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Subject: Poll shows voters favor 3-1 stronger action on pay-to-play than Ethics passed, want full investigation

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The poll shows strong public support for measures that go beyond the provisions to be considered at Tuesday's joint Board-Ethics Commission hearing on the anti-corruption action.

The highest level of support was for a prohibition on contributions from developers to those who decide on their permits at over 70%. Ethics did not include this in their proposed reforms.

There is strong support for prohibitions on potential pay-to-play influences rather than disclosures. The Tuesday proposal however relies primarily on disclosures and not the prohibitions that the public favors.

This poll was done (and questions designed) by Public Policy Polling, a national polling firm with an established positive reputation.

It includes 513 respondents by telephone with a 4.4% margin. It also includes a break-down by supervisor district.

It was conducted March 28-29.

The focus was on policy decisions debated at Ethics for

the Anti-Corruption and Accountability Ordinance. In most cases, the debate was whether to adopt a prohibition or a scheme of disclosure. In some cases, the issue was whether to act at all.

At the Ethics Commission, commissioner votes for prohibition or votes to act came up 3-2, which was not enough since four of the five commissioners are the threshold for acting. We tested whether the public sentiment was on the side of disclosure or prohibition, or action.

The poll results indicate the public sentiment, usually by at least 2-1 and often 3-1, favored stronger action than Ethics. In one case — whether to enact a prohibition on developer contributions rejected at this time by Ethics — the public opinion was 7-1 in favor of a prohibition on developer contributions and fundraising similar to the existing prohibition for contractors and lobbyists.

We also delved into public opinion on a specific behind-the-scenes politicking that included threats of City Hall action based on contributions to a specific candidate. We choose this example because it was widely reported (including in both daily newspapers and in other media like SF Public Press) and because it exemplified pay-to-play. It also involved a participant who has emerged as a major influence on city policy through spending on candidates and elections and expenditures at the request of City Hall officials.

Specifically, these were the decision points:

1. Should city appointees be prohibited from contributing and fundraising for officials and those favored by officials, or just for the specific official who appointed them? Ethics opted for the limited version. The public opinion was for the stronger version applying to all officials and the candidates they back.
2. Behest payments (contributions requested by a city official for a favored purpose or group) are currently unlimited, including on sources who have pending decisions before the official who requests the check. Ethics voted to allow it to continue even in those circumstances but with some disclosure. Public opinion strongly favored an outright prohibition
3. A well-reported episode of pay-to-play involving the then-mayor and top city elected officials pressuring donors and those with pending decisions at City Hall was a test of whether the public viewed such arm-twisting as a serious concern or politics-as-usual. Ethics has not taken up the specific episode or provided a public forum to examine its prevalence. Public opinion regards it as a serious concern and wants a public investigation as proposed by Ethics Commissioner and retired Judge Quentin Kopp.
4. Ethics debated but did not act on a proposed prohibition on campaign contributions from developers who have pending permits, similar to the current prohibition from contractors and lobbyists. Public opinion favored a

prohibition by the largest margin of any question in the poll.

5. A final question tested public opinion on whether pay-to-play politics at City Hall has a very negative impact on the quality of life in the city, or only somewhat or makes no difference.

The poll responses were also segmented to determine whether gender, ethnicity, race or sexual orientation, political party, age, or the supervisor district generated differences in opinion.

The Ethics Commission should take action to upgrade and improve required disclosure by city officers to ensure transparency and accountability. This will benefit city officers and the public.

The upgrades and improvements affect San Francisco requirements for Statements of Economic Interests (Form 700) by filers, Statements of Incompatible Activities by departments and agency, and Internet posting for recusals and disclosures required by city and state laws and regulations.

1. Filers should include disclosure of board memberships on voluntary, unpaid nonprofit groups. Personal, professional or business relationships would best be done on Schedule C of the Form 700. This disclosure includes “a professional relationship with a person based on regular contact in a professional capacity, including regular contact in conducting volunteer and charitable activities.” (Section 3.214 of the Campaign and Government Code requires this disclosure, which is further outlined in Ethics Commission Regulation 3.214-5. This will apply to serving in an unpaid capacity on a volunteer Board of Directors.) This transparency is most important when service on such boards includes professional relationship with other board members who may have pending issues before the officer’s commission or body.
2. In the case of filers who do not file with Ethics but file with their own agency, the Ethics internet site for City Officers should list by name and agency those who

file instead at the Department level, with a link to where that specific agency record can be accessed on the internet.

3. For filers who seek and obtain advice on conflicts or incompatible activities, requests for advance written determinations and written determinations including approvals and denials are public records. This information should be posted on each agency's Internet site by the name of the filer, the issue, and the type of issue.
4. The application of this standard to unpaid voluntary relationships is established in common law according to guidance by the California Attorney General and the explication in the decision in *Clark v City of Hermosa Beach* (1996) 48 Cal.App.4th 1152 and in the Attorney General's opinion (fn18:92 Ops Cal Atty Gen 19 (2009))
5. Statements of Incompatible Activities for each agency should be updated to note that state law (Section 84308) "prohibits an appointed officer from soliciting, accepting or directing campaign contributions of more than \$250 from any party, participants or agency of a party or participating while a proceeding is pending before the officer's agency and for three months following the date of the decision. This prohibition applies even where the contribution is directed to a person other than the officer." This would appear to be

in conflict with the Commission on the Status of Women Statement of Incompatible Activities that states “nothing in this section precludes an officer or employee from performing volunteer functions with or making charitable contributions to organizations that are under the jurisdiction of or that receive funds from the Commission or Department.”

