the Clerk of the Board of Supervisors or other appropriate office.

~~“Official misconduct” shall mean any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any willful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers.~~

“One-third,” “a majority” or “two-thirds” of the Board of Supervisors or any other board or commission of the City and County shall mean one-third, a majority or two-thirds of all members of such board or commission.

“Published” shall mean published in an official newspaper of the City and County.

“Referendum” shall mean the power of the voters to nullify ordinances involving legislative matters except that the referendum power shall not extend to any portion of the annual budget or appropriations, annual salary ordinances, ordinances authorizing the City Attorney to compromise litigation, ordinances levying taxes, ordinances relative to purely administrative

matters, ordinances necessary to enable the Mayor to carry out the Mayor's emergency powers, or ordinances adopted pursuant to Section 9.106 of this Charter.

“Special municipal election” shall mean, in addition to special elections otherwise required by law, the election called by (1) the Director of Elections with respect to an initiative, referendum or recall, and (2) the Board of Supervisors with respect to bond issues, election of an official not required to be elected at the general municipal election, or an initiative or referendum.

“Statewide election” shall mean an election held throughout the state.

“Voter” shall mean an elector who is registered in accordance with the provisions of state law.

Section 18.115. EFFECTIVE DATES AND AMENDMENTS TO ETHICS PROVISIONS.

The amendment to the Charter's ethics provisions proposed by the Ethics Commission and submitted to the voters at the November 4, 2003 election shall be enacted and take effect only if the Conflict of Interest Law Amendments proposed by the Ethics Commission for submission to the voters at the November 4, 2003 election are adopted at the same election. If adopted by the voters at the November 4, 2003 election, the Conflict of Interest Law Amendments may be amended by the voters. The Conflict of Interest Law Amendments may be amended by the Board of Supervisors if (a) the amendment serves the purposes of the Ordinance; (b) the Ethics Commission approves the proposed amendment by at least four-fifths vote of all of its members; (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors; and (d) the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

~~C8.105—CONFLICT OF INTEREST AND OTHER PROHIBITED PRACTICES~~

~~(a)—No officer or employee of the city and county shall become directly or indirectly interested in any contract, franchise, right privilege or sale or lease of property awarded, entered into or authorized by him or her in his or her capacity as an officer or employee, or by an officer or employee under his or her supervision and control, or by a board or commission of which he or she is a member, unless same is devolved upon him or her by law. An officer or employee with such an interest, however acquired, shall become divested of said interest within 60 days or shall resign said office or employment.~~

~~—(b)—No officer or employee shall give or promise any money or other valuable thing in consideration of his or her nomination, appointment, or election to any city and county office or employment or accept, other than lawful political campaign contributions, any gratuity in money or other valuable thing, either directly or indirectly, from any subordinate or employee or from any candidate or applicant for a position as employee or subordinate under him or her.~~

~~—(c)—No officer or employee shall make, participate in making or in any way attempt to use his or her office or employment to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest, as defined by California Government Code Section 87103.~~

~~(d)—No officer or employee of the city and county shall willfully or knowingly disclose any privileged information concerning property, government, or affairs of the city and county, unless a duty to do so is imposed upon said person by law, nor shall that person use any privileged information obtained by him or her by virtue of his or her office or employment to advance the financial or other private interest of himself or herself or others.~~

~~—(e)—No person who has served as an officer or employee of the city and county shall within a period of two years after termination of such service or employment appear before the board or agency of the city and county of which he or she was a member in order to represent any~~

~~private interest, provided, however, that said officer or employee may appear before said board for the purpose of representing himself or herself.~~

~~(f) No officer or employee of the city and county shall receive, directly or indirectly, any compensation, reward or gift from any source except compensation from the City and County of San Francisco, or any other governmental agency to which he or she has been duly appointed for any service, advice, assistance or other matter related to the governmental processes of the city and county, except for fees for speeches or published writing.~~

~~(g) The ethics commission with respect to officers and employees whose positions are subject to the civil service provisions of the charter other than officers and members of the fire and police departments, the fire commission with respect to officers and members of the fire department and the police commission with respect to officers and members of the police department, are each empowered to prescribe and enforce such reasonable rules and regulations as each commission deems necessary to effectuate the purposes and intent of this section. Such rules and regulations may provide for restrictions against activities, employments and enterprises other than those described or mentioned herein when such restrictions are found necessary for the preservation of the honor or integrity of the city and county. Rules and regulations previously adopted or approved by the civil service pursuant to this section shall remain in effect until amended by the ethics commission.~~

~~The civil service commission with respect to officers and employees whose positions are subject to the civil service provisions of the charter other than officers and members of the fire and police departments, the fire commission with respect to officers and members of the fire department and the police commission with respect to officers and members of the police department, are each empowered to prescribe and enforce such reasonable rules and regulations as each commission deems necessary to provide for the efficiency of the city and county civil service.~~

