File No. 180280 Committee Item No. _____
Board Item No. 43

COMMITTEE/BOARD OF SUPERVISORS

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Prepared by: Lisa Lew Date: March 29, 2018
Prepared by: _____ Date: _____

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) require committees to file a third pre-election statement prior to an election; 8) remove the prohibition against distribution of campaign advertisements containing false endorsements; 9) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 10) require financial disclosures from certain major donors to local political committees; 11) impose additional disclaimer requirements; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) establish local behested payment reporting requirements for donors and City officers.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.161, 1.162, 1.168, 1.170, adding Sections 1.114.5, 1.124, 1.125, 1.158, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"At the behest of" shall mean under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.

* * * *

"Business entity" shall mean a limited liability company (LLC), corporation, limited partnership, or limited liability partnership.

* * * *

"Prohibited source contribution" shall mean a contribution made (a) in violation of Section 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from contributing under Section 1.126, or (d) from a lobbyist prohibited from contributing under Section 2.115(e).

* * * *

"Resident" shall mean a resident of the City and County of San Francisco.

"Solicit" shall mean personally request a contribution for any candidate or committee, either orally or in writing.

* * * *

SEC. 1.114. CONTRIBUTION*S* - LIMITS *AND PROHIBITIONS*.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) ~~*LIMITS*~~ *PROHIBITION* ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection *(b)* shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate or committee to circumvent the limits established by subsections (a) and (b).

(d) PROHIBITION ON CONTRIBUTIONS FOR OFFICIAL ACTION. No candidate may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

~~*(c)*~~ *(e)* AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section *1.114* and Section 1.120, the contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that

individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section *1.114*, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50*%* ~~*percent*~~.

~~*(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*~~

~~*(e)*~~ *(f)* FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section *1.114* or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the *permitted* amount ~~*permitted by this Section*~~ to the City and County of San Francisco ~~*and*~~ *by* deliver*ing* the payment to the Ethics

Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

~~(f)~~ (g) RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited, and in addition # is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section 1.114, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act~~, *California Government Code Section 81000, et seq*~~.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business.

(1) A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(2) If a committee collects the information required under this subsection (a) on a form signed by the contributor stating that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single calendar year, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose to the committee receiving the contribution the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission disclosing the contributions.

(3) Notwithstanding the provisions of this subsection (b), no committee shall be required to make the disclosure required in subsection (b)(2) for any contribution that constitutes a contribution to the City elective officer at whose behest the contribution was made.

(c) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution may be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, or in the name of another person or combination of persons.

(2) No person may make a contribution to a candidate or committee in his, her, or its name when using any payment received from another person on the condition that it be contributed to a specific candidate or committee.

(d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section 1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

*(a) **Additional Disclosures.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that, in aggregate, total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

(a) ***Definition.*** *For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting.

"Campaign administrative activity" shall mean administrative functions performed by paid or volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee's campaign statements, or such campaign consultant's paid employees.

(b) ***Additional Disclosure Requirements.*** *Any committee controlled by a City elective officer or candidate for City elective office that receives contributions totaling $5,000 or more that have been bundled by a single individual shall disclose the following information:*

(1) the name, occupation, employer, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the individual who bundled the contributions is a member of a City board or commission, the name of the board or commission on which that person serves, and the names of any City officers who appointed or nominated that person to the board or commission.

(c) ***Filing Requirements.*** *Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission. Committees shall be required to provide this information following the receipt of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more.*

*(d) **Website Posting.** The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.126. CONTRIBUTION ~~*LIMITS*~~ *PROHIBITION* – CONTRACTORS DOING BUSINESS WITH THE CITY.

(a) **Definitions**. For purposes of this Section *1.126*, the following words and phrases shall mean:

"Affiliate" means any member of an entity's board of directors or any of that entity's principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the entity, and any subcontractor listed in the entity's bid or contract.

"Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

"City Contractor" means any person who contracts with, or is seeking a contract with, any department of the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District, when the total anticipated or actual value of the contract(s) that the person is party to or seeks to become party to with any such entity within a fiscal year equals or exceeds $100,000.

"Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

(1) the rendition of personal services,

(2) the furnishing of any material, supplies or equipment,

(3) the sale or lease of any land or building,

(4) a grant, loan, or loan guarantee, or

(5) a development agreement.

"Contract" shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

~~*(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.*~~

~~*(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:*~~

~~*(A) the rendition of personal services,*~~

~~*(B) the furnishing of any material, supplies or equipment,*~~

~~*(C) the sale or lease of any land or building, or*~~

~~*(D) a grant, loan or loan guarantee.*~~

~~*(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.*~~

(b) **Prohibition on Contributions.** No *City Contractor or affiliate of a City Contractor may make any contribution to:* ~~*person who contracts with the City and County of San Francisco, a state*~~

~~agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District,~~

~~(1) Shall make any contribution to:~~

~~(A)~~ (1) An individual holding a City elective office if the contract or contracts must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;

~~(B)~~ (2) A candidate for the office held by such individual; or

~~(C)~~ (3) A committee controlled by such individual or candidate.

~~(2) Whenever the agreement or contract has a total anticipated or actual value of $50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of $50,000.00 or more in a fiscal year of the City and County~~

~~(3)~~ (c) ***Term of Prohibitions.*** *The prohibitions set forth in subsection (b) shall apply from the submission of a proposal for a contract until:* ~~*At any time from the commencement of negotiations for such contract until.:*~~

~~(A)~~ (1) The termination of negotiations for such contract; or

~~(B)~~ (2) ~~Six~~ 12 months ~~have elapsed~~ from the date the contract is approved.

~~(c)~~ (d) **Prohibition on** ~~***Receipt of Contribution***~~ ***Soliciting or Accepting Contributions.*** No individual holding City elective office, *candidate for such office,* or committee controlled by such an individual shall: ~~*solicit or*~~

(1) accept any contribution prohibited by subsection (b); *or*

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know to be a City Contractor.

~~at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For~~

~~*the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.*~~

~~*(d)*~~ *(e)* **Forfeiture of ~~*Dontribution*~~ *Contribution*.** In addition to any other penalty, each committee that ~~*receives*~~ *accepts* a contribution prohibited by subsection ~~*(c)*~~ *(b)* shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for *the waiver or reduction* of the forfeiture.

~~*(e)*~~ *(f)* **Notification.**

(1) ~~***Prospective Parties to Contracts***~~ ***Notification by City Agencies.***

(A) ***Prospective Parties to Contracts.*** *The City agency seeking to enter into a contract subject to subsection (b) shall inform any* ~~*Any*~~ prospective party to a contract ~~*with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District shall inform each person described in Subsection (a)(1)*~~ of the prohibition in ~~*S*~~subsection (b) *and of the duty to notify the Ethics Commission, as described in subsection (f)(2),* ~~*by the commencement of negotiations*~~ *by the submission of a proposal* for such contract.

(B) ***Parties to Executed Contracts.*** *After the final execution of a contract by a City agency and any required approvals of a City elective officer, the agency that has entered into a contract subject to subsection (b) shall inform any parties to the contract of the prohibition in subsection (b) and the term of such prohibition established by subsection (c).*

(2) ***Notification of Ethics Commission.*** *The City agency seeking to enter into a contract subject to subsection (b) shall notify the Ethics Commission, within 30 days of the submission of a proposal, on a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the contract, and any subcontractor listed as part of the proposal*

*(3) **Notification by Prospective Parties to Contracts.** Any prospective party to a contract subject to subsection (b) shall, by the submission of a proposal for such contract, inform any member of that party's board of directors and any of that party's principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the party's bid or contract of the prohibition in subsection (b).*

~~(2)~~ *(4) Notification by* **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits, or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form *or in a format* adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection *(f)(4)* if the Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on which an appointee of the officer serves has filed the form on behalf of the board.

SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

(a) **Supplemental Preelection Statements** *- General Purpose Committees.* In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter *1*, a San Francisco general purpose committee that makes contributions or expenditures totaling $500 or more during the period covered by the preelection statement, other than expenditures for the establishment and administration of that committee, shall file a preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot.

(b) **Time for Filing Supplemental Preelection Statements** *- General Purpose Committees*.

(1) Even-Numbered Years. In even-numbered years, preelection statements required by ~~*this Section*~~ *subsection (a)* shall be filed pursuant to the preelection statement filing schedule established by the Fair Political Practices Commission for county general purpose recipient committees. *In addition to these deadlines, preelection statements shall also be filed, for the period ending six days before the election, no later than four days before the election.*

(2) Odd-Numbered Years. In odd-numbered years, the filing schedule *for preelection statements* is as follows:

~~*(1)*~~ *(A)* For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election;

~~*(2)*~~ *(B)* For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election~~.~~*; and*

(C) For the period ending six days before the election, the statement shall be filed no later than four days before the election.

*(c) **Time for Filing Supplemental Preelection Statements - Ballot Measure Committees and Candidate Committees.** In addition to the deadlines established by the Fair Political Practices Commission, ballot measure committees and candidate committees required to file preelection statements with the Ethics Commission shall file a third preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot, for the period ending six days before the election, no later than four days before the election.*

~~*(c)*~~ *(d)* The Ethics Commission may require that these statements be filed electronically.

~~***SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.***~~

~~*(a)* ***Prohibition.*** *No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated or implied in the campaign communication.*~~

~~*(b)* ***Definitions.*** *Whenever in this Section the following words or phrases are used, they shall mean:*~~

~~*(1) "Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement that refers to one or more clearly identified candidates or ballot measures. The term "campaign advertisement" does not include:*~~

~~*(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;*~~

~~*(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or*~~

~~*(C) material distributed to all members, employees and shareholders of an organization, other than a political party;*~~

~~*(2) "Internet Advertisement" includes paid internet advertisements such as "banner" and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but*~~

~~*shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.*~~

~~*(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement.*~~

~~*(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not apply to violations of this Section. Notwithstanding the 60-day waiting period in Section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.*~~

SEC. 1.158. MAJOR DONORS - FINANCIAL DISCLOSURES.

*(a) **Definitions.** Whenever in this Section 1.158 the following words or phrases are used, they shall mean:*

"Business entity" shall mean any corporation, partnership, or other legal entity that is not a natural person, but shall not include any nonprofit organization that is exempt from taxation under Section 501(c) of the United States Internal Revenue Code.

"Committee" shall mean any committee that: (1) qualifies as committee pursuant to Section 82013 of the California Government Code, including as that Section may be amended in the future; and (2) is required to file campaign statements with the Ethics Commission.

"Doing business" shall be defined as set forth in Title 2, Section 18230 of the California Code of Regulations.

"Immediate family" shall be defined as spouse, registered domestic partner, and any dependent children; "dependent child" shall be defined as set forth in Title 2, Section 18229.1 of the California Code of Regulations.

"Investment" shall be defined as set forth in Section 82034 of the California Government Code and Title 2, Section 18237 of the California Code of Regulations.

(b) ***Financial disclosures.***

(1) ***Required disclosures.*** *Any entity or person who during a calendar year contributes $10,000 or more to a single committee, must disclose the following financial interests, within 24 hours of meeting the $10,000 threshold:*

(A) All investments worth $10,000 or more in any business entity located in or doing business in San Francisco held by the contributor or a member of the contributor's immediate family; provided that the following investments do not need to be disclosed:

(i) government bonds (including municipal bonds), diversified mutual funds, or exchange traded funds;

(ii) bank accounts, savings accounts, money market funds, or certificates of deposit;

(iii) insurance policies;

(iv) annuities;

(v) commodities;

(vi) shares in a credit union;

(vii) investments in defined-benefit pension funds through a government employer; and

(viii) investments held in a blind trust.

(B) All business entities located in or doing business in San Francisco in which the contributor holds the position of and receives compensation as director, officer, partner, trustee, employee, or any position of management.

(2) ***Filing.*** *Persons required to make the disclosures required by subsection (b)(1) shall disclose such information by filing a form, to be specified by the Ethics Commission, with that agency.*

(A) For any disclosure required by subsection (b)(1)(A), the disclosure shall include the name of business entity, a general description of the business entity, the nature of the investment, the date on which the investment was acquired, and the fair market value of the investment. The fair market value of the investment shall be disclosed according to the following ranges: $10,000-$100,000, $100,000-$1,000,000 or $1,000,000 or more.

(B) For any disclosure required by subsection (b)(1)(B), the disclosure shall include the name of the business and a general description of the business entity.

SEC. 1.161. CAMPAIGN ADVERTISEMENTS.

(a) DISCLAIMERS. In addition to complying with the disclaimer requirements set forth in Chapter 4 of the California Political Reform Act, California Government section 84100 et seq., and its enabling regulations, all committees making expenditures which support or oppose any candidate for City elective office or any City measure shall also comply with the following additional requirements:

(1) TOP ~~*TWO*~~ *THREE* CONTRIBUTORS. The disclaimer requirements for primarily formed independent expenditure committees and primarily formed ballot measure committees set forth in the Political Reform Act with respect to a committee's top ~~*two*~~ *three* major contributors shall apply to contributors of ~~*$20,000*~~ *$10,000* or more. The Ethics Commission may adjust this monetary threshold to reflect any increases or decreases in the Consumer Price Index. Such adjustments shall be rounded off to the nearest five thousand dollars.

(2) WEBSITE REFERRAL. Each disclaimer required by the Political Reform Act or its enabling regulations and by this section shall be followed in the same required format, size and speed by the following phrase: "Financial disclosures are available at

sfethics.org." A substantially similar statement that specifies the web site may be used as an alternative in audio communications.

(3) MASS MAILINGS AND SMALLER WRITTEN ADVERTISEMENTS. Any disclaimer required by the Political Reform Act and by this section on a mass mailing, door hanger, flyer, poster, oversized campaign button or bumper sticker, or print advertisement shall be printed in at least 12-point font.

(4) CANDIDATE ADVERTISEMENTS. Advertisements by candidate committees shall include the following disclaimer statements: "Paid for by _____ (insert the name of the candidate committee)." and "Financial disclosures are available at sfethics.org." Except as provided in subsection (a)(3), the statements' format, size and speed shall comply with the disclaimer requirements for independent expenditures for or against a candidate set forth in the Political Reform Act and its enabling regulations.

(5) AUDIO AND VIDEO ADVERTISEMENTS. For audio advertisements, the disclaimers required by this Section 1.161 shall be spoken at the beginning of such advertisements. For video advertisements, the disclaimers required by this Section 1.161 shall be spoken at the beginning of such advertisements and appear in writing during the entirety of the advertisements.

* * * *

SEC. 1.162. ELECTIONEERING COMMUNICATIONS.

(a) DISCLAIMERS.

(1) Every electioneering communication for which a statement is filed pursuant to subsection (b) shall include the following disclaimer: "Paid for by _____ (insert the name of the person who paid for the communication)." and "Financial disclosures are available at sfethics.org."

(2) Any disclaimer required by this Section shall be included in or on an electioneering communication in a size, speed or format that complies with the disclaimer requirements for independent expenditures supporting or opposing candidates set forth in the Political Reform Act and its enabling regulations.

(3) Notwithstanding subsection (a)(2), any disclaimer required by this Section:

(A) to appear on a mass mailing, door hanger, flyer, poster, oversized campaign button or bumper sticker, or print advertisement shall be printed in at least ~~*12-point*~~ *14-point* font;~~.~~

(B) to be included in an audio advertisement, shall be spoken at the beginning of such advertisements; or

(C) to be included in a video advertisement, shall be spoken at the beginning of such advertisements and appear in writing during the entirety of the advertisements.

* * * *

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter *1* has occurred may file a complaint with the Ethics Commission, City Attorney, or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any ~~*voter*~~ *resident*, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter *1*.

(1) No ~~*voter*~~ *resident* may commence an action under this *Ss*ubsection *(b)* without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The ~~*voter*~~ *resident* shall deliver the notice to the City Attorney *and the Ethics Commission* at least 60 days in advance of filing an action. No ~~*voter*~~ *resident* may commence an action under this *Ss*ubsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another ~~*voter*~~ *resident* has filed a civil action against the defendant under this *Ss*ubsection.

(2) A Court may award reasonable attorney's fees and costs to any ~~*voter*~~ *resident* who obtains injunctive relief under this *Ss*ubsection *(b)*. If the Court finds that an action brought by a ~~*voter*~~ *resident* under this *Ss*ubsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

(1) **Criminal.** Prosecution for violation of this Chapter must be commenced within four years after the date on which the violation occurred.

(2) **Civil.** No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred.

(3) **Administrative.** No administrative action alleging a violation of this Chapter and brought under Charter Section C3.699-13 shall be commenced more than four years after the date on which the violation occurred. The date on which the Commission forwards a

complaint or information in its possession regarding an alleged violation to the District Attorney and City Attorney as required by Charter Section C3.699-13 shall constitute the commencement of the administrative action.

*(A) **Fraudulent Concealment.** If the person alleged to have violated this Chapter engages in the fraudulent concealment of his or her acts or identity, this four-year statute of limitations shall be tolled for the period of concealment. For purposes of this subsection, "fraudulent concealment" means the person knows of material facts related to his or her duties under this Chapter and knowingly conceals them in performing or omitting to perform those duties.*

(4) **Collection of Fines and Penalties.** A civil action brought to collect fines or penalties imposed under this Chapter shall be commenced within four years after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine or penalty is imposed when a court or administrative agency has issued a final decision in an enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter. The Executive Director does not make a final decision regarding the amount of a late fine or penalty imposed under this Chapter until the Executive Director has made a determination to accept or not accept any request to waive a late fine or penalty where such waiver is expressly authorized by statute, ordinance, or regulation.

* * * *

(e) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under Administrative Code Chapter 28 initiate debarment proceedings against any person in conformance with the procedures set forth in that Chapter.

SEC. 1.170. PENALTIES.

(a) CRIMINAL. Any person who knowingly or willfully violates any provision of this Chapter *1* shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Section*s* 1.114, *1.126, or 1.127* of this Chapter shall be punishable by a fine of not less than $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater.