Similar language exists in the Planning Department’s Statement which includes “Nothing in this Statement shall be construed to restrict an officer’s or employee’s ability to perform volunteer functions with non-profit charitable organizations as long as those volunteer functions do not conflict with official duties, require excessive time demands or are subject to the review of the Department.”

6. Form 700 filings should include under Schedule D disclosure of behest payments, including those made to Section 527 tax-exempt organizations involved in political activity. This disclosure is required under Ordinance 001-17 effective January 1, 2018. This is in addition to the timely filing by city officers with the Ethics Commission.
7. The Commission should seek to have the City Attorney rescind its January 5, 2018 letter to Chloe Hackert that asserts “a public official employed by a nonprofit organization does not have a conflict of interest arising from persons who donate to the officer’s employer, unless the official solely controls the nonprofit, a donation constitutes a significant

portion of the salary that the official receives from the nonprofit, or a donation is directed to the official as an employee of the nonprofit entity.” This should be replaced with a new advice letter that cites San Francisco law regarding soliciting behest donations by city officers, and recusals in cases of contributions, and its application of those with a “professional association” with the officer through a nonprofit entity. If the City Attorney declines this request, the Ethics Commission should issue its own advisory letter to be circulated to all officers and appropriate agencies.

SELECTED EXAMPLES OF CITY OFFICERS WHO ALSO SERVE AS NONPROFIT BOARD MEMBERS

SPUR SF Board of Directors

V. Fei Tsen, Chair, Treasure Island Board

Tilly (Doris) Chang, SF Transportation Agency

Executive Director

Carmen Chu, SF Assessor

Nicholas Josefowitz, Redevelopment Successor

Agency member until June 2018

Hydra Mendoza, Deputy Mayor Chief of Staff, Board
of Education member

Joaquin Torres, Housing Authority Commissioner and
Director Office of Economic and Workforce
Development
Paul Woolford, Arts Commission member

FRIENDS OF CITY PLANNING

Peter Cohen, Citizen Committee on Community
Development

YIMBY Action

Sam Moss, DBI Commission (very recently left
YIMBY Action Board)

SAN FRANCISCO FOUNDATION

Francesca Vietor, SF Public Utilities Commission

CALIFORNIA ALLIANCE FOR JOBS

Vince Courtney, SF Public Utilities Commission
Ken Cleaveland, Fire Commission

Friends of Ethics Comments on CFRO Reform Proposal

Friends of Ethics is pleased that the Ethics Commission will address the need for a deeper, more intense review of San Francisco's campaign law. We are pleased to submit our comments on the need for a strong enhancement of San Francisco's law, and our observations on the public support for meaningful reforms.

While the staff draft incorporates a number of recommendations from Friends of Ethics, we call your attention to the May 22 Commission meeting when the Ethics Commission requested of staff to develop language based on the Friends of Ethics initial proposal.

The draft that is before the public now has omitted provisions that we believe better meet the need for meaningful change, particularly in addressing pay to play. We believe San Francisco would be better served with the more robust, complete reform we proposed, and strongly urge the Commission to return to those values and anti-corruption proposals.

Notably, the Staff version does not repeat the remaining valid points in the original Proposition J of 2000, approved overwhelmingly by voters at that time, and which set out the Purpose and Intent of the current proposal anchored in the voter-approved earlier language.

The staff draft also eliminates important protection against influence by major corporations through Behest payments, gifts of travel and contributions by officers, directors and owners of companies that may be seeking city approvals that benefit themselves financially. It does this by limiting the prohibition to contractors and those seeking city approvals of land use matters. Even in such limited cases, the language is ambiguous on matters such as upzoning, variances and other decisions.

We believe this will fall short of satisfying the public demand that City Hall influence peddling be forcefully curbed.

The current effort comes against a backdrop of recommendations by civil grand juries, the Board's budget and legislative analyst, public opinion polls, and expert testimony before the Ethics Commission over the past six years.

There are clear signals that the public is concerned about the influences brought to bear on City Hall decisions and wants actions taken to ensure that citizens have a clear ability to participate in the decisions that affect their lives and the life of the city. This has become an increasingly urgent concern as power is concentrated in the hands of those who will benefit financially from decisions they influence.

Existing safeguards that protect the public interest have been overtaken by changes in the political environment, leaving the public interest vulnerable to special interests. The challenge in the current effort to address the Campaign Finance Reform Ordinance is to return public interest to the center of City Hall decisions.

Friends of Ethics appreciates the Ethics Commission's commitment to this mission and to its effort to solicit public input and be responsive. We note at the outset that the Ethics Commission draft accepts the Friends of Ethics proposal to increase disclosure of campaign contributions in the final period before Election Day to improve transparency and accountability.