~~—(h)—An officer or employee shall not be deemed to be interested in any transaction described in Subsections (a) or (c) above if he or she has only a remote interest in the transaction and if the fact of such interest is disclosed and noted in the official records of the board, commission or department and thereafter the board, commission or department authorizes, approves, or ratifies the transaction in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest or by his or her immediate superior unless the transaction must be awarded to the highest or lowest responsible bidder as the case may be on a particular day and the vote of such officer or member is necessary to a quorum on that day.~~

~~(1)—As used in this article “remote interest” means:~~

~~—(A)—That of a nonsalaried officer of a nonprofit corporation;~~

~~—(B)—That of an employee or agent of the party involved in the transaction, if such party has 10 or more other employees and if the officer or employee was an employee or agent of said party for at least three years prior to his or her initially accepting his or her office or employment.~~

~~—For the purposes of this subsection, time of employment with the party by the officer or employee shall be counted in computing the three year period specified in this subsection even though such party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by such officer. Time of employment in such case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the party is the same or substantially similar to that which existed before such transfer or change in organization. For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the “real or ultimate ownership” of such party.~~

~~—(C)—That of a parent in the earnings of his or her minor child for personal services;~~

~~—(D)—That of a landlord or tenant of the transacting party;~~

~~—(E)—That of an attorney of the transacting party;~~

~~—(F)—That of a supplier of goods or services when such goods or services had been supplied to the transacting party by the officer or employee for at least five years prior to his or her election or appointment to office or employment;~~

~~—(G)—That of an officer, director, or employee of a bank, bank holding company, or savings and loan association with which a party to the transaction has the relationship of borrower or depositor, debtor or creditor.~~

~~—(2)—The provisions of this subsection shall not be applicable to any officer or employee interested in a transaction who influences or attempts to influence another officer or employee to enter into the transaction.~~

~~—(i)—An officer or employee shall not be deemed to be interested in a transaction pursuant to Subsections (a) and (c) above if his or her interest is:~~

~~—(1)—The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed five percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed five percent of his or her total annual income;~~

~~—(2)—That of an officer or employee in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty;~~

~~—(3)—That of a recipient of public services generally provided by the board, commission or department of which he or she is a member or employee, on the same terms and conditions as if he or she were not a member or employee of the board, commission or department.~~

~~—(4)—That of a landlord or tenant of the transacting party if such party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this~~

~~state or an adjoining state unless the subject matter of such transaction is the property in which such officer or employee has such interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning and subject to the provisions of Subsection (g).~~

~~—(5)—That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.~~

~~—(6)—That of a spouse of an officer or employee in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.~~

~~—(7)—That of a nonsalaried member of a nonprofit corporation, provided that such interest is disclosed at the time of the first consideration of the transaction and provided further that such interest is noted in its official records.~~

~~—(8)—An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of a borrower or depositor, debtor or creditor.~~

~~—(j)—No member of any board or commission of the city and county shall knowingly vote on or in any way attempt to influence the outcome of governmental action on any measure or question involving his or her own character or conduct, his or her right as a member, or his or her appointment to any office, position, or employment, wherein the said member's financial interest is immediate, particular, and distinct from the public interest. The word "knowingly" as used in this paragraph shall mean actual or constructive knowledge of the existence of the interest which would disqualify the vote under the provisions of this section.~~

~~—If under any provision of this charter or of any ordinance, resolution, rule or regulation, action on any measure or question must be taken on a particular day and such action cannot be taken by a qualified voting quorum of the board or commission on that day by reason for the disqualification from voting under the provisions of this section, said action may be postponed until, but not later than, there are sufficient qualified members present to vote and take action on said measure or question. The term “a qualified voting quorum” as used in this paragraph shall mean the presence of a sufficient number of qualified voting members of the board or commission to take either affirmative or negative action on the measure or question before the board or commission.~~

~~—(k) The city attorney, the district attorney of the City and County of San Francisco or any resident or group of residents of the City and County of San Francisco may bring a suit in the superior court to compel compliance with the provisions of this section.~~

~~—(l) The provisions of Section 8.105 shall not apply to any member serving as a representative of any profession, trade, business, union or association on any board, commission or other body heretofore or hereafter created by an ordinance of the City and County of San Francisco which requires that the membership consists in whole or in part of representatives of specific professions, trades, businesses, unions or associations. Conflicts of interest and prohibited practices of such members and the penalties therefor shall be as prescribed by the ordinance creating such board, commission or other body or by an amendment thereto.~~

~~(m) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon a final judgment of conviction of same, shall be removed from office or in the alternative shall be subject to a penalty of not more than one year in jail and/or fine of not more than \$10,000, as well as removal.~~

~~(n) Every contract made in violation of any of the provisions of Section 8.105 may be avoided at the insistence of any party except the officer or employee interested therein. No such contract may be avoided because of the interest of an officer or employee therein unless such~~

~~contract is made in the official capacity of such officer or employee, or by a board or body of which he or she is a member.~~

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
CHAD A. JACOBS
Deputy City Attorney