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter *1* shall be liable in a civil action brought by the ~~*civil prosecutor*~~ *City Attorney* for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater. *In determining the amount of liability, the court may take into account the seriousness of the violation, the degree of culpability of the defendant, and the ability of the defendant to pay.*

(c) ADMINISTRATIVE. Any person who ~~*intentionally or negligently*~~ violates any of the provisions of this Chapter *1* shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter 2 the following words or phrases are used, they shall mean:

"Anything of value" shall mean any money or property, private financial advantage, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the City, contributions as defined herein, or gifts that qualify for gift exceptions established by State or local law.

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent.

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.

"Fundraising" shall mean:

(a) requesting that another person make a contribution;

(b) inviting a person to a fundraising event;

(c) supplying names to be used for invitations to a fundraiser;

(d) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;

(e) permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event;

(f) providing the use of one's home or business for a fundraising event;

(g) paying for at least 20% of the costs of a fundraising event;

(h) hiring another person to conduct a fundraising event;

(i) delivering a contribution, other than one's own, by whatever means to a City elective officer, a candidate for City elective office, or a candidate-controlled committee; or

(j) acting as an agent or intermediary in connection with the making of a contribution.

"Immediate family" shall mean spouse, registered domestic partner, and dependent children.

~~(a)~~ "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file *a* statements of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

~~*(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.*~~

"Solicit" shall mean personally requesting a contribution for any candidate or committee, either orally or in writing.

"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

(a) ***Prohibitions.*** *In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

(b) ***Exception: public generally.*** *The prohibition set forth in subsection (a)(1) shall not apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public and the effect is not unique. For purposes of this subsection (b):*

(1) A significant segment of the public is at least 25% of:

(A) all businesses or non-profit entities within the official's jurisdiction;

(B) all real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) all individuals within the official's jurisdiction.

(2) A unique effect on a public official's financial interest includes a disproportionate effect on:

(A) the development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;

(B) an official's business entity or real property resulting from the proximity of a project that is the subject of a decision;

(C) an official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;

(D) an official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;

(E) a person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or

(F) an official's personal finances or those of his or her immediate family.

SEC. 3.209. RECUSALS.

(a) ***Recusal Procedures.*** *Any member of a City board or commission who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing or acting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

(b) ***Recusal Notification.*** *A member of a City board or commission who is required to file a statement of economic interests pursuant to Article III, Chapter 1 of the Campaign and Governmental Conduct Code shall file a recusal notification form each time the member recuses himself or herself, as required by subsection (a).*

(1) The member shall file the original recusal notification form, along with a copy of the meeting agenda containing the item involving the conflict of interest, with the Ethics Commission within 15 calendar days after the date of the meeting at which the recusal occurred.

(2) The member shall file the recusal notification form with the Ethics Commission even if the member is not present at the meeting that would have involved the conflict of interest.

(3) The recusal notification form shall be filed under penalty of perjury in a method prescribed by the Ethics Commission and shall include, at a minimum, the following:

(A) the member's name;

(B) the name of the member's board or commission;

(C) the date of the meeting at which the recusal occurred or would have occurred;

(D) the agenda item number, a brief description of the matter, and a statement of whether the matter concerns the making of a contract; and

(E) the financial interest causing the recusal.

(c) ***Repeated Recusals.*** *In the event a member of a City board or commission recuses himself or herself, as required by subsection (a) during any 365 day period from acting on:*

(1) three or more agenda items by reason of the same investment in a business entity, the same interest in real property or the same source of income; or

(2) 1% or more of the matters pending before the board or commission by reason of any investments in business entities, any interests in real property or any sources of income, the Ethics Commission shall examine the nature and extent of the conflict(s) of interest and shall determine whether the member has a significant and continuing conflict of interest. If the Ethics Commission so determines, the Ethics Commission may recommend to the official's appointing authority that the official divest or otherwise remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting interest within 90 days or as the Ethics Commission determines as reasonably practicable, the Ethics Commission may recommend to the official's appointing authority that the official should be removed from office under Charter Section 15.105 or by other means.

*(d) **Exception.** The requirements of this Section 3.209 shall not apply to the members of the Board of Supervisors.*

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a campaign for or against any ballot measure or candidate.*

*(b) **Fundraising for Appointing Authorities.** No member of a board or commission may engage in fundraising on behalf of (1) the officer's appointing authority, if the appointing authority is a City elective officer; (2) any candidate for the office held by the officer's appointing authority; or (3) any committee controlled by the officer's appointing authority. For the purposes of this subsection, "member of a board or commission" shall not include a member of the Board of Supervisors.*

Section 3. Section 1. The Campaign and Governmental Conduct Code, Article III, Chapter 6, is hereby amended by revising Sections 3.600, 3.610, 3.620, and by adding Sections 3.630, 3.640, 3.650, to read as follows:

CHAPTER 6: BEHESTED PAYMENT REPORTING ~~*FOR COMMISSIONERS*~~

SEC. 3.600. DEFINITIONS.

Whenever in this Chapter 6 the following words or phrases are used, they shall have the following meanings:

"Actively support or oppose" shall mean contact, testify in person before, or otherwise communicate in an attempt to influence an official or employees of a board or commission (including the Board of Supervisors), including use of an agent to do any such act.

"Agent" shall be defined as set forth in Title 2, Section 18438.3 of California Code of Regulations, as amended from time to time.

"At the behest of" shall mean under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.

~~*"Auctioneer" shall mean any person who is engaged in the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.*~~

"Behested payment" shall mean a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.

~~*"Behested Payment Report" shall mean the Fair Political Practices Commission Form 803, or any other successor form, required by the Fair Political Practices Commission to fulfill the disclosure requirements imposed by California Government Code Section 82015(b)(2)(B)(iii), as amended from time to time.*~~

~~*"Charitable Contribution" shall mean any monetary or non-monetary contribution to a government agency, a bona fide public or private educational institution as defined in Section 203 of*~~

~~*the California Revenue and Taxation Code, or an organization that is exempt from taxation under either Section 501(c) or Section 527 of the United States Internal Revenue Code.*~~

~~*"Commissioner" shall mean any member of a board or commission listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(1); provided, however, that "Commissioner" shall not include any member of the Board of Supervisors.*~~

"Contact" shall be defined as set forth in Section 2.106 of this Code.

"Financial interest" shall be defined as set forth in the California Political Reform Act (California Government Code Section 87100 et seq.), any subsequent amendments to these Sections, and its implementing regulations.

"Interested party" shall mean (i) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before an officer or any board or commission (including the Board of Supervisors) on which the officer sits, or (ii) any person who actively supports or opposes a governmental decision by an officer or any board or commission (including the Board of Supervisors) on which the officer sits, if such person has a financial interest in the decision.

"License, permit, or other entitlement for use" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.

"Officer" shall mean the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public Defender, a Member of the Board of Supervisors, or any member of a board or commission who is required to file a Statement of Economic Interests, including all persons holding positions listed in Section 3.1-103(a)(1) of this Code.

"Payment" shall mean a monetary payment or the delivery of goods or services.

"Participant" shall be defined as set forth in California Government Code Section 84308 and Title 2, Section 18438.4 of California Code of Regulations, as amended from time to time.

"Party" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.

"Public appeal" shall mean a request for a payment when such request is made by means of television, radio, billboard, a public message on an online platform, the distribution of 500 or more identical pieces of printed material, or a speech to a group of 50 or more individuals.

"Relative" shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, and first cousin, and includes any similar step relationship or relationship created by adoption.

SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.

(a) **FILING REQUIREMENT.** ~~*If a Commissioner directly or indirectly requests or solicits any Charitable Contribution(s), or series of Charitable Contributions, from any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before the Commissioner's board or commission, the Commissioner shall file a Behested Payment Report with the Ethics Commission in the following circumstances:*~~ *If an officer directly or indirectly requests or solicits any behested payment(s) from an interested party, the officer shall file the behested payment report described in subsection (b) with the Ethics Commission in the following circumstances:*

(1) ~~*if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more while the proceeding is pending, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total $1,000 or more;*~~ *if the interested party makes any behested payment(s) totaling $1,000 or more during the pendency of the matter involving the interested party, the officer shall file a behested payment report within 30 days*

of the date on which the behested payment was made, or if there has been a series of behested payments, within 30 days of the date on which the behested payment(s) total $1,000 or more;

(2) ~~*if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more during the three months following the date a final decision is rendered in the proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total $1,000 or more; and*~~ *if the interested party makes any behested payment(s) totaling $1,000 or more during the six months following the date on which a final decision is rendered in the matter involving the interested party, the officer shall file a behested payment report within 30 days of the date on which the behested payment was made, or if there has been a series of behested payments, within 30 days of the date on which the behested payment(s) total $1,000 or more; and*

(3) ~~*if the party, participant or agent made any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more in the 12 months prior to the commencement of a proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date the Commissioner knew or should have known that the source of the Charitable Contribution(s) became a party, participant or agent in a proceeding before the Commissioner's board or commission.*~~ *if the interested party made any behested payment(s) totaling $1,000 or more in the 12 months prior to the commencement of a matter involving the interested party, the officer shall file a behested payment report within 30 days of the date the officer knew or should have known that the source of the behested payment(s) became an interested party.*

(b) ***BEHESTED PAYMENT REPORT.*** *The behested payment report shall include the following:*

(1) name of payor;

(2) address of payor;

(3) amount of the payment(s);

(4) date(s) the payment(s) were made,

(5) the name and address of the payee(s),

(6) a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment(s) were made;

(7) if the officer or the officer's relative, staff member, or paid campaign staff, is an officer, executive, member of the board of directors, staff member or authorized agent for the recipient of the behested payment(s), such individual's name, relation to the officer, and position held with the payee;

(8) if the payee has created or distributed 200 or more substantially similar communications featuring the officer within the six months prior to the deadline for filing the behested payment report, a brief description of such communication(s), the purpose of the communication(s), the number of communication(s) distributed, and a copy of the communication(s); and

(9) if in the six months following the deadline for filing the behested payment report, the payee has created or distributed 200 or more substantially similar communications featuring the officer, the officer shall file an amended payment report that discloses a brief description of such communication(s), the purpose of the communication(s), the number of communication(s) distributed, and a copy of the communication(s).

*(c) **AMENDMENTS.** If any of the information previously disclosed on a behested payment report changes during the pendency of the matter involving the interested party, or within six months of the final decision in such matter, the officer shall file an amended behested payment report.*

*(d) **PUBLIC APPEALS.** Notwithstanding subsection (a), no officer shall be required to report any behested payment that is made solely in response to a public appeal.*

*(e) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a public appeal, that any person make a behested payment, the official or his agent must notify that person that if the person makes any behested payment in response to the solicitation or request, the person may be subject to the disclosure and notice requirements in Section 3.620.*

~~*(b)*~~ *(f)* **WEBSITE POSTING.** The Ethics Commission shall make available through its website all ~~*B*~~*b*ehested ~~*P*~~*p*ayment ~~*R*~~*r*eports it receives from ~~*Commissioners*~~ *officers*.

~~*(c) **PENALTIES.** A Commissioner who fails to comply with this Section 3.610 is subject to the administrative process and penalties set forth in Section 3.242(d).*~~

~~*(d) **EXCEPTION.** A Commissioner has no obligation to file Behested Payment Reports, as required by subsection (a), if the Commissioner solicited Charitable Contributions by acting as an auctioneer at a fundraising event for a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code.*~~

SEC. 3.620. FILING BY DONORS.

*(a) **REPORT.** Any interested party who makes a behested payment, or series of behested payments in a calendar year, of $1,000 or more must disclose, within 30 days following the date on which the payment(s) totals $1,000 or more:*

(1) the proceeding the interested party is or was involved in;

(2) the decisions the interested party actively supports or opposes;

(3) the outcome(s) the interested party is or was seeking in such proceedings or decisions; and

(4) any contact(s) the interested party made in relation to such proceedings or decisions.

*(b) **NOTICE.** Any person who makes a behested payment must notify the recipient that the payment is a behested payment, at the time the payment is made.*

SEC. 3.630. FILING BY RECIPIENTS OF MAJOR BEHESTED PAYMENTS.

*(a) **MAJOR BEHESTED PAYMENT REPORT.** Any person who receives a behested payment, or a series of behested payments, received during a calendar year, totaling $100,000 or more that was made at the behest of any officer must do the following:*

(1) within 30 days following the date on which the payment(s) total $100,000 or more, notify the Ethics Commission that the person has received such payment(s) and specify the date on which the payment(s) equaled or exceeded $100,000;

(2) within 13 months following the date on which the payment(s) or payments total $100,000 or more, but at least 12 months following the date on which the payment(s) total $100,000 or more, disclose:

(i) all payments made by the person that were funded in whole or in part by the behested payment(s) made at the behest of the officer; and

(ii) if the person has actively supported or opposed any City decision(s) involving the officer in the 12 months following the date on which the payment(s) were made:

(A) the proceeding the person is or was involved in;

(B) the decision(s) the person actively supported or opposed;

(C) the outcome(s) the person is or was seeking in such proceedings or decisions; and

(D) any contact(s) the person made in relation to such proceedings or decisions.

*(b) **EXCEPTION.** Subsection (a) does not apply if the entity receiving the behested payment is a City department.*

*(c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the notice, as required under Section 3.620, that a particular payment is a behested payment, the recipient will not be*

subject to penalties under Section 3.650, as regards that particular payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances that the recipient knew or should have known that the payment was made at the behest of an officer.

SEC. ~~3.620~~ *3.640*. REGULATIONS.

(a) The Ethics Commission may adopt rules, regulations, and guidelines for the implementation of this Chapter 6.

(b) The Ethics Commission may, by regulation, require *persons* ~~*Commissioners*~~ to electronically submit any ~~*substantially the same*~~ information ~~*as*~~ required ~~*by the Behested Payment Report*~~ to fulfill their obligations under ~~*Section 3.610*~~ *this Chapter 6*.

SEC. 3.650. PENALTIES.

Any party who fails to comply with any provision of this Chapter 6 is subject to the administrative process and penalties set forth in Section 3.242(d) of this Code.

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

By: _____
ANDREW SHEN
Deputy City Attorney

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FILE NO. 180280

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) require committees to file a third pre-election statement prior to an election; 8) remove the prohibition against distribution of campaign advertisements containing false endorsements; 9) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 10) require financial disclosures from certain major donors to local political committees; 11) impose additional disclaimer requirements; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) establish local behested payment reporting requirements for donors and City officers.

Existing Law

1. Campaign contributions: general requirements

State law prohibits "earmarking" campaign contributions - making any contribution to a committee with the understanding that it will be further contributed to another identified candidate committee. Cal. Gov. Code § 85704. State law also requires campaign committees to accurately report campaign contributions. *See* Cal. Gov. Code § 84211.

2. Campaign contributions: disclosure requirements

Neither state nor local law require (a) with respect to contributions made to ballot measure and independent expenditure committees, the disclosure of whether a City elected official solicited those contributions, or (b) the disclosure of bundled campaign contributions.

State law requires campaign committees to itemize each campaign contribution of $100 or more, and for each such contribution, the contributor's name, address, occupation, and employer. Cal. Gov. Code § 84211(f).

3. Campaign contributions: prohibitions

Local law prohibits prospective City contractors, seeking certain contracts worth $50,000 or more, from making campaign contributions to City elective officers who must approve those contracts, from the commencement of negotiations for such contract until either (a) the termination of negotiations for such contract, or (b) six months have elapsed from the date the contract is approved. S.F. Campaign & Gov'tal Conduct Code § 1.126.

4. Campaign statements: pre-election reporting requirements

Certain campaign committees must file two pre-election campaign statements prior to local elections. The first pre-election statement must be filed no later than 40 days before to each election, and must report the committee's fundraising activity and expenditures for the period ending 45 days before the election. The second pre-election statement must be filed no later than 12 days before each election, and must report on the committee's financial activity for the period ending 17 days before the election. S.F. Campaign & Gov'tal Conduct Code § 1.135.

5. False endorsement ordinance

Local law seeks to prohibit the creation and distribution of campaign advertisements that contain false endorsements. Under this provision, a false endorsement is defined as "a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not" take such a position. S.F. Campaign & Gov'tal Conduct Code § 1.163.5.

6. Campaign disclosure: contributions to non-candidate committees

In the last 90 days before an election, state law requires certain local committees that make or receive contributions that total $1,000 or more to file "late contribution reports" within 24 hours. Cal. Gov. Code § 84203. Committees file these late contribution reports using the Fair Political Practices Commission ("FPPC") Form 497. On the FPPC Form 497, the committee must disclose the contributor's name, address, occupation, and employer.

No provision of state or local law requires contributors to disclose their financial interests, in addition to their contact information and information about their employer or profession.

7. Disclaimers for Election-Related Communications (e.g., "Paid for by ...")

State and local law currently requires persons distributing certain election-related communications to include basic information about their funding. Existing law:

a. requires 12-point type for all disclaimers on mass mailers and smaller print advertisements;

b. requires independent expenditure and ballot measure committees to report their two top funders who have contributed at least $20,000; and

c. allows disclaimers required for audio and video advertisements to be included at either the beginning or the end of those advertisements.

S.F. Campaign & Gov'tal Conduct Code §§ 1.161, 1.162; 2 C.C.R. § 18450.4(b)(3).

8. Campaign finance: private right of action and debarment

Local law authorizes any "voter" to file a civil action to enjoin violations of or compel compliance with the City's campaign finance laws. S.F. Campaign & Gov'tal Conduct Code § 1.168(b). Prior to initiating such action, the voter is required to notify the City Attorney's Office. If the voter prevails in litigation, the court may award reasonable attorney's fees and costs.

Local law does not explicitly provide for the administrative debarment of a contractor for violation of local campaign finance laws. *See* S.F. Admin. Code, Ch. 28.

9. Conflict of interest laws for elected officials and members of City boards and commissions

City elected officials and members of City boards and commissions are subject to a range of state and local conflict of interest laws, including the Political Reform Act (Cal. Gov. Code Section 87100, et seq.), California Government Code Section 1090, and the provisions of the City's Government Ethics Ordinance.