Friends of Ethics comments submitted today are intended to provide an overview of public concern regarding a political culture that serves the few at the expense of the many. The comments deconstruct elements of the Ethics Commission staff recommendations, provide our views, and make

recommendations.

Overview:

Civil Grand Jury reports: In the past five years, three different San Francisco Civil Grand Juries have issued findings and recommendations to address the failures of ethics and elections in our city. Some sixty San Franciscans appointed by the Superior Court took an oath before a judge to deliver a sober, unbiased examination and investigation of how government was performing and issued those reports. Together they included 47 different findings and 43 recommendations for action.

http://civilgrandjury.sfgov.org/2014_2015/14-15_CGJ_Whistleblower_Report_Court_Approved.pdf
(June 2015)

six findings and six recommendations

http://civilgrandjury.sfgov.org/2013_2014/2014_SF_CGJ_Report_Ethics_in_the_City.pdf (June 2014)

29 findings and 29 recommendations

http://civilgrandjury.sfgov.org/2010_2011/San_Francisco_Ethics_Commission.pdf (June 2011)

12 findings, 8 recommendations

News Media: In recent years, our city's news media has reported on its investigations into our city's "soft corruption" of pay to play, rigged outcomes, and cronyism. Those media investigations have come from every quarter of our city's diverse viewpoints and neighborhoods, from the daily press of the San Francisco Chronicle and San Francisco Examiner, to the San Francisco Bay Guardian, Westside Observer, San Francisco Public Press and the San Francisco Weekly and San Francisco Magazine.

<http://www.sfchronicle.com/opinion/openforum/article/San-Francisco-must-end-its-pay-to-play-practices-11015569.php>

(Peter Keane and Larry Bush) March 21, 2017

Chron editorial:

<http://www.sfchronicle.com/opinion/editorials/article/SF-corruption-a-game-that-s-too-easy-to-play-11024070.php>

(SF Corruption a game that's too easy to play) March 23, 2017

<http://www.sfchronicle.com/opinion/openforum/article/Bringing-back-ethics-to-the-Ethics-Commission-9128120.php>

(Bring back Ethics to the Ethics Commission, August 7, 2016)

<http://www.sfchronicle.com/opinion/openforum/article/Supervisors-must-add-muscle-to-SF-whistleblower-7242184.php>

(Supervisors must add muscle to the whistleblower law, April 11, 2016)

<http://www.sfchronicle.com/politics/article/Short-staffed-SF-ethics-panel-s-backlog-of-10863958.php>

(Short Staffed SF ethics panel backlog of cases is growing; January 18, 2017)

<http://www.sfchronicle.com/opinion/openforum/article/Time-for-San-Francisco-to-close-pay-to-play-6052909.php>

(Time for San Francisco to close Pay to Play Loopholes, February 1, 2015)

<http://www.sfchronicle.com/bayarea/article/Mayor-Ed-Lee-has-knack-for-raking-in-big-bucks-6267454.php>

<http://www.sfchronicle.com/bayarea/nevius/article/Time-for-Ethics-Commission-to-prove-its-relevance-3498584.php>

(Time for Ethics Commission to Prove its Relevance, April 21, 2012)

<http://www.sfchronicle.com/opinion/openforum/article/S-F-supervisors-must-bring-ethics-to-government-2377356.php>

<http://www.sfexaminer.com/close-the-city-hall-casino/>

<http://www.sfexaminer.com/new-details-political-corruption-case-reveal-sfs-alleged-pay-play-culture/>

(article on pay to play impacting San Francisco decisions)

<http://www.sfchronicle.com/crime/article/SF-pay-to-play-defendant-We-eat-sleep-9976094.php>

(report on criminal charges in money laundering by city officials)

http://48hills.org/sfbgarchive/2013/10/08/friendsintheshadows/?_sft_writer=rebecca-bowe&sf_paged=9

(analysis of “behest payments” and connections to city decisions)

<http://sfpublicpress.org/news/costofvotes/2016-08/in-bid-for-dominance-mayors-allies-flood-sf-politics-with-corporate-cash>

<http://sfpublicpress.org/costofvotes>

<https://archives.sfweekly.com/sanfrancisco/dispute-over-who-gets-to-run-city-parking-garages-leads-to-allegations-of-a-shakedown/Content?oid=2176840>

(article on contract award for parking)

<http://www.bizjournals.com/sanfrancisco/print-edition/2014/01/31/apic-chinese-investors-bay-area-chen.html>

(article on investors seeking influence through paying for official’s travel)

<https://theintercept.com/2016/08/03/chinese-couple-million-dollar-donation-jeb-bush-super-pac/>

(article on investors seeking influence through paying for official’s travel)

<http://sfpublicpress.org/news/2017-02/after-exporting-raisins-tech-pioneer-brought-campaign-finance-disclosures-online>

This is in addition to front page reporting on threats by the mayor and his top staff, accompanied by the Board President and the Chair of the Board's Finance Committee, to thwart the legitimate applications for permits, contracts and agreements unless a favored candidate receives their financial backing and the opponent is denied campaign support.

Without exception they report that the city's system intended to represent the public in fact is representing the interests of the powerful, the influential, and the connected.

Public Testimony at the Ethics Commission: Over this same period, the Ethics Commission has heard public testimony from our Bay Area and state's most experienced academics from our best universities and study centers. They include the co-author of the California Political Reform Act, the founder of the Institute for Government Studies, the director of the USF McCarthy Center, an entire post-graduate class at USF, and the policy director from the Campaign Legal Center in Washington, DC.

[:http://www.policyarchive.org/collections/cgs/](http://www.policyarchive.org/collections/cgs/)

<https://sfethics.org/ethics/2015/06/minutes-june-5-2015.html>

https://sfethics.org/wp-content/uploads/2016/02/Item_3_-_USF_Summary_Handout_and_PowerPoint_Presentation_FINAL.pdf
<https://sfethics.org/wp-content/uploads/2015/04/complete.pdf>

Opinion Polls: The public at large has expressed its opinion as measured in public opinion polls by both local and national firms. The results tell us that only 15 percent of the public believes that we are served by the current system of campaign fundraising and the relationship with those who benefit from city decisions.

Local Elections: The evidence is also backed by the results of elections. In every case when voters are presented with an opportunity to change our campaign and ethics laws with reforms that reduce the influence of special interests, they vote overwhelmingly in favor by margin as high as 85 percent to 15 percent.

Record of wrongdoing: In a city where ethics and campaign laws are often ignored or gamed even by those charged with enforcing them, the record is clear. A member of the Board of Supervisors tried, convicted and jailed in a case that included pay-offs. The state senator representing San Francisco tried and convicted of accepting bribes. The former President of the city's School Board was arrested and convicted of seeking pay-offs for influence peddling. The city's Community College chancellor tried and convicted of money laundering and self-dealing. An FBI investigation currently charges city officials now facing trial for selling access and influencing decisions. The District Attorney has announced a joint task force with the FBI into public corruption that is ongoing.

<http://www.sfexaminer.com/new-details-political-corruption-case-reveal-sfs-alleged-pay-play-culture/>
During this period, courts have awarded millions of dollars to city workers who faced retaliation, including dismissal, for refusing orders to engage in illegal and prohibited practices intended to favor city officials or their supporters.

Civil Action: In civil action, the cases include a former commissioner turned departmental executive found to have awarded contracts that included payments to herself, that the chair of an key Board of

Supervisors committee had benefitted from illegal campaign coordination, that an elected official who also had served on a vital city commission violated basic campaign requirements, and a number of city commissioners were identified as soliciting contributions in violation of the law. In yet another case, the city's former City Attorney undertook an investigation into actions at a major city department that raised significant evidence of bid rigging, favoritism in contract awards, and threats of reprisals against city staff who refused demands for illegal action.

http://www.citireport.com/wp-content/uploads/2013/06/Redacted-pdf-SFHA-RSHS-Fact-Gathering-Summary-re-Larsen-Complaints-re-SFHA-Procurement-Process-4_17_13.pdf

Need for Reform Action is Urgent:

In the most significant failure to date, a front page example of pay to play politics that involved all of the city's highest elected officials, their consultants, contractors, developers and union officials underscored that the Ethics Commission has not sought public testimony, much less subpoenaed the participants and put them under oath,

<https://www.modernluxury.com/san-francisco/story/sources-mayor-lee-and-ron-conway-pressured-donors-not-supporting-aaron-peskin-su>

<http://www.sfchronicle.com/bayarea/matier-ross/article/S-F-Mayor-Ed-Lee-serves-notice-about-supporting-6193001.php>

ELEMENTS IN THE STAFF PROPOSAL: following the money in political influence.

BEHEST PAYMENTS: The staff proposal refers to behest payments "to" elected officials, which is confusing because the payments are not "to" an official but at the official's behest.

The total during the 27 month period posted beginning in April 2015 on the Ethics Commission site was \$10,857,295 from 102 separate contributions, and the donors were dominated by businesses who retained lobbyists to pursue favorable outcomes in city decisions at the same time.

The proposed Section 1.126 prohibits behest payments from city contractors made at the request of any city elective officer. The record of Behest payments shows that almost all came from those seeking City Hall approvals for their interest and many of whom have retained lobbyists to persuade city officials to favor their request.

As proposed, Section 1.127 would prohibit Behest contributions from those seeking city approvals involving land use.

Friends of Ethics endorses these as partial steps that further the purposes of the Act. However, we urge in the strongest terms that these provisions apply to any entity seeking City Hall influence on decisions favored by donors or contributors as well as those who make gifts including travel costs.

The stated rationale that entities seeking land use decisions present a greater risk of corrupt influence than others seeking city approvals of their interests is not supported by the record of Behest payments or campaign contributions.

Friends of Ethics provides additional points to support a universal policy that any entity seeking City Hall decisions should be prohibited from making behest payments at the direction of City officials who

make the decisions, to make campaign contributions to those officials or to provide gifts including the cost of travel for those officials.

Again, the loophole allowing those seeking City influence to make Behest payments while seeking to influence city officials has drawn the attention of the San Francisco Civil Grand Jury, The Institute on Government, and numerous newspaper articles.