Under these laws, City officers are generally required to recuse themselves in the event of a conflict of interest. State law requires certain public officials to offer a specific explanation of the bases for their recusals. *See* Cal. Gov. Code § 87105; 2 C.C.R. § 18707.

10. Political activity laws for elected officials and members of City boards and commissions

Under state and local law, City elected officials and members of City boards and commissions are restricted from engaging in certain political activities, when such activities would consume City resources. *See* Cal. Gov. Code § 8314; Cal. Pen. Code § 424; S.F. Campaign & Gov'tal Conduct Code § 3.218(c). State and local law additionally prohibit City officials from accepting bribes. *See* Cal. Pen. Code § 68; S.F. Campaign & Gov'tal Conduct Code § 3.216(a).

Local law also specifically prohibits City officers from soliciting campaign contributions from other City officers and employees, participating in political activities while in uniform, and engaging in political activities during working hours or on City premises. S.F. Campaign & Gov'tal Conduct Code § 3.230. State law also prohibits appointed City officials, i.e., members of City boards and commissions, from soliciting contributions of more than $250 from parties appearing before them. *See* Cal. Gov. Code § 84308.

11. Behested payment reporting

State law requires elected officials – but not members of the City boards and commissions – to file "behested payment" reports when they solicit contributions of $5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission.

A recently enacted local law (Ord. No. 01-17) would require members of certain City boards and commissions to file behested payment reports for some charitable contributions totaling $1,000 or more. This ordinance became operative on January 1, 2018.

Amendments to Current Law

1. Campaign contributions: general requirements

The proposed ordinance would clarify that no person may make a campaign contribution to a committee with the understanding that it will be subsequently contributed to another candidate or committee in order to circumvent local campaign contribution limits. *See* Proposed Section 1.114(c). The proposed ordinance would also explicitly prohibit "assumed name contributions" – that is, campaign contributions made using the name of a person other than the contributor's own name. *See* Proposed Section 1.114.5(c).

2. Campaign contributions: disclosure requirements

Proposed Section 1.114.5(b) would require any person making contributions that total $5,000 or more a single calendar year to a ballot measure or independent expenditure committee, at the behest of a City elected official, to disclose the name of that elected official.

In addition to existing state law requirements, Proposed Section 1.124 would require campaign committees to disclose additional information regarding contributions from business entities that contribute $10,000 or more in a single election cycle. For such contributions, committees would be required to disclose the names of the entities' principal officers and whether they have received funds through a City contract or grant within the last 24 months.

Proposed Section 1.125 would require committees controlled by a City elected official or a candidate for such office that disclose certain information regarding "bundlers" who have delivered or transmitted contributions totaling $5,000 or more to those officials and candidates.

3. Campaign contributions: prohibitions

The proposed ordinance would expand the scope of contracts subject to Section 1.126's ban on campaign contributions to include development agreements. The proposal would increase the threshold for the value of contracts that trigger this prohibition from $50,000 to $100,000,

and would expand the length of the prohibition from six months to 12 months. The proposal would also add notification requirements regarding this campaign contribution ban.

4. Campaign statements: pre-election reporting requirements

The proposed ordinance would require certain committees to file a third pre-election statement prior to local elections. The third pre-election statement must be filed no later than four days before each election, and must report on the committee's financial activity for the period ending six days before the election.

5. False endorsement ordinance

The proposal would delete the City's false endorsement ordinance in its entirety.

6. Campaign disclosure: contributions to non-candidate committees

The Proposed Section 1.158 would require any person or entity that contributes $10,000 or more to a single local political committee in a calendar year to disclose the following financial interests, within 24 hours of reaching this threshold:

- all investments worth $10,000 or more in any business entity located in or doing business in San Francisco held by the contributor or a member of the contributor's immediate family; and
- all business entities located in or doing business in San Francisco in which the contributor holds the position of and receives compensation as director, officer, partner, trustee, employee, or any position of management.

The disclosure of these financial interests would largely follow guidelines that govern the similar disclosure of these interests on the FPPC Form 700 Statement of Economic Interests.

7. Disclaimers for Election-Related Communications (e.g., "Paid for by ...")

The proposed ordinance would amend Sections 1.161 and 1.162 to require:

a. 14-point type for disclaimers on mass mailers and smaller print advertisements;

b. independent expenditure and ballot measure committees to report their three top funders who have contributed at least $10,000;

c. disclaimers to be included at the beginning of audio advertisements; and

d. disclaimers to be spoken at the beginning of video advertisements and appear in writing included during the entirety of such advertisements.

8. Campaign finance: private right of action and debarment

The proposed ordinance would authorize any "resident" – instead of any "voter" – to file a civil action to enjoin violations of or compel compliance with the City's campaign finance laws. The proposal would also explicitly authorize the Ethics Commission to, after a hearing on the merits or settlement of an enforcement action, to recommend the debarment of a contractor from future City contracting opportunities.

9. Conflict of interest laws for elected officials and members of City boards and commissions

In addition to existing state and local conflict of interest laws, the Proposed Section 3.207 would prohibit City elected officials and members of City boards or commissions from:

- using their public position or office to seek or obtain anything of value for the private or professional benefit of themselves, their immediate families, or organizations with which they are associated;
- directly or indirectly, giving, offering, promising to give, withholding, or offering or promising to withhold their votes or influence on any proposed or pending matter in exchange for campaign contributions; and
- soliciting or accepting, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, actions, or judgment, or could reasonably be considered a reward for any official action or inaction on the part of the officer.

Proposed Section 3.209 would require all members of City boards and commissions to follow prescribed procedures in the event of a recusal, including notification of the Ethics Commission. This proposed section would also explicitly authorize the Ethics Commission to make recommendations to these City officers' appointing authorities if there are repeated recusals.

10. Political activity laws for elected officials and members of City boards and commissions

In addition to existing state and local political activity laws, the Proposed Section 3.231 would prohibit:

- City elected officials and members of City boards or commissions from soliciting uncompensated volunteer services from any subordinate employee for political campaigns; and
- members of City boards or commissions from soliciting campaign contributions for the benefit of their appointing authorities.

11. Behested payment reporting

The proposed ordinance would supplant and expand Ordinance No. 01-17. It would require City elected officials and members of City boards and commissions to file behested payment

reports with respect to certain charitable contributions of $1,000 or more. It would also require the donors and recipients of such contributions to file additional disclosures in specified circumstances.

Background Information

The Board of Supervisors may enact amendments to the City's Campaign Finance Reform Ordinance and Government Ethics Ordinances (Article I, Chapter 1 and Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code) if:

(a) the amendments further the purposes of these Chapters;

(b) the Ethics Commission approves the proposed amendments in advance by at least a four-fifths vote of all its members;

(c) the proposed amendments are available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and

(d) the Board of Supervisors approves the proposed amendments by at least a two-thirds vote of all its members.

San Francisco Charter Section 15.102 also authorizes the Ethics Commission to submit these amendments directly to the voters as a ballot measure, if the Ethics Commission chooses to do so by a four-fifths vote.

This legislation is identical to the campaign finance and conflict of interest legislation before the Ethics Commission, as of the conclusion of its February 16, 2018 meeting. The Ethics Commission has not yet approved that legislation by a four-fifths vote.

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FILE NO. ORDINANCE NO.

Supervisor Tang
Proposed Amendments
Item 43 - April 3, 2018

Proposed Amendments - Supervisor Tang

AMENDMENT #1 - CONTRIBUTION DISCLOSURE REQUIREMENTS

SEC. 1.104. DEFINITIONS. [File No. 180280 - page 2, line 5]

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"Public appeal" shall mean a request for a payment when such request is made by means of television, radio, billboard, a public message on an online platform, the distribution of 500 or more identical pieces of printed material, or a speech to a group of 50 or more individuals.

* * * *

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES. [File No. 180280 - page 5, line 16]

(a) CONTRIBUTOR INFORMATION REQUIRED FOR CANDIDATE-CONTROLLED COMMITTEES. *If the cumulative amount of contributions received from a contributor is $100 or more,* ~~the committee~~ a candidate-controlled committee *shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business.*

(1) A candidate-controlled *committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*

(2) If a candidate-controlled *committee collects the information required under this subsection (a) on a form signed by the contributor stating that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.*

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single calendar year, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose to the committee receiving the contribution the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission disclosing the contributions.

(3) Notwithstanding the provisions of this subsection (b), no committee shall be required to make the disclosure required in subsection (b)(2) for any contribution that constitutes a contribution to the City elective officer at whose behest the contribution was made.

(4). **Exception for public appeals.** No person or committee shall be required to make any disclosures required under this subsection (b) for any contribution, if the contribution was made solely in response to a public appeal.

* * * *

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES. [File No. 180280 - page 7, lines 7-8]

(a) ***Additional Disclosures.*** *In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that, in aggregate, total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) one of *the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and*

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

* * * *

AMENDMENT #2 - CONFLICT OF INTEREST

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter *2* the following words or phrases are used, they shall mean:

* * * *

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an ~~authorized representative or~~ *agent* or employee. [File No. 180280 - page 24, lines 10-13]

* * * *

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS. [File No. 180280 - page 25, lines 20-21]

(a) ***Prohibitions.*** *In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or

pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment with respect to a particular pending legislative or administrative action, *or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.*

* * * *

AMENDMENT #3 – BEHESTED PAYMENTS

CHAPTER 6: BEHESTED PAYMENT REPORTING ~~*FOR COMMISSIONERS*~~

SEC. 3.600. DEFINITIONS. [File No. 180280 - page 30, line 5]

Whenever in this Chapter 6 the following words or phrases are used, they shall have the following meanings:

~~"Actively support or oppose" shall mean contact, testify in person before, or otherwise communicate in an attempt to influence an official or employees of a board or commission (including the Board of Supervisors), including use of an agent to do any such act.~~

"Agent" shall be defined as set forth in Title 2, Section 18438.3 of California Code of Regulations, as amended from time to time.

"At the behest of" shall mean under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.

~~*"Auctioneer" shall mean any person who is engaged in the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.*~~

"Behested payment" shall mean a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.

~~*"Behested Payment Report" shall mean the Fair Political Practices Commission Form 803, or any other successor form, required by the Fair Political Practices Commission to fulfill the disclosure requirements imposed by California Government Code Section 82015(b)(2)(B)(iii), as amended from time to time.*~~

~~*"Charitable Contribution" shall mean any monetary or non-monetary contribution to a government agency, a bona fide public or private educational institution as defined in Section 203 of*~~

~~*the California Revenue and Taxation Code, or an organization that is exempt from taxation under either Section 501(c) or Section 527 of the United States Internal Revenue Code.*~~

~~*"Commissioner" shall mean any member of a board or commission listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(1); provided, however, that "Commissioner" shall not include any member of the Board of Supervisors.*~~

"Contact" shall be defined as set forth in Section 2.106 of this Code.

"Financial interest" shall be defined as set forth in the California Political Reform Act (California Government Code Section 87100 et seq.), any subsequent amendments to these Sections, and its implementing regulations.

"Interested party" shall mean ~~(i)~~ *any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before an officer or any board or commission (including the Board of Supervisors) on which the officer sits,* ~~or (ii) any person who actively supports or opposes a governmental decision by an officer or any board or commission (including the Board of Supervisors) on which the officer sits, if such person has a financial interest in the decision.~~

* * * *

SEC. 3.620. FILING BY DONORS. [File No. 180280 - page 35, line 14]

(a) ***REPORT.*** *Any interested party who makes a behested payment, or series of behested payments in a calendar year, of $1,000 or more must disclose, within 30 days following the date on which the payment(s) totals $1,000 or more:*

(1) the proceeding the interested party is or was involved in;

~~(2) the decisions the interested party actively supports or opposes;~~

~~(3)~~ *(2) the outcome(s) the interested party is or was seeking in such proceedings or decisions; and*

~~(4)~~ (3) *any contact(s) the interested party made in relation to such proceedings or decisions.*

*(b) **NOTICE.** Any person who makes a behested payment must notify the recipient that the payment is a behested payment, at the time the payment is made.*

SEC. 3.630. FILING BY RECIPIENTS OF MAJOR BEHESTED PAYMENTS. [File No. 180280 - page 36, line 2]

*(a) **MAJOR BEHESTED PAYMENT REPORT.** Any person who receives a behested payment, or a series of behested payments, received during a calendar year, totaling $100,000 or more that was made at the behest of any officer must do the following:*

(1) within 30 days following the date on which the payment(s) total $100,000 or more, notify the Ethics Commission that the person has received such payment(s) and specify the date on which the payment(s) equaled or exceeded $100,000;

(2) within 13 months following the date on which the payment(s) or payments total $100,000 or more, but at least 12 months following the date on which the payment(s) total $100,000 or more, disclose:

~~(i)~~ *all payments made by the person that were funded in whole or in part by the behested payment(s) made at the behest of the officer.*; ~~and~~

~~(ii) if the person has actively supported or opposed any City decision(s) involving the officer in the 12 months following the date on which the payment(s) were made:~~

~~(A) the proceeding the person is or was involved in;~~

~~(B) the decision(s) the person actively supported or opposed;~~

~~(C) the outcome(s) the person is or was seeking in such proceedings or decisions; and~~

~~(D) any contact(s) the person made in relation to such proceedings or decisions.~~

*(b) **EXCEPTION.** Subsection (a) does not apply if the entity receiving the behested payment is a City department.*

*(c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the notice, as required under Section 3.620, that a particular payment is a behested payment, the recipient will not be subject to penalties under Section 3.650, as regards that particular payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances that the recipient knew or should have known that the payment was made at the behest of an officer.*

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

By: _____
ATTORNEY'S NAME
Deputy City Attorney

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BOARD of SUPERVISORS

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MEMORANDUM

TO: LeeAnn Pelham, Executive Director, Ethics Commission
John Arntz, Director, Department of Elections

FROM: JW for Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: March 26, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Peskin on March 20, 2018:

File No. 180280

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) require committees to file a third pre-election statement prior to an election; 8) remove the prohibition against distribution of campaign advertisements containing false endorsements; 9) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 10) require financial disclosures from certain major donors to local political committees; 11) impose additional disclaimer requirements; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) establish local behested payment reporting requirements for donors and City officers.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Kyle Kundert, Ethics Commission

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

November 29, 2017

Honorable Members
San Francisco Board of Supervisors
Attention: Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Proposed Ordinance – San Francisco Anti-Corruption and Accountability Ordinance

Dear Members of the Board:

At its November 27, 2017 Regular Meeting, the Ethics Commission voted by a four-fifths majority to support a series of amendments to City law that seek to strengthen the City's Campaign Finance Reform Ordinance and the Conflict of Interest Code to advance the purposes of reducing undue influence, limiting corruption, and ensuring and advancing an informed electorate. The Commission's proposed Ordinance, the *San Francisco Anti-Corruption and Accountability Ordinance* (the "Ordinance") would amend Articles I and III of the Campaign and Governmental Conduct Code ("SFC&GCC"). The Ethics Commission is transmitting the Ordinance to the Board of Supervisors for its consideration and urges the Board to enact the Ordinance into law.

Overview of Proposal

The Ordinance creates a series of new rules designed to reduce the incidence or appearance of corruption and to increase transparency regarding political fundraising and payments made at the behest of City officials.

The Ordinance would amend the SFC&GCC to create or expand certain prohibitions on political contributions. The Ordinance would further restrict the ability of City contractors, prospective City contractors, and individuals with a financial interest in a land use matter pending before a City agency to make payments benefitting certain City officials or other organizations with which these City officials are affiliated. The Ordinance would also prohibit the earmarking of contributions to evade contribution limits and make assumed name contributions a violation of City law.

The Ordinance would also institute new disclosure requirements to better inform the public about money being raised and spent on political campaigns or at the behest of a City official. Officials would be required to disclose certain fundraising activities in relation to ballot measure or independent expenditure committees. Candidates would need to disclose the identity of individuals who bundle large amounts of contributions for their committees. To

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further strengthen transparency of campaign finance activities in City elections, the Ordinance would establish a third public disclosure report for campaign committees prior to the date of the election, and business entities that contribute to candidates would be required to provide additional disclosures about their management. Additionally, the Ordinance would create local rules for reporting payments made at the behest of a City official.

Importantly, the Ordinance also would create new rules regarding conflicts of interest, including prohibitions on City officials using their position to obtain something of value for themselves or accepting something of value that is likely to influence their official actions. The Ordinance would also create new procedures for board and commission members who recuse themselves based on a conflict of interest, including a public notice of the conflict and steps to address any conflict that result in a member's repeated recusals.

The Commission's proposed Ordinance was developed and refined over a period of nine months through extensive public comment at Commission hearings and a series of interested persons meetings with Commission Staff. In transmitting its recommendations to the Board of Supervisors, the Commission urges the Board to enact the proposed changes to expand and strengthen City campaign finance and conflict of interest provisions.

For reference, a record of ordinance drafts, written comment received from the public and interested persons, and other supporting materials are attached.

If you have any questions for the Ethics Commission or would like any additional information from our office, please feel free to contact me at (415) 252-3100.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham
Executive Director

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: June 21, 2017

To: San Francisco Ethics Commission

From: Kyle Kundert, Senior Policy Analyst

Re: AGENDA ITEM 4 – Staff Memo Introducing Proposition J Draft Ordinance

Summary: This memorandum outlines Staff's proposed changes to Revised Proposition J ("Proposition") along with an explanation of the proposed changes.

Action Requested: No action is required at this time by the Commission, but staff seeks the Commission's further policy guidance on issues highlighted in this memo and feedback on the proposed changes to the Proposition for any further revision in drafting a final ordinance for consideration at the Commission's August meeting.

For ease of reference, the contents of this memo are organized as shown below.

I. Introduction

At its May 22, 2017 meeting, the Commission heard Staff's presentation outlining a more comprehensive revision of the Campaign Finance Reform Ordinance ("CRFO"). That plan would join several proposals recently presented to the Commission in a revision package for presentation to the Board of Supervisors. Together, these proposals seek to amend and strengthen CFRO and advance its stated purposes of reducing undue influence, limiting corruption, and ensuring and advancing an informed electorate.