Note these:

Civil grand jury on behest:

http://48hills.org/sfbgarchive/2014/06/30/civil-grand-jury-report-highlights-gifts-made-mayors-behalf/?_sf_s=behest

AT&T behest while seeking rules change

<http://www.sfchronicle.com/bayarea/article/SF-may-dilute-law-on-beautifying-AT-T-utility-11281724.php>

As reported in the San Francisco Chronicle:

“Ethics Commission records also show how big a player AT&T is in local politics. In addition to campaign contributions from Lighthouse, the company also made at least two big charitable gifts last year, shelling out \$50,000 for the Women’s Foundation at the behest of Mayor Ed Lee, and \$5,000 for the GLBT Historical Society at Wiener’s behest.

Even the group San Francisco Beautiful, which unsuccessfully sued the city in 2011 in an effort to ban the utility boxes altogether, now seems to be changing its tune. Golombek said the group is in talks with AT&T to start a pilot program in which artists would decorate the boxes.

“I’m conflicted,” said San Francisco Beautiful Executive Director Darcy Brown. “On the one hand, I don’t want these boxes all over the city. On the other hand, people want delivery of (Internet) service.”

<http://www.sfchronicle.com/bayarea/article/Mayor-Ed-Lee-has-knack-for-raking-in-big-bucks-6267454.php>

Also in the San Francisco Chronicle:

“Sometimes, the timing of gifts can look a little fishy, though. Lee asked for and received a \$10,000 gift from Coca-Cola to fund the city’s summer jobs program for youth last year at the same time the soda industry was fighting the proposed soda tax. Lee stayed out of the soda tax debate despite pressure from health groups to take a stand, and the proposal was defeated.”

SF Weekly feature on corrupt ways that are legal, including behest:

<http://www.sfweekly.com/news/news-news/5-corrupt-ways-influence-san-francisco-politics/>

48 HILLS: DA behest payments questioned

http://48hills.org/sfbgarchive/2013/04/01/das-office-makeover-may-have-skirted-rules/?_sf_s=behest&sf_paged=2

BAY Guardian: Friends in The Shadows:

http://48hills.org/sfbgarchive/2013/10/08/friendsintheshadows/?_sf_s=friends+in+the+shadows

“But the largest gifts to the SFGHF came from Kaiser Permanente, and its financial interests in the city run deep. Kaiser came into the city’s crosshairs in July, when the Board of Supervisors passed a resolution calling on Kaiser to disclose its pricing model after a sudden, unexplained increase in health care costs for city employees. Kaiser holds a \$323 million city contract to provide health coverage, and supervisors took the healthcare giant to task for failing to produce data to back up its rate hikes.

In the meantime, Kaiser has also been a generous donor. It contributed \$364,950 toward SFGHF and another \$25,000 to SFPHF in fiscal year 2011-12.”

SF CHRONICAL: Editorial:

<http://www.sfchronicle.com/opinion/editorials/article/SF-corruption-a-game-that-s-too-easy-to-play-11024070.php>

Op-ed:

Bush/Keane op-ed

<http://www.sfchronicle.com/opinion/openforum/article/San-Francisco-must-end-its-pay-to-play-practices-11015569.php>

Unless a full prohibition is enacted, Behest payments will provide a river of money for the purposes identified by elected officials, including at times to benefit their own office. Those contributions have amounted to more than \$1 million from a single donor, compared to the \$500 limit for campaign contributions.

The top contributors through Behest payments in the past 27 months were Salesforce (\$2,440,712), Ron Conway (\$1,130,000), Kilroy Realty (\$566,000) Parks Alliance (\$457,000), Golden State Warriors (\$295,000), Realtors Associations (\$292,000) and Lennar (\$235,000).

Mayor Lee leads the list of elected officials requesting contributions to purposes he specified, with 83 of the 105 contributions for a total of \$9,962,300.

We are concerned that staff language specifying agencies that make land use decisions may inadvertently result in some agencies being exempt from this provision despite the fact they also make

decisions on land use. For example, the Fire Department took to the ballot the issue of siting fire stations. The Recreation and Parks Department has put on the ballot voter approval for new parks, including conversion of underutilized sites.

It is important for staff to clarify the intent of this language, and to provide the ability for the Ethics Commission to add through regulation or other procedures the inclusion of any other agency as needed. Friends of Ethics states the prohibition should include any entity seeking a city benefit of significantly large value. We have analyzed the past 27 months of Behest Payments and note that the contributors that appear to fall outside the limit of “contractor” or “land use decision” criteria include:

- Pacific Gas and Electric Company,
- Recology,
- Parks Alliance,
- Association of Realtors,
- Facebook,
- AT&T,
- Wells Fargo,
- Twitter,
- Kaiser,
- Microsoft,
- Dignity Health,
- Chevron,
- United,
- Comcast,
- Marc Benioff,
- Sean Parker,
- Peter Thiel,
- Walgreens,
- individuals like Ron Conway and
- sf.citi.

The relationship between city officials and those making behest contributions cannot be overstated. Indeed, millions of dollars are contributed to entities under the direct control of city officials.

Mayor Lee’s reports indicate that \$1,095,550 went toward the City Hall Celebration while \$3,0485,750 was donated toward the cost of the 2015 US Conference of Mayors meeting in San Francisco. The Mayor, as co-host of the Women’s Foundation conference, won \$200,000 in behest payments for that event.

In additional cases, the behest payments went directly to the City Attorney or to the District Attorney.

In all such cases, there should be disclosure of whether any of the official’s staff, contractors or consultants were paid from the Behest funds, and if so, for what purposes and for what amounts. In almost all cases, the behest funds went to purposes that enhanced the elected officials political position or else somewhat minimized the elected official’s failure to negotiate agreements that fully reimbursed the city, as was the case with the America’s Cup.

While Behest payments by law must serve a charitable, governmental or educational purpose, Friends

of Ethics found that the largest percentage went to efforts providing some benefit to the official. We were unable to identify major contributions to efforts for health care, housing or the homeless, beyond contributions through the Hamilton Family Center for \$3,476,000 paid by donors Mark Benioff (\$1.1 million), Peter Thiel (\$1 million), and Sean Parker (\$1 million).

Supervisor Mark Farrell accounted for 15 reports on the Ethics disclosures for a total of \$467,500 for schoolyard and parks projects.

Other officials are District Attorney George Gascon (\$389,315 for blue ribbon panels) (City Attorney Dennis Herrera (\$15,680 for pro bono legal services for the City Attorney), Supervisor Scott Wiener (2), Supervisor Norman Yee (1), Supervisor Malia Cohen (1).

The Ethics Commission should be the original filing officer. Friends of Ethics also recommends that the draft also set new standards for the disclosure of Behest payments.

Currently contributions must be reported to the official's department in 30 days, and the city department must file with Ethics within another 30 days. The result is that it can legally be two months after the contribution was obtained before there is public disclosure.

Even in these cases, some city officials have been as much as 15 months late in filing disclosures. We recommend that Ethics enact a local penalty in addition to the state agency in overdue disclosures, with the penalty varying based on factors of the lack of timeliness, the amount, and whether a pending matter was considered. In cases of filing delays that extend to months or during a period when decisions are made by the official whose travel has been contributed, one option might be to require the official to repay the contribution from their own funds. This should be a local law and should be locally enforceable.

Friends of Ethics recommends that disclosures be made within 24 hours of the contribution. The amounts are significant, the donors often have pending city decisions, and timeliness is in the public interest of transparency as decisions are made.

COMMISSIONER CONTRIBUTIONS

Board Budget Analyst Harvey Rose noted in a June 2012 report to the Board of Supervisors that Los Angeles has adopted a ban on fundraising and contributions by city appointees.

The San Francisco Civil Grand Jury (June 2014) endorsed this same provision.

San Francisco officials who have been involved in illicit fundraising including a Human Rights Commissioner now indicted by federal officials for money laundering, the then-President of the Building Inspection Commission who illegally solicited contributions from those with business pending before his commission, and other unnamed examples.

SF Form 700 filers contributed \$1,095,020.71 in the 2015 and 2016 elections. The top contributors including bundling were:

Diane Wilsey (\$504,522.34)

Vicki Hennessy (\$54,047.94)

David Gruber (\$53,150)

David Wasserman (\$27,100)

Nicolas Josefowitz (\$25,350)

Aaron Peskin (\$21,468)

(See attached list prepared by Maplight of city officials donations, the amounts, and the entity who received the donations.

Ethics staff indicates that its proposal mirrors the Los Angeles prohibition, but it fails to do so as completely as Friends of Ethics proposal did. The result is that San Francisco would adopt a more limited prohibition than the Los Angeles policy that is our model.

Friends of Ethics proposes that the prohibition apply to Board and Commission members and Department heads. The record shows that Department heads in fact are making contributions that would benefit the administration that appointed them.

Ethics staff also limits the prohibition to contributions by appointees to only those who appoint them.

This would be difficult to enforce, provide loopholes, and would perpetuate a city hall political operation sometimes referred to as “the city family.”

San Francisco has key commissions with split appointments (Planning, Board of Permit Appeals, Building Inspection, Police, among others) between the mayor and the Board of Supervisors.

Consider whether Planning Commissioners appointed by the mayor could then contribute to the mayor’s chosen candidates for the Board. Or they could contribute to the mayor if their appointing authority is the Board of Supervisors.

A related factor is that some commission appointments made by the mayor

are confirmed or vetoed by the Board of Supervisors, leaving open the prospect of mayoral appointees contributing to supervisors who also vote on their appointment.

Friends of Ethics proposed a provision that copies Los Angeles law and was recommended for consideration in San Francisco in the Board Budget and Legislative Analyst report of June 2012. We have consistently advocated for its inclusion since that time. It does not include the exceptions proposed now by Ethics staff.

This provision is intended to curb pay to play and currying favor by appointees. Commissioners are encouraged by the mayor and other elected officials to contribute and raise money for candidates they favor, or to contribute to campaigns to defeat candidates and incumbents. Thus the provision here would leave the door wide open to continued pay to play activities by city commissioners.