As part of this process, Staff is presenting this memorandum to the Commission, which outlines the provisions of the Proposition, provides Staff's proposed amendments, and explains the legal and policy changes behind those amendments. Staff has also provided an initial draft of an ordinance that would combine the features of the Proposition and related proposals that were presented to the Commission at past meetings (See Attachment 2). Staff prepared this initial draft of an ordinance to be consistent with current law, to provide practical auditing and enforcement and, most importantly, to further the stated goals of CFRO. At its core, San Franciscans hoped CFRO would, among other goals[1]:

1. Place realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections, as well as on the amount individuals may contribute to political campaigns in municipal elections;
2. Provide full and fair enforcement of all the provisions in this Chapter;
3. Ensure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes;
4. Limit contributions to candidates, independent expenditure committees, and other committees to eliminate or reduce the appearance or reality that large contributors may exert undue influence over elected officials;
5. Assist voters in making informed electoral decisions;
6. Ensure each campaign's compliance with contribution limits through the required filing of campaign statements detailing the sources of contributions and how those contributions have been spent;
7. Make it easier for the public, the media, and election officials to efficiently review and compare campaign statements by requiring committees that meet certain financial thresholds to file copies of their campaign statements on designated electronic media; and
8. Help restore public trust in governmental and electoral institutions.

This memorandum begins with a background of the proposals that have been presented to the Commission, and which Staff has used to jumpstart its review of CFRO. The memorandum next outlines the revised Proposition, including explanations of Staff's proposed changes and why those changes may

[1] *See* CFRO § 1.101(b).

be necessary. The memorandum concludes with a proposed draft ordinance for the Commission's consideration.

II. Background

In the spring of 2017, as part of the Commission's Annual Policy Plan, Staff began a review of CFRO. In conjunction with that effort, Staff also reviewed several separate proposals to amend CFRO. Staff provided the Commission with memoranda outlining the Staff's analysis and review of those items at its April 24th meeting (Proposition J) and May 22nd meeting (proposals of Supervisors Peskin, Ronen, and Farrell). At the May 22nd meeting, the Commission expressed its desire to review an initial draft of an ordinance outlining Staff's proposed amendments to the Proposition after Staff reviewed proposals provided by the Supervisors Peskin, Ronen, and Farrell.

III. Overview

Staff has presented the Commission with its initial analysis of the Proposition, gathered public comment, and continued to research available policy and legal alternatives to ensure that any proposal that the Commission presents to the Board of Supervisors is strong, effective, and meets the goals of CFRO. What follows is an outline of the Proposition and Staff's proposed amendments, which aim to ensure compliance with existing legal precedent and to reinforce the original Proposition's stated anti-corruption interest.

A. Personal or Campaign Advantage and a Public Benefit

Proposition J contains several unique provisions that aim to limit the influence of money in politics or otherwise limit corruption and its appearance. The first and most significant provision of the Proposition is a ban on "public beneficiaries" giving a "personal or campaign advantage" to elective officials, boards on which they serve, and their appointees or subordinates.

The Proposition accomplishes this by broadly defining the categories of public beneficiaries and the personal and campaign advantages which are prohibited.

1. Public Beneficiary Class

Several states and the federal government prohibit certain classes of persons from contributing to candidates for office, political parties, and (in certain instances) political action committees ("PAC").[2]

[2] See for Example: Georgia Code § 21-5-30.1, which prohibits contributions to candidates for state executive branch offices from entities that are licensed or regulated by an elected executive branch official or a board under the jurisdiction of such an official. See also R.S. § 18:1505.2, a Louisiana statute prohibiting contributions to state candidates and PACs supporting or opposing candidates from entities involved in the gaming industry and from

Those states and the federal government may also prohibit those persons from soliciting, directing, or otherwise giving campaign donations to candidates, political parties, and others.[3]

The Proposition seems to rely on these other states and the federal contractor ban where it seeks to regulate the political activity of public beneficiaries. For a ban on the political activities of public beneficiaries to survive judicial challenge, we need a clear determination that public beneficiaries, as a class, are substantially similar to those other classes of persons where bans have been upheld. The Supreme Court in *Wagner v. Federal Election Commission* found that a ban on federal contractors was valid because many of those contractors' positions were indistinguishable from that of an average government employee.[4] In many cases, the contractors were in positions that they had previously held in the federal government and were doing the same or similar job related duties.[5] The Court went on to note that contribution bans or limits were typically subject to intermediate scrutiny but that in the circumstances of the case, an even more deferential review might be appropriate because government contractors were difficult to distinguish from government employees, to whom the more lenient *Pickering* balancing test applies.[6] The Pickering test balances the employee's interest, as a citizen, with the government's interest, as an employer, in providing public services efficiently.[7] The Court, however, still found it necessary to canvass the history of the prohibition and the scandals that inspired it before deciding to uphold the federal contractor ban.

It is unlikely that the class of public beneficiaries in the Proposition have a substantial relation to other classes of persons that have been prohibited from making campaign donations in other jurisdictions. First, Staff believes there is insufficient evidence to support the broad prohibitions in the Proposition. A smaller subset of the public beneficiaries may, however, have a sufficient and identifiable history of corrupting activity to subject them to a political activity ban. The next section discusses the merits of limiting political activity to a more limited class of persons.

Second, it is unclear whether the original Proposition J contains a substantial governmental interest that is closely drawn to limit any corrupting activity, which was the stated purpose of the original Proposition. Although limiting corruption has been found to be a sufficiently important governmental interest, courts have required legislatures to make sufficient empirical findings when establishing a rational nexus between the activity prohibited and the government's interest.[8] Courts have noted that

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certain affiliated individuals. NY Elec L § 14-116 prohibits New York public utilities from using "revenues received from the rendition of public service within the state" to make political contributions.

[3] See 52 U.S. Code § 30119. See also Conn. Gen. Stat. §§ 9-610(g), 9-612(g)(2)(A)-(B) (prohibit[ing] state contractors and lobbyists, their spouses and dependent children from making campaign contributions to candidates for state office).

[4] *Wagner v. Federal Election Commission*, 793 F.3d 1 (D.C. Cir. 2015). *See also* Test. of John K. Needham, Director, Acquisition & Sourcing Management, Gov't Accountability Office, S. Hrg. 111-626, at 3 (2010) ("[I]t is now commonplace for agencies to use contractors to perform activities historically performed by government employees.")

[5] *Id.* at 19.

[6] *Id.* at 7, 10.

[7] Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, 391 U.S. 563, 568 (1968).

[8] *Id.* at 17-18, 21.

the talismanic invocation of preventing corruption isn't sufficient justification to support regulating political activity without a full and established record.[9]

Third, Staff does not believe it can sufficiently connect the activity of public beneficiaries to that of contractors or other lawfully prohibited classes whose proximity to public officials has been linked by state or federal governments to their likelihood to exert influence on those public officials. In contrast, courts have upheld both contractor and lobbyist bans because of the direct day-to-day contact between these individuals and the public officials they seek to influence.[10] Further, as noted previously, contractors have been so closely intertwined with the work of government employees that the Court in *Wagner* treated them as such.[11] Staff cannot find a similar and adequately strong connection between the broad class of public beneficiaries here and the public officials such public beneficiaries would seek to influence.

Fourth, although it is true that the government may withhold public benefits altogether, the government may not generally condition the grant of such benefits on the forfeiture of a constitutional right.[12] In *Nollan v. California Coastal Commission,* the Court reasoned that although the government may deny a land use permit if the proposed development does not conform to the government's land use and development plan, the government may not impose conditions upon the issuance of the permit if there is no "nexus" between the conditions and that plan.[13] In *Nollan*, the court found that a land use regulation did not constitute a taking if it substantially advanced a legitimate state interest. However, *Nollan*'s standard is likely not met in the Proposition because of its expansive definition of public beneficiaries. In other words, the original Proposition J will be difficult for the City to justify its restrictions on public beneficiaries because the restriction appears to condition the grant of public benefits on the forfeiture of the constitutional right of free speech and political activity, without a substantial nexus between the public benefit and the forfeiture of the right.

Lastly, Staff believes that the Propositions broad definition of public beneficiaries' casts such a wide net that it will likely sweep up more persons than intended. The broad language in the Proposition may include volunteer charitable organizations, their managers, and their key employees who are providing valuable public services for the City. Additionally, because of the low thresholds which define a public beneficiary in the Proposition, it is possible that many low-income or other indigent persons may be prohibited from giving and participating in political activity because they receive some public benefit

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[9] See: *Preston v. Leake*, 660 F.3d 726, 727 (4th Cir. 2011), *Ball v. Madigan*, No. 15 C 10441 (N.D. Ill. Mar. 24, 2017) (finding: "[M]ere conjecture" about the risk of corruption or its appearance is insufficient to show that a contribution restriction promotes a sufficiently important government interest.)

[10] *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 715-16 (4th Cir. 1999).

[11] *Wagner* at 19.

[12] See *Sherbert v. Verner,* 374 U.S. 398 (1963) (holding that the government may not deny unemployment benefits to persons who refuse to work on Saturdays); *FCC v. League of Women Voters,* 468 U.S. 364 (1984) (invalidating a Federal law prohibiting broadcasters that received public subsidies from endorsing candidates or editorializing on the ground that the law forced broadcasters to forfeit the constitutional right to free expression in exchange for the subsidies); *Nollan v. California Coastal Comm'n,* 483 U.S. 825, 107 S.Ct. 3141, 3147-48 (1987) (holding that the government may not condition issuance of a land use permit on the property owner's agreement to convey a public easement).

[13] *Nollan* at 837.

such as: housing vouchers, food assistance or other low-income maintenance program. Staff believes that is was not the intent of the drafters or the Commission to sweep up these persons, and yet its text—and not the drafters' intent—will govern how it may be enforced or how a court may interpret it.

2. Personal and Campaign Advantages Barred

As noted previously, several states and the federal government bar a class of persons from political activity.[14] These states and the federal government limit the barred activity (in most cases) to contributions and not other associational or expenditure activity. As written, the Proposition goes further in restricting what this class of persons is barred from doing. One of the broadest state restrictions on political activity currently in effect is New Jersey's regulated-industry ban, which prohibits banks, railroads, and others from making direct donations to candidates and parties.[15] The New Jersey ban not only prohibits these groups from contributing money, but also prohibits giving "[any]thing of value" directly to a candidate or political party.[16] However, recent court decisions like *Free and Fair Election Fund, et al. v. Missouri Ethics Commission* beg the question whether New Jersey's and other broad regulated-industry bans are ripe for challenge.[17] Staff believes that such broad regulated-industry bans are vulnerable to challenge, and that the goals of such restrictions are better suited for and accomplished in other areas of the law, such as the conflicts of interest laws discussed below.

Further, the Supreme Court has distinguished between restrictions on expenditures for political speech (*i.e.,* expenditures made independently of a candidate's campaign) from restrictions on campaign contributions. The Court has concluded that restrictions on campaign expenditures place a relatively heavier burden on First Amendments rights than restrictions on campaign contributions.[18] As written, the original Proposition seems to prohibit a number of constitutionally protected activities beyond making contributions, such as making payments to slate mailer organizations and participating in a number of independent fundraising activities. Additionally, several of the personal or campaign advantages that are prohibited by the Proposition are already prohibited or substantially limited by current conflict of interest laws. For Instance; no public official, candidate for elective office, or local elected government officer may accept gifts of over $470 in any calendar year.[19] Lastly, some of the activity prohibited by the Proposition is better suited to be barred from the side of the public official's conduct rather than the private citizen's conduct because government officials and their speech can be limited more readily than a private citizen's.[20]

Based on its research, public comment, and a review of the original legal challenges surrounding the original Proposition J, Staff believes that the "personal or campaign advantage" provision of the

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[14] See 11 C.F.R. § 115.2

[15] NJ Rev Stat § 19:34-45

[16] Id.

[17] *Free and Fair Election Fund V. Missouri Ethics Commission*, No. 16-04332-CV-C-ODS (W.D. Mo. May 5, 2017).

[18] *Federal Election Com'n v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652, 551 U.S. 449, (2007), (quoting *Buckley*, 424 U.S. at 19-21).

[19] California Government Code ("CGC") § 89503. See also CGC § 84308, which prohibits a party seeking a contract (other than competitive bid), license, permit, or other entitlement for use from making a contribution of more than $250 to an "officer" of the agency.

[20] *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty., 391 U.S. 563, (1968).*

Proposition requires considerable tailoring to ensure that the law does not cross into more protected areas of political activity than is lawful or necessary to accomplish the Proposition's goals or the goals for amending CFRO. Because of the potential conflicts with current law and overlap with provisions of the ethics laws, Staff has determined that the better course of action would be to expand the prohibitions of when a public official or candidate for public office must disclose an interest in a matter before them, recuse themselves where necessary and when to require the Commission to review and recommend disqualification from public office when a conflict requires a public official to persistently recuse himself or herself.

3. Staff Amendments to Personal and Campaign Advantages Public Beneficiary Ban

Staff believes that the original Proposition J and its revision shared the laudable purpose and intent of limiting corruption and its appearance in the City. Based on its research, Staff believes that this can be accomplished by confining the political activity of certain identifiable players with a history of or occasion to influence and corrupt public officials.¥ Additionally, Staff believes that placing the impetus on the public official to disclose his or her interests better prevents the corruption which the Proposition seeks to target, while additionally providing the electorate information about who is influencing their public officials. To that end, Staff is proposing several amendments to the Proposition that will limit the opportunity for public officials to be unduly corrupted.

Staff proposes several amendments to the public beneficiary ban section of the Proposition: First, Staff proposes amending the personal and campaign advantage ban so it would apply to a more plausible class of public beneficiaries. Staff has reiterated above that case law allows limits on political activity only in limited contexts so as not to intrude upon protected political and associational activities. In that vein, Staff is proposing that the public benefit ban be limited to those persons who have a financial interest in or receive a discretionary decision related to certain land use matters in the City. Staff believes that there is a sufficient history of abuse and scandal in this class of public beneficiaries so that regulation is warranted.[22] Further, San Francisco's meteoric rise in property values, rental prices and leasing contracts makes discretionary land use matters and the decision-makers of land use planning ripe for corrupting activity. Because of the history of scandal and the potential for abuse, Staff believes it is well within constitutional bounds to impose strict limits on the political activity of persons seeking and receiving these decisions. Further, because of the extraordinary nature of the San Francisco real estate market, it makes logical sense to prevent the potential for corruption at the outset.

¥ Staff is continuing to develop a legislative record that supports the restrictions laid out in this section.

[22] See for Example: Department of Justice, Northern District of California, "Bay Area Building Contractors Charged With Fraud And Bribery In Connection With Federal And State Construction Contracts" (2017), available at: https://www.justice.gov/usao-ndca/pr/bay-area-building-contractors-charged-fraud-and-bribery-connection-federal-and-state ; Malaika Fraley, "Feds: Well-known Oakland contractors conspired to cheat government", (2017), available at: http://www.eastbaytimes.com/2017/04/07/feds-bay-area-developers-including-well-known-oakland-contractors-conspired-to-cheat-government/ ; Susan Sward and Jaxon Vanderbeken, "Permit official faces bribery charges / District attorney and FBI probe S.F. building department", (2005), available at: http://www.sfgate.com/news/article/Permit-official-faces-bribery-charges-District-2618578.php

Additionally, Staff is proposing further restricting and requiring public officials and candidates for public office to more readily disclose when they have received a campaign or personal advantage and would require them to recuse themselves in scenarios where that personal or campaign advantage is likely to influence their judgment or otherwise bias their decision-making. California Government Code ("CGC") sections 89503 and 84308 already restrict the receipt of gifts over $470 and participation in any proceeding in which they received a contribution of more than $250 from a party or participant.[23] However, staff believes further disclosure and recusal is necessary where the benefit may influence their neutral decision-making ability. Finally, staff is proposing that, in certain scenarios, the Ethics Commission be required to review a board or commission member's recusals whenever that member is disqualified from acting on matters because of an ongoing interest that conflicts with their official duties.[24]

Finally, Staff is proposing that the Commission adopt regulations related to land use and planning provisions, as well as the current contractor ban, set forth in C&GCC § 1.126, which would protect public officials from non-willful violations of these sections. Previous Ethics Commission Staff highlighted the need to provide safeguards related to monitoring, due diligence and safe harbors. Taken together, these sections would provide a public official with a "safe-harbor" period to correct and avoid a violation of the above provision where they exercised due diligence and made a good faith effort to discover whether a contractor or other land use recipient was prohibited from donating or soliciting for their campaign. When and until the City can effectively track, and identify City contracts or land use decisions, there are significant practical issues with discovering prohibited givers. Staff believes that requiring monitoring and due diligence and extending a safe-harbor if an official makes a land use or planning decision which affects a campaign contributor is an appropriate compromise. Staff's proposed monitoring, due diligence, and safe harbor language would ensure that public officials are effectively monitoring their contributions, while also not subjecting such public officials to arbitrary enforcement where information on prohibited persons is difficult to ascertain.

Staff finds that the above amendments to the Proposition will allow the law to remain effective and further strengthen the Commission's ability to enforce the law against actors who seek to abuse their public office for substantial gain. Further, staff finds that moving away from restrictions of political activity on private citizens makes the law less vulnerable to legal challenge. Finally, and most importantly, Staff believes that the proposed amendments further the stated interests of the Proposition by supporting the effectiveness of the City's campaign finance and ethics laws.

B. Political Activity Restrictions of City Officers

The second provision of the Proposition Staff has reviewed and proposes to amend is the Proposition's proposed fundraising ban. The fundraising ban would prohibit members of City boards, commissions,

[23] CGC §§ 89503 & 84308

[24] LA City Charter § 707: (the L.A. Charter requires the Ethics Commission to review a public officials conflict of interest and determine whether the conflict must be terminated. The Los Angeles provision requires the conflict to be reviewed after three (3) instances of recusal).

and department heads from engaging in several prohibited fundraising activities. Additionally, prohibited fundraising activity would apply to public beneficiaries of land use and planning decisions, as described in the previous section.

The Proposition seeks to restrict fundraising activity similar to the way the Hatch Act restricts federal officials and employees, and similar to prohibitions passed by other localities, including the City of Los Angeles.[25] While most of the Proposition's listed prohibitions are uncontroversial and have been recognized as promoting several governmental interests aimed at protecting public officials from coercion and limiting corruption, the Proposition's extension of the fundraising ban to public beneficiaries warrants review.

Generally, fundraising and associational activities are viewed as a fundamental element of political activity.[26] Core political speech consists of conduct and words that are intended to directly rally public support for a particular issue, position, or candidate. In one prominent case, the U.S. Supreme Court suggested that core political speech involves any "interactive communication concerning political change."[27] The Supreme Court concluded that discussion of public issues and debate on the qualifications of candidates are forms of political expression integral to the system of government established by the federal Constitution.[28] The First Amendment elevates core political speech above all other forms of individual expression by prohibiting laws that regulate political speech unless such laws are narrowly tailored to serve a compelling state interest. For this reason, Staff believes that the extension of the fundraising ban to non-public officials, such as public beneficiaries, is unwarranted. The extension of these restrictions to public officials, however, is sufficiently supported by legal and policy justifications.

As explained above, the First Amendment and state constitutions give Americans substantial rights to engage in free speech and other core political activities.[29] However, the courts have noted that public employees' rights are diminished when it comes to asserting free speech rights against the Government.[30] The United States Supreme Court reinforced the difference between private citizens and public employees as recently as 2006.[31] Additionally, in *Public Workers v. Mitchell,* the Supreme Court explained: "restrictions on a broad range of political activities by federal employees was constitutionally

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[25] 5 C.F.R. 733.106; L.A.M.C. § 49.7.11

[26] See: *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).

[27] *Meyer v. Grant*, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988). See also *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995) (stating the First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office" (citations omitted)).

[28] *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

[29] See *Griset v. Fair Political Practices Com.*, 884 P.2d 116, 8 Cal. 4th 851, 35 Cal. Rptr. 2d 659 (1994), (finding political speech is at the core of the First Amendment: "`[T]he First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. [citing *Burson v. Freeman* 504 U.S. 191]).

[30] See *Pickering,* which held the government has an interest in regulating the conduct of "the speech of its employees that differ[s] significantly from those it possesses in connection with regulation of the speech of the citizenry in general *[...]"*).

[31] *Garcetti v. Ceballos*, 547 U.S. 410 (2006)

permissible" where the political activity threatens the good administration of government.[32] Staff believes that same logic applies to City officers who serve primarily in the interest of the public and hold positions of public trust, and that narrowly tailored restrictions on the political activities of City officers would be permissible.

The Supreme Court has also recognized several governmental interests when it upheld restrictions on public officials' fundraising. These interests included safeguarding public resources, the meritorious administration of government, and protecting officials and employees from political coercion.[33] Staff further believes that extending the fundraising prohibitions in the Proposition will sufficiently advance the anti-corruption interest which underlies the CFRO and our City's ethics law. This is particularly true in light of recent scandals involving city officials attempting to raise funds to retire the Mayor's campaign debt.[34]

1. Staff's Amendments to the Fundraising Restrictions

Staff continues to believe that the Proposition's fundraising restrictions contain justifiable limits on political activity. Based on its lengthy research, however, Staff believes that the restrictions on political activity should be limited to City officers for the reasons described above.

Staff proposes several amendments to this section of the Proposition. First, Staff proposes extending the restrictions already contained in Cal. Govt. Code §§ 3201-3209 and S.F. Campaign and Governmental Conduct Code § 3.230, which already limit certain political activities on public time and while using public resources.[35] Staff proposes mirroring the prohibitions contained in L.A. Municipal Code § 49.7.11 and the Federal Hatch Act's "further restricted" employee class.[36] Specifically, Staff's proposed amendments would prohibit City officers from acting as agents or intermediaries in connection with the making of a contribution, providing the use of their home or business for a fundraising event, or supplying their name, signature, or title for a solicitation.

Staff finds that the above amendments to the Proposition will make the law more effective and will further strengthen the Commission's ability to enforce the law against actors who seek to abuse their public office for material gain. Staff believes the law is necessary to ensure that City money and programs are administered in a neutral and nonpartisan fashion, will protect public officials and employees from coercion in the workplace, and will advance the meritorious administration of public funds.

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[32] *Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947).
[33] *USCSC v. National Association of Letter Carriers*, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973).
[34] John Shutt and Rebecca Bowe, *"3 Former Fundraisers for Mayor Ed Lee Charged With Bribery, Money Laundering"* (2016), *available at* https://ww2.kqed.org/news/2016/01/22/3-former-fundraisers-for-mayor-ed-lee-indicted-on-bribery-money-laundering-charges/
[35] S.F. Code § 3.230.
[36] 5 C.F.R. 733.106; L.A.M.C. § 49.7.11

C. Intra-Candidate Transfer Ban

The third provision of the Proposition Staff reviewed and proposes to amendment is the intra-candidate transfer ban. Intra-candidate transfers occur when a candidate transfers campaign funds from one campaign committee to a different campaign committee controlled by the same candidate.

The Proposition aims to limit the circumstances under which a candidate and their controlled committee(s) may transfer funds. Specifically, the Proposition aims to limit transfers only to committees that were "formed for the same office". The California Supreme Court, however, struck down a similarly proposed intra-candidate transfer ban as unconstitutional in *SEIU v. Fair Political Practices.*[37] In the SEIU case, the court found that the intra-candidate provision was an unconstitutional expenditure limitation. Additionally, the Attorney General of California further noted in a 2002 opinion that intra-candidate transfer bans operate as an expenditure limitation because they "limit the purposes for which money raised by a candidate may be spent."[38] Expenditure limitations are subject to strict scrutiny and will be upheld only if they are "narrowly tailored to serve a compelling interest."[39]

Staff has reviewed and researched case law attempting to advance an interest sufficient to support the City's regulation of these transfers. However, in no instance did staff discover any source or identified law where the intra-candidate ban advanced a necessary governmental interest which justified the ban. The most appealing argument is that the ban is necessary in order to prevent circumvention of contribution regulations, but the *SEIU* Court concluded the ban "cannot serve this purpose in the absence of valid contribution limits."[40] The Court then addressed and rejected the FPPC's alternative justification for the ban, which FPPC argued served "the state's interest in preventing corruption or the appearance of corruption by `political power brokers."[41] The Court rejected this rationale, explaining, "Even if we assume this to be an important state interest, the ban is not `closely drawn' to avoid unnecessary abridgment of associational freedoms."[42] In light of the above, Staff recommends that the intra-candidate ban not be included in a final comprehensive ordinance presented to the Board of Supervisors. However, Staff offers an amendment which reinforces the anti-corruption interest underlying the Proposition.

1. Staff's Proposed Amendments - Assumed Name Contributions.

Staff believes that supporting strong anti-corruption laws which also prevent the appearance or corruption are necessary to advance the stated interests of CFRO. In that vein, Staff proposes amending CFRO to expand and reinforce the restriction on laundered contributions in CGC sections 85701 and 84223. Elections around the country have seen a surge in political contributions and activity by persons

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[37] *Service Employees v. Fair Political Practices*, 747 F. Supp. 580 (E.D. Cal. 1990).
[38] See: Attorney General Opinion 01-313 (2002), *available at* http://caselaw.lexroll.com/2016/10/31/opinion-no-01-313-2002/
[39] Id.
[40] *Service Employees* at 1322.
[41] Id. at 1323.
[42] Id.

attempting to mask the true source of their political spending.[43] To prevent the circumvention of campaign finance laws, several states and localities, including the City of Los Angeles, have strictly enforced laws ensuring that individuals and politicians are informed about the true source of political contributions.[44]

Although state laws attempting to restrict laundering of campaign funds and revealing the true source of campaign donations are well-meaning, Staff believes they ultimately leave open the possibility of contributors hiding their identities and skirting contribution limits. Staff proposes the adoption of an ordinance section which more thoroughly defines the prohibition on laundered contributions and expands the Commission's ability to enforce the improper concealment of contributions. The Commission will need to adopt regulations that reinforce and define the Commission's ability to "drill-down" or "look-back" to the true source of a person's donation if that is unclear after a facial review of the person's campaign disclosures.

Staff believes that strengthening laundered contribution provisions is necessary to advance the stated purposes of CFRO. In particular, a better defined and more strictly enforced laundered contribution provision will provide the electorate with a better sense of who is contributing to City elections and what interests those contributors may be attempting to conceal. Finally, although courts have highlighted the necessity for anonymous speech in certain instances, Staff believes that "[r]equiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed." [45] Requiring the contributor of campaign contributions to be named outweighs the necessity for anonymous speech when CFRO's aim is to root out fraud and protect our democratic principles.

D. Enforcement Mechanisms

1. Citizen Suit

The fourth Proposition provision Staff reviewed and proposes to amend is the "Citizen Suit" provision. A citizen suit is a lawsuit by a private citizen to enforce a law that ordinarily falls to a government entity to enforce. Laws with citizen suit provisions enable private plaintiffs to seek penalties, court ordered injunctive relief, and/or attorney's fees and costs. Both the Political Reform Act and CFRO in their current form include a citizen suit provision.[46] Staff supports citizen suits as an effective method to ensure enforcement and agrees with keeping the citizen suit provision in the revised Proposition so citizens have authority to recover civil penalties from defendants in the circumstances discussed below.

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[43] See for Example: Ashley Balcerzak, *"Surge in LLC contributions brings more mystery about true donors"(2017), available at:* https://www.opensecrets.org/news/2017/04/surge-in-llc-contributions-more-mystery/ ; Andrea Estes and Viveca Novak, "Federal prosecutors open criminal grand jusr probe of theonton law firm donors", (2016), *available at*: https://www.opensecrets.org/news/2016/11/federal-prosecutors-open-criminal-grand-jury-probe-of-thornton-law-firm-donations/

[44] See L.A.MC. § 49.5.1; Texas Admin. Code § 22.3; Wis. Stat. §§ 11.1303(1) & 11.1204(1)

[45] *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 561 U.S. 186, 177 L. Ed. 2d 493 (2010). See However: *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995). ("Anonymity is a shield from the tyranny of the majority. [...]").

[46] *See* CGC §§ 91004, 91007; SF C&GCC § 1.168

As currently drafted, the Proposition proposes giving successful citizen plaintiffs a right to personally recover 50 percent of a civil penalty award directly from the defendant in certain circumstances. Unlike damage awards resulting from private litigation, civil penalty assessment is subject to due process guarantees that exercises of police power be "procedurally fair and reasonably related to a proper legislative goal."[47] The government has police power to impose penalties to ensure prompt obedience to its regulatory requirements, but a governmental penalty assessment must not be arbitrary or unduly strict.[48] The government must assess factors, such as the sophistication of the plaintiff, willfulness of the violation, and the defendant's financial strength before the government can assess a reasonable penalty under the federal Constitution.[49]

Statutes might authorize citizen suits to push government regulators to greater enforcement action and supplement, what has historically been, thinly stretched resources.[50] Proponents of citizen suits often point out that they appear to be an inexpensive alternative to government enforcement and impetus for agencies to examine and enforce the laws within their jurisdiction. However, citizen suit provisions have not escaped criticism and associated claims that they are abused. Some critics worry that these provisions can actually interfere with a department's time and resources by requiring a department to respond to claims that are frivolous, factually deficient, or otherwise improper before the citizen files their claim in court.[51] Further, several courts have noted that citizen suit provisions raise numerous due process concerns and can be procedurally unwieldly.[52]

Citizen suit provisions are not new and several California statues and local agencies have enforcement regulations. For example, California's Private Attorney General Act ("PAGA") gives citizen plaintiffs the right to recover civil penalties from employers who violate Labor Code sections 2698-2699.5. Before filing suit, the citizen plaintiff must meet several procedural requirements before they can recover civil penalties directly from their employer, including filing a notice with the employer and giving the employer an opportunity to cure her violations. Citizen plaintiffs who prevail are entitled to 25 percent of the penalty, and the Labor and Workforce Development Agency is entitled to 75 percent of the penalty. In a PAGA suit, the employer must pay the penalty monies directly to the citizen plaintiff.

2. Staff's Proposed Amendments to Citizen Suit Provision

Staff believes that a well-crafted citizen suit provision helps the Commission ferret out instances of wrongdoing in the City. Staff proposes amending existing law to strengthen its efficacy. To be sure, knowledge that citizens may bring a private action may have the additional effect of providing the City

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[47] *Hale v. Morgan*, 22 Cal. 3d 388, 398 (Cal. 1978) (citing U.S. Const., Amend. VIII).
[48] Id.
[49] Id; See: *City and County of San Francisco v. Sainez*, 77 Cal. App. 4th 1302 (Cal. App. 1st Dist. 2000), for a local case concerning civil penalty assessment.
[50] L. Ward Wagstaff, Citizen Suits and the Clean Water Act: The Supreme Court Decision in Gwaltney of Smithfield v. Chesapeake Bay Foundation, 1988 UTAH L. REV. 891, 894 (1988).
[51] Travis a. Voyles, "Clearing Up Perceived Problems with the Sue-and-Settle Issue in Environmental Litigation", (2017). Journal of Lang Use.
[52] *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 900 F. Supp. 67, 77 (E.D. Tex. 1995).

and the Commission with a general deterrence function without further burdening staff time and resources in auditing and enforcement matters. This last point is particularly true where a citizen suit provision can be drafted in a way that the Commission acts as a "gatekeeper" rather than being required to handle the citizen complaint in both the Commission's enforcement and quasi-judicial functions, which would consume broad swaths of staff time.

Staff agrees with the Proposition's proposal to give citizens access to civil penalties in certain circumstances but does not support the notion that a citizen should be able to recover penalties through a court from the defendant directly. Citizen plaintiffs are not subject to the Eighth Amendment and Due Process concerns noted above and would likely forgo solicitation of evidence regarding the defendant's inability to pay or other mitigating factors. Instead, Staff recommends that citizen plaintiffs be entitled to recover 25% of any civil or administrative penalty awarded directly from the City Attorney, District Attorney, or Commission if any of those government agencies initiate an enforcement action based on the citizen plaintiff's notice of intent to sue. By incentivizing citizen plaintiffs to first notify the government and then obtain a portion of civil penalties from the government if the government acts in response to their claim, the government will maintain control over the penalty assessment and recovery process. Moreover, citizen plaintiffs will be able to play a more robust oversight role over government enforcement activity, as notices of intent to sue will operate as incentives for the government to take their own action.

3. Debarment

The fifth Proposition provision Staff has reviewed and proposes to amend is the "Debarment" provision. Debarment, and its precursor "suspension", are sanctions that exclude an individual or entity from doing business with the government. These sanctions are imposed upon persons who have engaged in wrongful conduct or who have violated the requirements of a public contract or program. A debarment excludes a person from doing business with the government for a defined period, usually some number of years. A suspension is a temporary exclusion which is imposed upon a suspected wrongdoer pending the outcome of an investigation and any ensuing judicial or administrative proceedings.

The original Proposition gives the Ethics Commission authority to debar public beneficiaries, including contractors, who have "violated" or "aided or abetted a violation of" Campaign and Government Code Section 1.126. This statute prohibits City contractors from engaging in certain political activity when bidding for or performing a City contract. The Proposition sets out a schedule for determining the period of debarment and would allow the Commission to adopt regulations to evaluate mitigating circumstances.

Suspension and debarment are serious and significant actions taken by the government and should be imposed only under limited circumstances. Additionally, like many other government benefactors, the California Supreme Court has determined that government contractors and other public beneficiaries

deserve at least some Due Process protections prior to debarment, including notice of the charges, an opportunity to rebut the charges, and a fair hearing in a meaningful time and manner.[53]

Government entities meet these requirements through the adoption of debarment procedures. San Francisco has done so via the San Francisco Administrative Debarment Procedure, found at Chapter 28 of the Administrative Code.[54] Section 28.2 gives any charging official the authority to issue Orders of Debarment against any contractor for willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. Charging officials include: any City department head, the president of any board or commission authorized to award or execute a contract, the Mayor, the Controller, the City Administrator, the Director of Administrative Services, or the City Attorney.[55]

Staff believes that the purpose of suspension and debarment is not punitive but rather provide protection to the City and the public. Therefore, even if grounds exist for suspension or debarment, an agency is not required to— and indeed should not—debar or suspend for minor or insignificant cause.

4. Staff's Proposed Amendments to Debarment

Staff believes the existing procedures for debarment set forth in Chapter 28 of the City's Administrative Debarment Procedures Act are sufficient to protect the City's interest. Rather than amending Chapter 28 to make the Commission a debarring official, Staff recommends the Proposition give the Commission authority to recommend the issuance of Orders of Debarment to any Charging Official identified in Chapter 28.

Staff additionally believes that it will need to adopt regulations or interpretive policies for the Commission to effectively evaluate both mitigating or exacerbating circumstances before recommending an Order of Debarment or Order of Suspension to any charging official. Although an expansive review of those procedures is beyond the scope of this memo, at a bare minimum, the Commission should be able to consider the person's willfulness, repetitiousness, and whether the violation is so serious as to jeopardize the person's present responsibilities under a contract, grant, or other obligation given by the City.

IV. Additional Proposals and Amended Sections

In addition to the revisions and amendments made to the Proposition laid out above, the initial draft ordinance, which follows in Attachment 2, has also amended and incorporated provisions of proposals previously reviewed by the Commission from Supervisors Farrell, Peskin and Ronen. The sections below

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[53] See: *Southern Cal. Underground Contractors, Inc. v. City of San Diego,* 108 Cal. Appl. 4th 533, 542-543 (2003) (citing Cal. Const. Art. I, §§ 7, 15; *Golden Day Schools, Inc. v. State Dept. of Education,* 83 Cal. App. 4th 695, 711 (2000)).