Instead of fully closing a loophole, this provision will perpetuate the influence peddling associated with fundraising by city appointees and fail to meet public expectations.

PROHIBITED CONTRIBUTION SOURCES:

The staff proposal continues to include city contractors as a prohibited source, adds entities seeking a land use decision and includes the Friends of Ethics suggestion of expanding the 6 month prohibition period to 12 months.

Staff proposal slightly increases the types of government contracts that are covered by the Campaign Finance Reform Ordinance, Section 1.126. While Friends of Ethics appreciates staff's addition of bond underwriting contracts to Section 1.126, it is unclear if this addition fully encompasses the scope of existing comparative law (Los Angeles, 49.7.36) recommended by Friends of Ethics. For example, LA's prohibition also applies selection for a pre-qualified list, selection to contract, and membership in a syndicate providing underwriting services on the scale of the bond. Furthermore, while Commission staff have confirmed that franchises (whether as defined by Administrative Code Section 11.1(p) or those awarded for conducting business in which no other competitor is available to provide a similar service) are contracts, it does not appear that they would fall under the revised

definition of “contract” proposed by staff.

Under the staff proposal, any other entity not prohibited is able to make contributions and behest payments, as are the officers, board members, and others associated with those entities.

Because staff suggests that the potential for influence is greatest in matters affecting land use, Friends of Ethics provides examples of equally significant influence through contributions and other means for entities not directly involved in land use matters. We strongly urge that they be included as a prohibited source.

Staff’s review fails to consider the history of influence-peddling and even corrupt practices that have marked much of San Francisco’s politics for more than a century.

1. PG&E

One of the earliest records is the October 12, 1908 “Report on the Causes of Municipal Corruption in San Francisco, as Disclosed by the Investigations of the Oliver Grand Jury, and the Prosecution of Certain Persons for Bribery and Other Offenses Against the State.” <http://www.sfmuseum.org/hist5/graft1.html>

This is included in the report:

“The millionaire sitting in his luxurious office rotund with the wealth filched from unclean franchises, may hold up his hands and say, ‘Preserve me from these baneful and culpable than the poor devil of a senator or assemblyman that has incurred debts which he is unable to pay? Who finds himself for the nonce lifted to a position which is evanescent, and is tempted by wines, banquets and money?”

"They are all alike guilty and criminal.”

The report names Pacific Gas and Electric Company, the telephone company, public transit and others.

In the more than a century since that time, Pacific Gas and Electric has compiled a record of influence peddling, corrupt practices and efforts to undermine city policy. They were a significant factor in Newsom’s decision to fire Public Utilities Commission Executive Director Susan Leal for her efforts to create a public power option. They faced the largest fine in city history for failing to disclose hundreds of thousands in campaign contributions against a public power ballot measure. They were being sued by the City Attorney for efforts to thwart the city from providing power to public and operated buildings in violation of the current policy. They are the focus of a federal investigation of corruption in its relationship with state regulators.

See for examples: <http://48hills.org/2017/04/13/pge-shakedown/>

<http://www.beyondchron.org/exposing-political-corruption-in-san-franciscos-bayview>

<http://www.sfgate.com/politics/article/PG-E-behind-ads-hitting-public-power-measure>

<http://www.sfgate.com/news/article/Newsom-urges-Leal-to-resign-as-head-of-S-F-PU>

2. Recology

A second major franchise that has been accused of corrupt practices and been the subject of investigations is Recology, the garbage hauler.

See these stories:

<http://www.dailytidings.com/article/20091020/NEWS02/910200320>

“Prosecutors conceded that the mayor had not received any money from the union but argued that he was guilty of taking a bribe by brokering a deal for “indirect future.” Chronicle reported.

Some legal experts had called the prosecutors’ characterization of the situation as bribery.

In dismissing the case, the judge wrote, “This is not bribery. This is politics.”

<http://sfappeal.com/2012/06/sf-voters-reject-garbage-measure-approve-coit-tower-initia>

<http://www.trashrecology.com/stop-the-sf-monopoly.html>

(includes links to a dozen articles)

In the 2015 and 2016 elections, Recology contributed \$171,200 to candidates and ballot 13 candidates for supervisors, college board, school board and Democratic County Cent also serving in elected office. In addition, Recology made contributions to candidate-co committees.

http://www.huffingtonpost.com/2012/05/29/recology-sf-san-francisco_n_1526149.html

3. NEW INTERNET-BASED AND RELATED BUSINESSES.

Over the past five years a new force in city campaign funding has emerged focused on tech companies. <http://www.nytimes.com/2012/04/01/us/as-mayor-edwin-m-lee-cultivates-business-treatment-questioned.html>

““There’s a distinct difference between pursuing policies that raise the tide for everybody in politics to reward one particular supporter’s investment,” said Aaron Peskin, a former Bay Area president who is now head of the local Democratic Party. “This is about rewarding a major contributor. It’s pay-to-play politics pure and simple.”