[54] See Also: California Labor Code § 1777.1.

[55] See: Admin. Debarment Proc. § 28.1(B).

should be incorporated into the amendments proposed by Staff, based on Staff's initial research following the May 22, 2017 meeting when the amendments were presented to the Commission, subsequent public comment, and the Commission's own discussion of those items.

A. Sunshine and Ethics Training

Commission Staff is proposing amendments to the Campaign and Governmental Code that will implement an Ethics and Sunshine training schedule to reinforce the City's anti-corruption policies. City Officers would be required to submit to the Commission within 30 days of assuming office, and, on April 1st of every subsequent year, a declaration under penalty of perjury that the City Officer has completed the required trainings. This amendment is meant to heighten awareness of and compliance with these training requirements by standardizing and streamlining the process for the submitting and reviewing of Ethics and Sunshine training by bringing the deadlines for submitting declarations in line with the required submittal of the Statement of Economic Interests. Staff finds that the importance of ongoing and strong ethics training reinforces the overall goals of the Commission and CFRO to strengthen the integrity of governmental processes and reduce corruption.

B. Technology: Disclosure Database and Contracts Tracker

As initially introduced, Proposition J also sought to develop mechanisms that would improve public access to disclosed data relevant to governmental decision making and factors that might have a bearing on how decisions are shaped or influenced. The initial proposal considered the concept of a disclosure database and contracts tracker that could enable searching across, for example, existing contracts data, economic interests' filings, lobbyist disclosure reports and campaign disclosure data. The Commission will continue to work with its vendors to ensure the public with online access that allows for easy retrieval and analysis of the data those systems disclose. In addition, the Controller and Ethics Commission Executive Director are launching a joint staff project team during the first half of Fiscal Year 2018 to identify specific goals and evaluate possible approaches for enable data to be accessed across departments or platforms.

Initial Proposal (Ordinance Section)	Description of Proposition Section	Staff's Proposal (Ordinance Section)	Description of Staff's Proposed Section	Rationale for Staff's Proposal
Personal and Campaign Advantages Ban for Public Beneficiaries (1.126)	provides that persons who receive a public benefit or person with financial interest in the benefit may not provide a campaign or personal advantage to a public official, including the elected official, board on which they serve, their subordinate or appointees.	conflict of interest and limited and narrow contribution ban (3.207, 209, 231, and 1.127)	Prohibiting persons with certain land use matters in the City from giving campaign contributions and behested payments. Expanded conflict of interest provisions.	Amends and balances policy goals with recent case law. Amending the conflict of interest code and strengthening its enforcement to reinforce the Proposition's and the City's corruption interest in a legally enforceable way. Adding mechanisms for public officials to disclose, rescuse, and for the Commission to recommended disqualification in certain instances. Staff would still prohibit persons with certain land use decisions in the City from making contributions based on that groups history of scandal and abuse of campaign finance and ethics laws. (Staff will continue to develop a legislative record to underpin its argument(s) going forward).
Fundraising Restrictions (1.122)	This section prohibits public beneficiaries and certain members of city boards, commissions and dept. heads from engaging in certain solicitation and fundraising activity.	Political Activity Restrictions for Public Officials (3.230)	Restrict the fundraising activities of public officials, including City Board members, Commission members.	Amendments balance free speech and association issues with the City's interest in having neutral, effective decision-makers, which are acting in the public's benefit. Staff believes that limiting the fundraising and political activity of public officials is necessary and lawful to avoid persons serving in the public interest from undue influence and coercion.
Intra-Candidate Transfer Ban.	Transfer of contributions from one committee of a candidate to another.	Assumed Name Contributions – (laundered/true source of campaign donations)	Assumed Name Contributions prohibition that reinforces the laundered contributions	The intra-candidate ban remains unconstitutional, however, Staff has advanced a true source/laundered contributions ordinance provision in addition to Section 84301 of the Political Reform Act. This section advances the anti-corruption interests of City law and makes it

(1.122)		(1.114.5)	prohibition in the Political Reform Act.	less likely that contribution limits will be skirted via laundered activities.
Revised Prop J Proposal (Ordinance Section)	**Description of Proposition Section**	**Staff's Proposal (Ordinance Section)**	**Description of Staff's Proposed Section**	**Rationale for Staff's Proposal**
Debarment ((1.126(g))	Prohibits public beneficiaries from doing business with government for a specified period if they violate CFRO provisions.	Debarment (1.168)	Debar certain persons that violate the prohibitions on contributions and behest payments contained in sections 1.126 & 1.127.	Suspension and debarment are serious and significant actions taken by the government and should be imposed under limited circumstances. For that reason, on balance, Staff would limit debarment to serious and willful violations of sections 1.126 & 1.127.
Citizen Suit (1.168)	Allows citizen plaintiff to bring and recover 50% of any civil penalty	Citizen Suit (1.168)	Citizen plaintiffs be entitled to recover 25% of any civil or administrative penalty awarded from the agency or office.	Staff does not support the notion that a citizen should be able to recover penalties through a court from the defendant directly because of due process concerns. However, Staff agrees with the Proposition's proposal to give citizens access to civil penalties but would have the penalties collected from government directly, rather than the defendant.
Database Requirement	This section provides that the Commission will adopt a database to track public beneficiaries and other city contracts to enforce the law and make data available for public consumption.	Database and Disclosure Portal	Contracts database and Disclosure	The Controller and Ethics Commission Executive Director are launching a staff project team during the first half of Fiscal Year 2018 to identify specific goals and approaches for tracking and accessing public contracts and other decisions. The Commission will continue to work with its vendors to ensure online access is available to retrieve and analyze information on spending in City elections.

FILE NO. ORDINANCE NO.

[Campaign and Governmental Conduct Code - Amending Campaign Finance and Conflict of Interest Provisions]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 3) require additional disclosures for campaign contributions from business entities to San Francisco political committees; 4) require disclosure of bundled campaign contributions; 5) prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, and their controlled committees, from any person with pending or recently resolved land use matters; 6) allow members of public to receive a portion of penalties collected in certain enforcement actions; 7) permit the Ethics Commission to recommend debarment as a penalty for campaign finance violations; 8) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; and 9) establish recusal procedures.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, and 1.168 and adding Sections 1.114.5, 1.123, 1.124, 1.125, and 1.127, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"Business entity" shall mean a limited liability company (LLC), corporation, or partnership.

* * * *

"Financial interest" shall mean an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter. "Financial interest" shall also mean holding the position of President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors.

* * * *

"Land use matter" shall mean any application for a permit or variance under the San Francisco Building or Planning Codes, any application for a determination or review required by the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), any development agreement, or any other non-ministerial decision regarding a project with a value or construction cost of $1,000,000 or more. This term shall not include an ordinance or resolution; provided that, "land use matter" shall include any ordinance or resolution that applies only to a single project or property or includes an exception for a single project or property.

* * * *

SEC. 1.114. CONTRIBUTION*S* - LIMITS.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) LIMITS ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section and Section 1.120 the contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50 percent.

~~*(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that*~~

~~*causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*~~

(d) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate to circumvent the limits established by subsections (a) and (b).

(e) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section *1.114* or which does not comply with the requirements of this Section *1.114* shall pay promptly the amount received or deposited in excess of the *permitted* amount ~~*permitted by this Section*~~ to the City and County of San Francisco ~~*and*~~ *by* deliver*ing* the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

(f) RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited and in addition it is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated or deposited and is returned to the contributor within 48 hours of receipt.

For all committees not addressed by this Section *1.114*, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act, California Government Code Section 81000, et seq.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(b) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution shall be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons.

(2) No person shall make a contribution in his, her or its name when using any payment received from another person on the condition that it be used as a contribution.

(c) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section 1.114 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.123. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE AND INDEPENDENT EXPENDITURE COMMITTEES.

*(a) **Definitions.** For purposes of this Section 1.123, the following words and phrases shall mean:*

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, Assessor-Recorder, City Attorney, District Attorney, Public Defender, Sheriff, or Treasurer.

"Indirectly solicits" shall mean a solicitation made by any subordinate of a City elective officer, unless the subordinate or the City elective officer can demonstrate by clear and convincing evidence that the subordinate acted without the City elective officer's authorization or knowledge.

"Subordinate" shall mean any employee of the City elective officer's department; provided that, subordinate employees of a member of the Board of Supervisors shall mean the legislative aides that the member directs and supervises.

*(b) **Disclosure Requirements.** Any City elective officer who directly or indirectly solicits a contribution of $10,000 or more to a state or local ballot measure committee, or a committee that makes independent expenditures in support of or opposition to a candidate for City elective office, shall disclose, within 24 hours after the contribution is made, the following information to the Ethics Commission:*

(1) the name of the contributor;

(2) the amount of the contribution;

(3) the name and Fair Political Practices Commission identification number of the committee that received the contribution;

(4) the date the City elective officer, or the City elective officer's subordinate, solicited the contribution;

(5) if a subordinate solicited the contribution, the name and governmental title or duties of the subordinate;

(6) the date the contribution was made to the committee; and

(7) whether during the 12 months prior to the contribution the contributor attempted to influence the City elective officer in any legislative or administrative action and if so, the legislative or administrative action that the contributor sought to influence and the outcome sought. The City elective officer shall disclose, if applicable, the title and file number of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, contract, or other matter of such legislative or administrative action.

*(c) **Filing Requirements.** The Ethics Commission may, through regulation, specify the form and manner in which City elective officers shall submit this information.*

*(d) **Website Posting.** The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

*(a) **Additional Disclosures.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter, any committee required to file campaign statements with the Ethics Commission must disclose the following information for each contribution:*

(1) the purpose of the business entity;

(2) the business entity's principal officers, including its President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, and Director; and

(3) whether the business entity has received funds through a contract or grant from any federal, state or local government agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the government agency that provided the funding, the amount of funds provided, and the date, title, and brief description of the contract or grant agreement between the government agency and the business entity.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file campaign statements with the Ethics Commission. The Ethics Commission may, through regulation, specify the form and manner in which committees shall submit this information.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

*(a) **Definition.** For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or those made by one's immediate family members.

The Ethics Commission may, through regulation, include additional fundraising activities within this definition.

*(b) **Additional Disclosure Requirements.** Any committee controlled by a City elective officer that receives contributions totaling $5,000 or more that have been bundled by a single person shall disclose the following information:*

(1) the name, occupation, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the person who bundled the contributions is a City employee, the employee's department and job title;

(4) if the person who bundled the contributions is a member of a City board or commission, the name of the board or commission that person serves on, and any City officer who appointed or nominated that person to the board or commission; and

(5) whether during the 12 months prior to the date of the contribution the person who bundled the contributions attempted to influence the City elective officer who controls the committee in any legislative or administrative action and if so, the legislative or administrative action that the contributor sought to influence and the outcome sought. The committee shall disclose, if applicable, the title and file number of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement, contract, or other matter of such legislative or administrative action.

(c) ***Exceptions for candidates and campaign staff.*** *Committees shall not be required to disclose contributions that have been bundled by:*

(1) candidates for City elective office who collect contributions for their candidate-controlled committees; and

(2) fundraising staff who are paid by a committee to collect contributions for that committee.

(d) ***Filing Requirements.*** *Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file campaign statements with the Ethics Commission. The Ethics Commission may, through regulation, specify the form and manner in which committees shall submit this information.*

(e) ***Website Posting.*** *The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS BEFORE A DECISION-MAKING BODY.

(a) ***Definitions.*** *For purposes of this Section 1.127, the following phrase shall mean:*

"Affiliated entities" shall mean business entities directed and controlled by a majority of the same persons, or majority-owned by the same person.

"Behested payment" is a payment made for a legislative, governmental, or charitable purpose made at the behest of (1) a Member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) City Attorney, or (6) a candidate for City Attorney.

"Made at the behest of" a candidate or officer shall mean under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or officer.

"Prohibited contribution" is a contribution to (1) a Member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

(b) ***Prohibition on Contributions.***

(1) No person, or the person's affiliated entities, with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Department of Building Inspection, Office of Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Planning Department, Port Commission, or Port of San Francisco shall make any behested payment or prohibited contribution at any time from the filing or submission of the land use matter until six months have elapsed from the date that the board or commission renders a final decision or ruling. If the

person is a business entity, such restriction shall also include any member of such person's board of directors, its chairperson, chief executive officer, chief financial officer, and chief operating officer.

(2) The prohibition set forth in subsection (b)(1) shall not apply if the person's land use matter only concerns their primary residence.

(3) For purposes of this subsection (b), the date of "filing or submission" of a land use matter in the form of an ordinance or resolution is the date on which the ordinance or resolution is introduced at the Board of Supervisors. The date of the "final decision or ruling" regarding such an ordinance or resolution is the date the Mayor signs the ordinance or resolution, the date the Mayor returns it unsigned or does not sign it within 10 days of receiving it, or the date the Board of Supervisors overrides the Mayor's veto.

(c) ***Prohibition on Receipt of Contributions.*** *It shall be unlawful for a Member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, to solicit or accept any behested payment or prohibited contribution.*

(d) ***Forfeiture of Prohibited Contributions.*** *In addition to any other penalty, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided, that the Commission may provide for the waiver or reduction of the forfeiture.*

(e) ***Notification.*** *Any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Department of Building Inspection, Office of Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission or Planning Department,*

within 10 days of filing or submitting or receiving written notice of the filing or submission of a land use matter, whichever is earlier, shall file with the Ethics Commission a report including the following information:

(1) the board or commission considering the land use matter;

(2) the location of the property that is the subject of the land use matter;

(3) if applicable, the file number for the land use matter;

(4) the action requested of the board, commission, or office considering the land use matter, as well as the legal basis for that action;

(5) the person's financial interest if any, in the project or property that is the subject of the land use matter; and

(6) if applicable, the names of the individuals who serve as the person's chairperson, chief executive officer, chief financial officer, and chief operating officer or as a member of the person's board of directors.

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter has occurred may file a complaint with the Ethics Commission, City Attorney or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any voter, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter.

(1) No voter may commence an action under this Subsection without first providing written notice to the City Attorney of intent to commence an action. The notice shall

include a statement of the grounds for believing a cause of action exists. The voter shall deliver the notice to the City Attorney at least 60 days in advance of filing an action. No voter may commence an action under this Subsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another voter has filed a civil action against the defendant under this Subsection.

(2) If the City Attorney or District Attorney obtains a civil or criminal judgment against the defendant, or if the Ethics Commission determines that the defendant violated the provisions of this Chapter as a direct result of the voter's notice under this subsection, then the voter shall be entitled to recover twenty-five percent of any administrative or civil penalties assessed against the defendant. The voter is entitled to recover her share of penalties from the government within ninety (90) days of the resolution of the civil, criminal, or administrative proceeding.

(3) A Court may award reasonable attorney's fees and costs to any voter who obtains injunctive relief under this Subsection. If the Court finds that an action brought by a voter under this Subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

(1) **Criminal.** Prosecution for violation of this Chapter must be commenced within four years after the date on which the violation occurred.

(2) **Civil.** No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred.

(3) **Administrative.** No administrative action alleging a violation of this Chapter and brought under Charter Section C3.699-13 shall be commenced more than four years after the date on which the violation occurred. The date on which the Commission forwards a complaint or information in its possession regarding an alleged violation to the District Attorney and City Attorney as required by Charter Section C3.699-13 shall constitute the commencement of the administrative action.

(4) **Collection of Fines and Penalties.** A civil action brought to collect fines or penalties imposed under this Chapter shall be commenced within four years after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine or penalty is imposed when a court or administrative agency has issued a final decision in an enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter. The Executive Director does not make a final decision regarding the amount of a late fine or penalty imposed under this Chapter until the Executive Director has made a determination to accept or not accept any request to waive a late fine or penalty where such waiver is expressly authorized by statute, ordinance, or regulation.

(d) ADVICE. Any person may request advice from the Ethics Commission or City Attorney with respect to any provision of this Chapter. The Ethics Commission shall provide advice pursuant to Charter Section C3.699-12. The City Attorney shall within 14 days of the receipt of said written request provide the advice in writing or advise the person who made the request that no opinion will be issued. The City Attorney shall send a copy of said request to the District Attorney upon its receipt. The City Attorney shall within nine days from the date of the receipt of said written request send a copy of his or her proposed opinion to the District Attorney. The District Attorney shall within four days inform the City Attorney whether he or

she agrees with said advice, or state the basis for his or her disagreement with the proposed advice.

No person other than the City Attorney who acts in good faith on the advice of the City Attorney shall be subject to criminal or civil penalties for so acting; provided that, the material facts are stated in the request for advice and the acts complained of were committed in reliance on the advice.

(e) MISUSE OF PUBLIC FUNDS. Any person who willfully or knowingly uses public funds, paid pursuant to this Chapter, for any purpose other than the purposes authorized by this Chapter shall be subject to the penalties provided in this Section.

(f) PROVISION OF FALSE OR MISLEADING INFORMATION TO THE ETHICS COMMISSION; WITHHOLDING OF INFORMATION. Any person who knowingly or willfully furnishes false or fraudulent evidence, documents, or information to the Ethics Commission under this Chapter, or misrepresents any material fact, or conceals any evidence, documents, or information, or fails to furnish to the Ethics Commission any records, documents, or other information required to be provided under this Chapter shall be subject to the penalties provided in this Section.

(g) PERSONAL LIABILITY. Candidates and treasurers are responsible for complying with this Chapter and may be held personally liable for violations by their committees. Nothing in this Chapter shall operate to limit the candidate's liability for, nor the candidate's ability to pay, any fines or other payments imposed pursuant to administrative or judicial proceedings.

(h) JOINT AND SEVERAL LIABILITY. If two or more persons are responsible for any violation of this Chapter, they shall be jointly and severally liable.

(i) EFFECT OF VIOLATION ON CANDIDACY.