<http://www.reuters.com/article/us-sanfrancisco-conway-idUSBRE89S05F20121029>

<http://sfpublicpress.org/news/2016-09/what-nevius-got-wrong-about-tech-and-politics>

<http://www.sfexaminer.com/tech-investor-sf-mayoral-backer-ron-conway-continues-to-lead-local-elections/>

<http://www.sfexaminer.com/ron-conway-big-tech-drop-thousands-sleepy-sf-election/>

<http://www.nytimes.com/2012/04/01/us/as-mayor-edwin-m-lee-cultivates-business-treatment-questioned.html>

<http://sfpublicpress.org/news/costofvotes/2016-08/in-bid-for-dominance-mayors-allies-politics-with-corporate-cash>

In 2011, Angel Investor Ron Conway made the first \$20,000 contribution to the newly created Mayor Ed Lee Committee for San Francisco. Within weeks Conway was convening in the mayors office to begin rewriting the city tax code in ways that benefited the companies he had investments. Conway also contributed to the mayors three day trip to Paris which had a total expense of thousands of dollars.

The examples of PG&E, Recology and the tech sector also applies to companies like AT&T that seeks city approvals for its “relay” boxes, to entities like Airbnb that seeks reinforcement of the city’s law applying to hotels and inns, and Uber and Lyft that have shaken the taxi industry that Yellow cab is going bankrupt.

The impact of such businesses is equal to the impact of those seeking land use approvals yet these companies would be free to make behest payments, its officers to make contributions, and to pay for travel and other gifts.

<http://www.businessinsider.com/wtf-win-the-future-reid-hoffman-democrats-2017-7>

Called Win the Future, WTF is starting as a "people's lobby" where people can vote on topics that are important to them, like making engineering degrees free for everyone.

"We need a modern people's lobby that empowers all of us to choose our leaders and s agenda," said Mark Pincus, the billionaire cofounder of Zynga who is partnering with Hoffman to s [magine voting for a president we're truly excited about. Imagine a government that promotes capi ivil rights."

Despite its roots with two powerful tech founders, WTF is taking an old-school appro: eople will vote on the policies and discuss them on Twitter. The group plans to turn the ones that s onate into billboards in Washington, DC, with congressional leaders the target audience.

While it wants to get the attention of members of Congress, WTF is also unabashedly oliticians." According to Recode, one of WTF's more audacious plans has been to recruit political n as "WTF Democrats" and challenge the old stalwarts of the Democratic Party. Pincus specifical rgeted Stephan Jenkins from the band Third Eye Blind, according to Recode.

Those plans are on hold for now, though, as the group focuses on the launch of its bill ampaigns and on building a political platform.

Sierra Club take-over:

<http://www.sfexaminer.com/planet-defeats-politics-sf-sierra-club-election/>

<http://www.sfexaminer.com/attacking-sierra-club-wont-solve-housing-crisis/>

FRIENDS OF ETHICS ALSO RECOMMENDS A CAREFUL SCRUBBING OF O'

- slate mailers organizations were included in the proposed reform but dropped by the sta recommendations. Staff should propose a provision that addresses the problem of slate mailer organizations effectively being used to bypass contribution limits on candidates.
- Requiring accessible data reporting for the public was included in the proposal but drop staff recommendations.
- Expanding upon SF's revolving door provisions is recommended by Friends of Ethics b been addressed by staff
- Conflict of interest involving an employers donors, customers and clients should be .inc not. In addition, no commissioner should be permitted to vote if they fail to submit the require

of Economic Interests and certification of training on ethics and Sunshine.

- Private right of action “Creates a mechanism for private plaintiffs to argue that they are penalties that government would normally have gotten 100% of. Unlike a private lawsuit for with a required notice provision, this mechanism does not incentivize the government doing incentives filing notices of intent to sue (regardless of whether lawsuit will actually be filed) complaints filed with SFEC. Creates ongoing litigation risk for the SFEC

Debarment would not require that Ethics be informed if action is taken and the reasons why it wa replaces FOE’s proposal for SFEC to debar 1.126 violators with ability for SFEC to merely recom Admin. Code Chapter 28 for any CFRO violator, which SFEC can already do – the practical effect ability of the SFEC to recommend Admin. Code Chapter 28 debarment for CFRO violators *only* hearing on merits or respondent agrees to the recommendation in a stipulation.”

- Cyber security and hacking is not included as a locally enforced action that undermines elections.

- Gifts of travel has been removed from the prohibitions applying to those seeking city

Benefits while the voters already enacted a prohibition on gifts of travel by lobbyists. Under provision, lobbyists clients could pay for travel but lobbyists could not. Clients as well as l should be prohibited for the same reasons.

inally, we urge the Commission to review thoroughly the original proposal from Friends of Ethics at language where it is more robust, complete and addresses existing loopholes.

Given the extensive reforms under consideration, the Commission may decide to vote to approve in some detail the measure with the amendments we propose, and authorize the Commission Presid authority to work on any refinements of the language.

We are alert to the Commission staff’s suggestion that unidentified individuals have suggested there legal issues not yet resolved in the proposed language. We note, however, that since these individua identified it can not be known whether they speak as paid advocates for entities that would resist re might dilute their current influence and the routes used to advance their personal interest.

Attached to our email transfer of these comments are documents that assist in supporting various as proposed reforms from the viewpoint of Friends of Ethics.