(1) If a candidate is convicted, in a court of law, of a violation of this Chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election, unless the court at the time of sentencing specifically determines that this provision shall not be applicable. No person convicted of a misdemeanor under this Chapter after his or her election shall be a candidate for any other City elective office for a period of five years following the date of the conviction unless the court shall at the time of sentencing specifically determine that this provision shall not be applicable.

(2) If a candidate for the Board of Supervisors certified as eligible for public financing is found by a court to have exceeded the Individual Expenditure Ceiling in this Chapter by ten percent or more at any time prior to his or her election, such violation shall constitute official misconduct. The Mayor may suspend any member of the Board of Supervisors for such a violation, and seek removal of the candidate from office following the procedures set forth in Charter Section 15.105(a).

(3) A plea of *nolo contendere*, in a court of law, shall be deemed a conviction for purposes of this Section.

(j) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under Administrative Code Chapter 28 initiate debarment proceedings against any individual person or business entity in conformance with the procedures set forth in that Chapter.

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Sections 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter the following words or phrases are used, they shall mean:

(a) "Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10 percent of the equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

~~(a)~~ *(c)* "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file statements of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

~~(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.~~

(d) "Prohibited fundraising" shall mean requesting that another person make a contribution; inviting a person to a fundraiser; supplying names to be used for invitations to a fundraiser; permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; providing the use of one's home or business for a fundraiser; paying for at least 20 percent of the costs of a fundraiser; hiring another person to conduct a fundraiser; delivering or otherwise forwarding a contribution, other than one's own, either by mail or in person to a City elective officer, a candidate for City elective officer, or a candidate-controlled committee; or acting as an agent or intermediary in connection with the making of a contribution.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

(a) In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may use or attempt to use the public position held by the officer to influence or gain benefits, advantages or privileges personally or for others.

(3) No City elective officer or candidate for City elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution.

(4) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the Officer. This subsection does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

(5) No City elective officer or member of a board or commission may vote upon or advocate the passage or failure of a matter with respect to which the independence of judgment of a reasonable person in the officer's situation would be materially affected.

SEC. 3.209. RECUSALS.

(a) ***Recusal Procedures.*** *Any member of a City board or commission, including a Member of the Board of Supervisors, who has a conflict of interest under either the California Political Reform Act (California Government Code Section 87100 et seq.) or California Government Code Section 1090, who must recuse herself from a proceeding under California Government Code Section 84308, or whose independence of judgment is likely to be materially affected within the meaning of Section 3.207(a)(5) shall, in public meetings, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing and voting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the consent calendar.

(b) ***Repeated Recusals.*** *If a member of a City board or commission, including a Member of the Board of Supervisors, recuses himself or herself, as required by the California Political Reform Act, California Government Code Section 1090, California Government Code Section 84308, or Section 3.207, in any 12-month period from acting on:*

(1) three or more separate matters; or

(2) 1% or more of the matters pending before the officer's board or commission,

the Commission shall determine whether the officer has a significant and continuing conflict of interest. The Commission shall publish its written determination, including any discussion of the officer's factual circumstances and applicable law, on the department's website. Thereafter, if the Commission determines that the officer has a significant and continuing conflict of interest, the officer shall provide the Commission with written notification of subsequent recusals resulting from the same conflicts of interest identified in the written determination.

With respect to such officers, the Commission may recommend to their appointing authorities that the official should be removed from office under Charter Section 15.105 or other means.

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a political campaign.*

*(b) **Fundraising for Appointing Authorities.** No City elective officer or member of a board or commission may engage in prohibited fundraising on behalf of (1) the officer's appointing authority, if the appointing authority is a City elective officer; (2) any candidate for the office held by the officer's appointing authority; or (3) any committee controlled by the officer's appointing authority.*

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: August 23, 2017

To: San Francisco Ethics Commission

From: Kyle Kundert, Senior Policy Analyst
Pat Ford, Policy Analyst

Re: **AGENDA ITEM 5- Staff Memo Introducing the 2017 San Francisco Corruption and Accountability Ordinance (Amending the Initial Proposition J Revision Proposal and Expanding the Conflict of Interest Code)**

Summary: This memorandum outlines Staff's proposed changes to the draft of the Revised Proposition J ordinance given to the Commission at their June 26 meeting and provides the Commission with an amended draft for the Commission's review.

Action Requested: Staff seeks the Commission's further policy guidance on the draft Ordinance at Attachment 1 and recommends that the Ordinance be adopted for submittal to the Board of Supervisors.

I. Introduction

At its June 26, 2017 meeting, the Commission heard Staff's presentation outlining a comprehensive revision of the Campaign Finance Reform Ordinance ("CFRO") and the Conflict of Interest Code, now entitled the 2017 San Francisco Corruption and Accountability Ordinance (the "Ordinance"). This proposed ordinance combines several proposals recently presented to the Commission into a revision package for presentation to the Board of Supervisors. The Ordinance seeks to amend and strengthen CFRO and the Conflict of Interest Code and to advance the purposes of reducing undue influence, limiting corruption, and ensuring and advancing an informed electorate. As part of this process, Staff is presenting this memorandum to the Commission, which outlines the provisions of the Ordinance, outlines amendments made to previous versions of the Ordinance, and explains the legal concerns and policy objectives behind those amendments.

This memorandum begins with background on the proposals that have been presented to the Commission, which Staff used to jumpstart its review of CFRO. The memorandum next outlines the Ordinance, highlights notable differences between the Ordinance and the proposals that were presented to the Commission, and explains why those changes are

necessary. The memorandum concludes with a proposed draft ordinance for the Commission's consideration.

II. Background

At the Commission's March 2017 meeting, Chair Keane introduced an initial Proposition J revision proposal, which was based on San Francisco's Proposition J from 2000. In the spring of 2017, as part of the Commission's Annual Policy Plan, Staff began a review of CFRO. In conjunction with that effort, Staff also reviewed several separate proposals to amend CFRO. Staff provided the Commission with memoranda outlining the Staff's analysis and review of those items at the Commission's April 24th meeting (Proposition J) and May 22nd meeting (proposals of Supervisors Peskin, Ronen, and Farrell). At the May 22nd meeting, the Commission expressed its desire to review an initial draft of an ordinance outlining Staff's proposed amendments to the Proposition after Staff reviewed proposals provided by Supervisors Peskin, Ronen, and Farrell. At the Commission's June 26th meeting, Staff presented a draft ordinance to the Commission, and the Commission provided feedback to guide further revisions to the Ordinance. Staff has held additional meetings of interested persons, reviewed written public comment, processed input from national policy and legal research institutions, reviewed the regulatory approaches taken in other jurisdictions, and sought guidance from multiple City departments on implementation matters. Based on the results of this process, Staff has revised the Ordinance in several ways, as discussed in the overview of the Ordinance's major provisions provided in Section III.

III. Overview of Ordinance

Staff has presented the Commission with its analysis of initial drafts of the Ordinance, gathered public comment, and continued to research available policy and legal alternatives to ensure that any proposal that the Commission presents to the Board of Supervisors is strong and effective and meets the goals of CFRO. What follows is an outline of the Ordinance, which aims to ensure compliance with existing legal precedent and to reinforce the anti-corruption and accountability interests promoted by CFRO, the Conflict of Interest Code, and the various proposals recently made to the Commission.

A. Preventing Pay-to-Play Politics

The Ordinance would create a series of new rules intended to reduce the incidence of "pay-to-play," whereby individuals attempt to secure City contracts or other beneficial governmental outcomes by directing contributions to City officials, candidates, or third parties that are linked to a City official. Pay-to-play is a practice that is destructive to the fairness, openness, and competitiveness of City government, and its existence or mere appearance can reduce public confidence in governmental processes. It is vital that CFRO contain robust and enforceable rules aimed at reducing or eliminating the ability of individuals to obtain favorable outcomes by making targeted monetary contributions. As such, the Ordinance would amend CFRO to further restrict the ability of City contractors, prospective City contractors, and individuals with a financial interest in a land use matter pending before a City agency to make payments benefitting certain City officials. These amendments to CFRO are in furtherance of

CFRO's stated objectives and promote the intended effects of the various proposals recently received by the Commission.

1. Persons Whose Activities Will Be Restricted

In order to have the most targeted impact on pay-to-play practices, the Ordinance would place restrictions on the persons who are most likely to attempt to secure a favorable governmental outcome though the use of targeted monetary payments: parties seeking a contract with the City and parties seeking a favorable land use decision by a City agency.

City contracting is a process that can present a danger of pay-to-play activity, and CFRO already contains rules addressing this risk. There is a documented history, both in San Francisco and across the country, of private business concerns attempting to secure government contracts through contributions to an official or candidate's campaign committee or, in some cases, illegal direct payments to officials.[1] Currently CFRO, prohibits contributions by persons who have or are seeking a City contract to an official who must approve the contract (or a candidate for that official's seat). Hence, City law already contemplates that City contractors present a risk of pay-to-play practices. The Ordinance would increase the restrictions that apply to this class of persons, as detailed in Subsection III.A.2.

The land use decision making process can also similarly present a danger of pay-to-play. San Francisco property values and rents are among the highest in the nation. Consequently, the monetary value of real estate transactions, development, new construction, and building modifications are constantly rising. Parties that seek to build or modify existing structures are subject to land use regulations, building codes, Area Plans, permitting requirements, and other local government restrictions. The process of seeking government approval of such projects is long and costly. Also, matters of land use, density, rent, redevelopment, and construction have spawned some of the most contentious debates occurring in the City. Considering the volatile and highly monetized climate surrounding land use matters in San Francisco, there is a serious risk that persons seeking a favorable land use determination will attempt to unduly influence City officials through monetary payments to campaign committees or other groups associated with a City official.[2] To address this potential for corruption, the Ordinance would expand CFRO to create rules limiting the political activity of persons seeking a favorable land use determination from the City.

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[1] *See, e.g.*, Department of Justice, Northern District of California, "Bay Area Building Contractors Charged With Fraud And Bribery In Connection With Federal And State Construction Contracts" (2017), *available at: https://www.justice.gov/usao-ndca/pr/bay-area-building-contractors-charged-fraud-and-bribery-connection-federal-and-state* .

[2] *See, e.g.*, Susan Sward and Jaxon Vanderbeken, "Permit official faces bribery charges / District attorney and FBI probe S.F. building department," (2005), *available at: http://www.sfgate.com/news/article/Permit-official-faces-bribery-charges-District-2618578.php.*

The initial Proposition J revision proposal sought to regulate the political activity of a vastly broader segment of the public: any person receiving a "public benefit."[3] This would include anyone who applies for a business or trade license, is the subject of a tax decision, or receives any form of City financial assistance, including housing vouchers and food assistance. As discussed in Staff's June 21, 2017 memo to the Commission, this class of individuals is too broad for the kinds of political activity restrictions contemplated.[4] Such an approach would likely violate the First Amendment's protections of political speech.[5] Many of the people who would be caught up in the "public benefit" category do not present a risk of corrupting financial influence in City politics. The class of persons targeted in the Ordinance, however, is more narrowly defined so as to address the most pressing areas where corruption is likely to occur in San Francisco. This approach will advance the anti-corruption interest contained in the Proposition J proposal while also abiding by constitutional limitations.

2. Restrictions on Contributions and Behested Payments

The Ordinance would create new limits on the payments that City contractors and parties to land use matters may direct to officials, candidates, and third-party organizations.

a. City Contractors

CFRO currently prohibits parties with a City contract, or those who are negotiating for a City contract, from making contributions to officials who must approve the contract, officials who sit on a board that must approve the contract, or a candidate for such an office. The Ordinance would expand this prohibition to also cover behested payments made by a contractor (or prospective contractor) at the behest of an official to whom the contractor may not make direct contributions.[6] A behested payment occurs when an official requests that a person make a payment to a third party and the person makes the payment. Behested payments are a common method for skirting contribution limits: if a person cannot give directly to an official's candidate committee, he or she can nonetheless try to gain the official's favor by giving to a third-party organization at the official's request. Often, officials request that contributions be made to organizations with which the official is affiliated or that promote the official or his or her policies. Thus, behested payments have become a channel for political payments that is immune from traditional contribution limits. To address this gap in campaign finance regulation, the Ordinance would prohibit City contractors from making payments to third parties at the request of an official who must approve the contractor's contract. This effort will help close the payment loophole currently available in the form of behested payments. The Ordinance would also extend the effective time period for the prohibition on contributions and behested payments from contractors: the current

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[3] *See* San Francisco Ethics Comm'n, Notice Of Regular Meeting, Monday, March 27, 2017, 5:30 P.M. And Agenda, Agenda Item 6 at 24, *available at* https://sfethics.org/wp-content/uploads/2017/03/March-22-2017-cover-memo-and-attachments-and-attachments-submitted-by-Commissioner-Keane.-ITEM-6.pdf.

[4] *See* San Francisco Ethics Comm'n, Notice Of Regular Meeting, Monday, June 26, 2017, 5:30 P.M. And Agenda, Agenda Item 4 (*hereinafter* "June 21, 2017 Memorandum") at 3—6, *available at* https://sfethics.org/wp-content/uploads/2017/06/2017.06.26-Agenda-Item-4-Combined.pdf.

[5] *Id.*

[6] *See* Draft Ordinance § 1.126.

period begins at the outset of contract negotiations and ends six months after the contract is approved; the Ordinance would extend that period to twelve months after the contract is approved.

The restrictions suggested by the initial Proposition J proposal would have prohibited a much wider array of activity by the regulated class of persons. That proposal also would have prohibited affected persons from making payments directly to slate mailer organizations, giving any gifts, extending employment offers, or giving "any other ... thing of value that is not widely available to the general public" if the beneficiary is an official who must approve in order for the person to receive a public benefit. As discussed in Staff's June 21, 2017 memo, limits on expenditures raise constitutional doubts. Furthermore, limits on gifts and conflicts of interest already exist in the Campaign and Governmental Conduct Code and are not appropriate additions to CFRO.[7] The prohibitions created in the Ordinance, on the other hand, would restrict the primary channels of pay-to-play payments while comporting with the requirements of the First Amendment.

b. Persons with a Financial Interest in a Land Use Matter

The Ordinance would restrict contributions and behested payments by persons with a financial interest in a land use matter.[8] Such persons would be prohibited from making contributions to (or making payments at the behest of) the mayor, a member of the board of supervisors, the city attorney, or a candidate for any of these offices. Contributions to a committee controlled by any of these officials or candidates would likewise be prohibited. The prohibition would bar contributions and behested payments from the time that a person applies for a land use decision until twelve months after a final decision is rendered.

A narrow exception to this prohibition would apply to certain land use matters involving nonprofit organizations.[9] In order for the exception to be operative, 1) the nonprofit organization involved must qualify as a charitable organization under § 501(c)(3) of the Internal Revenue Code, 2) the land use matter must "solely concern[] the provision of health care services, social welfare services, permanently affordable housing, or other community services ... to serve low-income San Francisco residents," and 3) the community services must be wholly or substantially funded by the City of San Francisco. The narrow construction of this exception is designed to exempt charitable organizations that provide community services using City funding and that apply for a land use decision that relates to the provision of those City-funded services. For example, an organization that operates a homeless shelter using City funds would not be subject to the prohibitions on contributions and behested payments if that homeless shelter became the subject of a land use decision. If, however, a charitable organization that qualified for the exception *vis a vis* one land use matter had a financial interest in a separate land use matter that did *not* meet the three elements of the exception, then the organization would no longer qualify for the exception and would thus be subject to the prohibitions on contributions and behested payments. For example, if the organization operating the homeless shelter were to apply for a zoning variance to construct its new corporate headquarters, it would become subject to the full breadth of the

[7] *See* June 21, 2017 Memorandum at 6—7. *See infra* Section III.G for discussion of changes to the Conflict of Interest Code contained in the Ordinance.
[8] *See* Draft Ordinance § 1.127.
[9] *Id.* at § 1.127(d).

prohibition, as this land use matter does not concern the provision of community services that is funded by the City.

B. Prohibiting Laundered or "Assumed Name" Contributions

The Ordinance would put in place new requirements in CFRO aimed at instituting accurate disclosure of the "true source" of political contributions. Firstly, the Ordinance would prohibit assumed name contributions, which are contributions made a) using "a name other than the name by which [the person is] identified for legal purposes," or b) using money that was "received from another person on the condition that it be given to a specific candidate or committee."[10] Both forms of assumed name contributions undermine the purpose of disclosure rules and committee reporting requirements because they are methods for disguising the true source of a contribution. This kind of circumvention can also be used to sidestep contribution limits and prohibitions. Thus, the Ordinance's new rules on assumed name contributions will fortify existing disclosure and contribution limit rules. This will promote CFRO's goals of promoting transparency and reducing the impact of money on electoral politics.

The initial Proposition J proposal had suggested a ban on intra-candidate fund transfers. Essentially, this would prohibit a candidate from moving funds between various committees that he or she controls. As explained in Staff's June 21 memo, such a ban would create an unconstitutional expenditure limit.[11] Thus, the Ordinance does not include this proposed ban.

C. Requiring Contribution Limit Attestations

The Ordinance would require committees to collect certain signed attestations from any contributor who contributes $100 or more to the committee.[12] The attestations must state that 1) the contribution does not exceed applicable contribution limits; 2) the contribution has not been earmarked to circumvent contribution limits; 3) the contributor is not prohibited from giving because he is a City contractor or prospective City contractor; 4) the contributor is not prohibited from giving because he has a financial interest in a land use decision; and, 5) the contributor is not a lobbyist.[13] The Commission will provide a version of a contributor card that complies with these requirements on its website, though committees may receive these attestations in a different form. By requiring committees and contributors to be explicit about their compliance with campaign finance laws, the Ordinance will promote greater awareness of the basic limits on contributions. Also, when a committee collects a signed contributor card, this will give rise to a rebuttable presumption that the committee did not accept a contribution that violates the rules referenced in the attestations.[14] This feature serves to shift the burden of verifying that a contributor is not prohibited from giving away from committees and onto the contributors themselves. This more appropriately locates the burden with the party that is most knowledgeable about the contributor's status as a contractor, lobbyist, or party to a land use matter.

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[10] *Id.* at § 114.5(c).
[11] June 21, 2017 Memorandum at 11—12.
[12] Draft Ordinance § 1.114.5(a).
[13] *Id.* at § 1.104.
[14] *Id.* at 1.114.5(a)(2).

However, the presumption created by use of a contributor card is rebuttable, so a committee cannot avoid liability for violations of CFRO by simply seeking signed contributor cards.

D. Increasing Campaign Finance Disclosures

1. Behested Payments to Ballot Measure and IE Committees

The Ordinance would require that any time a contributor makes behested payments to a ballot measure committee or a committee making independent expenditures, the contributor must disclose the identity of the person who made the behest, if such person is a City elective officer.[15] Any committee that receives such behested payments must disclose the name of the City elective officer at the time that the committee files its required campaign statements.[16] This new disclosure requirement would provide information about campaign finance activities that are currently untracked. As discussed in Section III.A, behested payments are a channel for political payments that are not subject to traditional contribution limits. Generating information about how behested payments are used for political purposes by City officials would further the goal of transparency.

2. Information about Business-Entity Contributors

If a committee receives contributions from a single business entity totaling $10,000 or more in a given election cycle, the Ordinance would require the committee to disclose the names of the entity's principal officers and whether the entity had received funds from a City grant or contract in the previous twenty-four months.[17] These disclosures would provide information that indicates what individuals are involved in the making of large contributions, which can be obscured when contributions are made through a business entity. They would also reveal whether the business entity had received funds from the City, which is relevant to both the eradication of pay-to-play practices and the detection of misuse of grant funds.

3. Bundling of Contributions

The Ordinance creates a new form of campaign disclosure that would track individuals who "bundle" contributions for a candidate. Bundling is defined as "delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting." If a committee receives bundled contributions of $5,000 or more from a single individual, the committee must disclose the identity of the person and certain information about the person and the contributions that he bundled. The information that this disclosure requirement would generate would allow the public to see who funneled large sums of money to a particular candidate's campaign. This information would then allow the public to evaluate whether any connections may exist between the fundraising activities of certain individuals and any

[15] *Id.* at § 1.114.5(b)(1).
[16] *Id.* at §1.114(b)(2).
[17] *Id.* at 1.124(a).

benefits or appointments that were awarded to them in the future by the candidate. This would advance the goals of promoting transparency in campaign finance and supporting an informed public.

E. Recommending Debarment for CFRO Violators

The Ordinance would create a provision whereby the Commission could recommend that a person who has violated CFRO be debarred.[18] This would prohibit the person from contracting with the City during the period of debarment. The Commission would likely recommend to the relevant debarment authority that a violator be debarred for knowing and willful violations of CFRO. The availability of such an enforcement mechanism would help reduce the instances of CFRO violators being awarded City contracts soon after violations of CFRO. This, in turn, would help reduce the appearance of corruption and build public confidence in the competitiveness of the City bidding system.

F. Allowing Citizen Plaintiffs to Recover a Portion of Civil Penalties

The Ordinance would expand existing rules on citizen suits to allow citizen plaintiffs to recover twenty-five percent of the penalties assessed against a defendant when the citizen plaintiff had provided notice that directly resulted in the judgment against the defendant.[19] This new enforcement feature will provide an added incentive for citizens to report violations of CFRO to the Commission. The Commission will, however, retain control over which alleged violations of CFRO will be the subject of an enforcement action. Importantly, if the Commission and the City Attorney decline to pursue an administrative action or a civil proceeding, respectively, against a defendant, a citizen plaintiff may pursue a civil action for injunctive relief but cannot pursue monetary penalties. This limit will prevent instances of frivolous suits brought for monetary gain and will protect the Eighth Amendment rights of defendants, which requires that the Commission take into account a defendant's inability to pay a penalty.

The proposal based on Proposition J would have allowed citizen plaintiffs to pursue monetary penalties in their own civil actions against defendants. But, any provision of CFRO that allows for citizen plaintiffs to share in monetary penalties must contain a limitation on penalties similar to the boundaries and considerations set and required by CFRO and the Commission.

G. Expanding Rules on Conflicts of Interest

1. Restricting Fundraising Activities by City Officers

The Ordinance would prohibit members of City boards and commissions from engaging in certain fundraising activities that would benefit the elected officer responsible for appointing the board or commission member, a candidate for that office, or a committee controlled by such an officer or candidate.[20] *Prohibited fundraising* activities include soliciting contributions, inviting individuals to a fundraising event or providing the names of potential invitees, providing one's home as a location for a fundraising event, paying twenty percent of the cost of a fundraising event, or "acting as an agent of

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[18] *Id.* at § 1.168(e).
[19] *See Id.* at § 1.168(b)(2).
[20] *See Id.* at § 3.231.

intermediary in connection with the making of a contribution."[21] As discussed in Staff's June 21 memo, this new restriction on fundraising activities is a constitutionally permissible restriction on the activities of government officials and mirrors restrictions set at the federal level via the Hatch and Pendelton Acts and of other local jurisdictions, including the City of Los Angeles.[22] It also reduces the possibility or appearance that appointed officials financially support the elected officials who appoint them, which promotes the goals of CFRO.

2. Defining New Instances that Constitute a Conflict of Interest

The Ordinance designates certain conduct by City elective officers that would constitute a conflict of interest. First, City elective officers would be prohibited from using their positions "to seek or obtain financial gain or anything of value for [their] private or professional benefit."[23] *Anything of value* includes payments, gifts, contributions, favors, services, and promises of future employment.[24] Second, City elective officers would be prohibited from demanding contributions in exchange for the official's vote, use of the official's influence, or taking any other official action.[25] Lastly, City elective officers would be prohibited from accepting anything of value, as that term is explained above, "if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer."[26] These new categories represent activity in which an official's personal interests, rather than the official's duties to the public, guide the official's conduct. As such, this expansion of what constitutes a conflict of interest would further the purposes of the Conflict of Interest Code.

We look forward to answering any questions and to the Commission's discussion on Monday.

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[21] *Id.* at § 3.203.
[22] For a Discussion on the Hatch and Pendleton Acts See: Bloch, Scott J. "*The Judgment of History: Faction, Political Machines, and the Health Act.*" *U. Pa. J. Lab. & Emp. L.* 7 (2004): 225.
[23] Draft Ordinance at § 3.207(a)(1).
[24] *Id.* at § 3.203.
[25] *Id.* at § 3.207(a)(2).
[26] *Id.* at § 3.207(a)(3).

FILE NO. ORDINANCE NO.

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest Provisions]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) establish local behested payment reporting requirements; 5) require additional disclosures for campaign contributions from business entities to San Francisco political committees; 6) require disclosure of bundled campaign contributions; 7) prohibit behested payments made at the request of City elective officers and candidates for City elective offices who must approve certain City contracts; 8) prohibit behested payments made at the request of and campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, and their controlled committees, from any person with pending or recently resolved land use matters; 9) require committees to file a third pre-election statement prior to an election; 10) remove the prohibition against distribution of campaign advertisements containing false endorsements; 11) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) appropriate $230,000 to the Ethics Commission to fund administrative and enforcement costs for this ordinance.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.168, 1.170, adding Sections 1.114.5, 1.123, 1.124, 1.125, 1.127, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"Behested payment" shall mean a payment for a legislative, governmental, or charitable purpose made at the behest of a City elective officer or candidate for City elective office.

"Business entity" shall mean a limited liability company (LLC), corporation, limited partnership, or limited liability partnership.

* * * *

"Developer" shall mean the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department (or other lead agency) under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for a project. For any project sponsor that is an entity, "developer" shall include all of its constituent individuals or entities that have decision-making authority regarding any of the entity's major decisions or actions. By way of example and without limitation, if the project sponsor is a limited liability company, each of its members is considered a developer for purposes of the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its general partners is considered a developer for purposes of the requirements of this Chapter. If the owner or agent that signs and submits the Environmental Evaluation Application will not be responsible for obtaining the entitlements or developing the project, then for purposes of the requirements of this

Chapter 1 the developer shall be instead the individual or entity that is responsible for obtaining the entitlements for the project.

* * * *

"Financial interest" shall mean (a) an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter; (b) holding the position of director or principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors, in an entity with an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter; or (c) being the developer of that project or property.

* * * *

"Land use matter" shall mean (a) any request to a City elective officer for a Planning Code or Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary determination at a public hearing before a board or commission under the San Francisco Building Code, the Planning Code, or the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). "Land use matter" shall not include discretionary review hearings before the Planning Commission.

* * * *

"Made at the behest of" shall mean made under the control or at the direction of; in cooperation, consultation, coordination, or concert with, at the request or suggestion of; or with the express, prior consent of, a candidate for City elective office or City elective officer.

* * * *

"Prohibited source contribution" shall mean a contribution made (a) in violation of Section 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from giving under Section 1.126, (d) from a person prohibited from giving under Section 1.127, or (e) from a lobbyist as defined in Section 2.105.

* * * *

"Solicit" shall mean personally request a contribution from any candidate or committee, either orally or in writing.

* * * *

SEC. 1.114. CONTRIBUTION*S* - LIMITS *AND PROHIBITIONS*.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) ~~*LIMITS*~~ *PROHIBITION* ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection *(b)* shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of *this Chapter 1 and* Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate or committee to circumvent the limits established by subsections (a) and (b).

~~*(c)*~~ *(d)* AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section *1.114* and Section 1.120, the contributions of an entity whose contributions are

directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section *1.114*, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50*%* ~~*percent*~~.

~~*(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*~~

(e) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section *1.114* or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the *permitted* amount ~~*permitted by this*~~

~~Section~~ to the City and County of San Francisco ~~and~~ by deliver*ing* the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

(f) RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited, and in addition ~~it~~ is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section *1.114*, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act, California Government Code Section 81000, et seq.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business; and a signed attestation from the contributor that the contribution does not constitute a prohibited source contribution.

(1) A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(2) If a committee that collects the information required under this subsection (a) and collects a signed attestation, or its electronic equivalent, that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single election cycle, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission.

(c) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution may be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, or in the name of another person or combination of persons.

(2) No person may make a contribution to a candidate or committee in his, her, or its name when using any payment received from another person on the condition that it be given to specific candidate or committee.

(d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section

1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.123. REPORTING OF BEHESTED PAYMENTS. *In addition to the disclosure requirements imposed by the California Political Reform Act, City elective officers required to disclose behested payments of $5,000 or more from a single source shall file their disclosure statements with the Ethics Commission within 30 days of the date on which the payment(s) total $5,000 or more.*

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

(a) ***Additional Disclosures.*** *In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director or equivalent positions; and

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

*(a) **Definition.** For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting.

"Campaign administrative activity" shall mean administrative functions performed by paid or volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee's campaign statements, or such campaign consultant's paid employees.

*(b) **Additional Disclosure Requirements.** Any committee controlled by a City elective officer or candidate for City elective office that receives contributions totaling $5,000 or more that have been bundled by a single person shall disclose the following information:*

(1) the name, occupation, employer, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the person who bundled the contributions is a member of a City board or commission, the name of the board or commission on which that person serves, and any City officer who appointed or nominated that person to the board or commission; and

(4) whether, during the 12 months prior to the date of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more, the person who bundled the contributions attempted to influence the City elective officer who controls the committee in any legislative or administrative action and, if so, the legislative or administrative action that the contributor sought to influence and the outcome sought.

*(c) **Filing Requirements.** Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission. Committees shall be required to provide this information following the receipt of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more.*

*(d) **Website Posting.** The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.126. CONTRIBUTION LIMITS – CONTRACTORS DOING BUSINESS WITH THE CITY.

(a) **Definitions**. For purposes of this Section *1.126*, the following words and phrases shall mean:

"Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

"Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

(1) the rendition of personal services,

(2) the furnishing of any material, supplies or equipment,

(3) the sale or lease of any land or building,

(4) a grant, loan, or loan guarantee; or

(5) a development agreement.

"Contract" shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

"Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors or principal officer, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in a bid or contract.

~~*(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.*~~

~~*(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:*~~

~~*(A) the rendition of personal services,*~~

~~*(B) the furnishing of any material, supplies or equipment,*~~

~~*(C) the sale or lease of any land or building, or*~~

~~*(D) a grant, loan or loan guarantee.*~~

~~(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.~~

(b) **Prohibition on *Behested Payments and* Contributions.** *No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall do any of the following if the contract has a total anticipated or actual value of $100,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of $100,000.00 or more in a fiscal year of the City and County:*

(1) Make any contribution to:

(A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;

(B) A candidate for the office held by such individual; or

(C) A committee controlled by such individual or candidate.

(2) Make any behested payment at the behest of:

(A) *An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;*

(B) A candidate for the office held by such individual.

*(c) **Term of Prohibition on Contribution**. The prohibitions set forth in Subsection (b) shall be effective from the commencement of negotiations for such contract until:*

(A) The termination of negotiations for such contract; or

(B) Twelve (12) months from the date the contract is approved.

(d) **Prohibition on *~~Receipt of Contribution~~ Soliciting or Accepting Behested Payments or Contributions***. No individual holding City elective office or committee controlled by such an

individual shall solicit or accept any *behested payment or* contribution prohibited by subsection (b) at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or ~~six~~ *12* months have elapsed from the date the contract is approved. For the purpose of this subsection *(d)*, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.

(e) **Forfeiture of ~~Dontribution~~ *Contribution*.** In addition to any other penalty, each committee that receives a contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for *the waiver or reduction* of the forfeiture.

(f) **Notification.**

(1) **Prospective Parties to Contracts.** *The agency responsible for the initial review of any contract proposal shall inform* ~~Any~~ *any* prospective party to a contract with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District ~~shall inform each person described in Subsection (a)(1)~~ of the prohibition in ~~S~~subsection (b) *and of the duty to notify the Ethics Commission, as described in subsection (f)(2),* by the commencement of negotiations for such contract.

*(2) **Notification of Ethics Commission.** Every prospective party to a contract with the City must notify the Ethics Commission, within 30 days of the submission of a proposal, on a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the contract, and any subcontractor listed as part of the proposal.*

~~(2)~~ *(3)* **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits, or a board of a state agency on which an appointee

of the officer sits, notify the Ethics Commission, on a form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection *(f)(3)* if the Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on which an appointee of the officer serves has filed the form on behalf of the board.

SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS BEFORE A DECISION-MAKING BODY.

(a) ***Definitions.*** *For purposes of this Section 1.127, the following phrases shall mean:*

"Affiliated entities" means business entities directed and controlled by a majority of the same persons, or majority-owned by the same person.

"Behested payment" is a payment for a legislative, governmental, or charitable purpose made at the behest of (1) a Member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) City Attorney, or (6) a candidate for City Attorney.

"Prohibited contribution" is a contribution to (1) a Member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

(b) ***Prohibition on Behested Payments and Contributions.*** *No person, or the person's affiliated entities, with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Office of Community Investment and Infrastructure Oversight Board, Treasure Island Development Authority Board of Directors, Historic Preservation Commission, Planning Commission,*

or Port Commission shall make any behested payment or prohibited contribution at any time from a request or application regarding a land use matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling. If the person is a business entity, such restriction shall also include any member of such person's board of directors, its chairperson, chief executive officer, chief financial officer, and chief operating officer.

*(c) **Prohibition on Soliciting or Accepting Behested Payments or Contributions.** It shall be unlawful for a Member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, to solicit or accept any behested payment or prohibited contribution.*

*(d) **Exceptions.** The prohibitions set forth in subsections (b) and (c) shall not apply if:*

(1) the land use matter concerns only the person's primary residence; or

(2) the person with a financial interest in the land use matter is an organization with tax exempt status under 26 United States Code Section 501(c)(3), and the land use matter solely concerns the provision of health care services, social welfare services, permanently affordable housing, or other community services funded, in whole or in substantial part, by the City to serve low-income San Francisco residents.

*(e) **Forfeiture of Prohibited Contributions.** In addition to any other penalty, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided, that the Commission may provide for the waiver or reduction of the forfeiture.*

*(f) **Notification.***

*(1) **Prospective Parties to Land Use Matters.** The agency responsible for the initial review of any land use matter shall inform any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Office of Community Investment and Infrastructure Oversight Board, Treasure Island Development Authority Board of Directors, Historic Preservation Commission, Planning Commission, or Port Commission, of the prohibition in subsection (b) and of the duty to notify the Ethics Commission, described in subsection (f)(2), upon the submission of a request or application regarding a land use matter.*

*(2) **Persons with a Financial Interest in a Land Use Matter.** Any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Office of Community Investment and Infrastructure Oversight Board, Treasure Island Development Authority Board of Directors, Historic Preservation Commission, Planning Commission, or Port Commission, within 30 days of submitting a request or application, shall file with the Ethics Commission a report including the following information:*

(A) the board, commission, or department considering the land use matter;

(B) the location of the property that is the subject of the land use matter;

(C) if applicable, the file number for the land use matter; and

(D) if applicable, the names of the individuals who serve as the person's chief executive officer, chief financial officer, chief operating officer, or equivalent positions or as a member of the person's board of directors.

SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

(a) **Supplemental Preelection Statements.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this

Chapter *1*, a San Francisco general purpose committee that makes contributions or expenditures totaling $500 or more during the period covered by the preelection statement, other than expenditures for the establishment and administration of that committee, shall file a preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot.

(b) **Time for Filing Supplemental Preelection Statements.**

(1) Even-Numbered Years. In even-numbered years, preelection statements required by this Section *1.135* shall be filed pursuant to the preelection statement filing schedule established by the Fair Political Practices Commission for county general purpose recipient committees. *In addition to these deadlines, preelection statements shall also be filed, for the period ending six days before the election, no later than four days before the election.*

(2) Odd-Numbered Years. In odd-numbered years, the filing schedule *for preelection statements* is as follows:

~~(1)~~ *(A)* For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election;

~~(2)~~ *(B)* For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election~~.~~*; and*

(C) For the period ending six days before the election, the statement shall be filed no later than four days before the election.

(c) The Ethics Commission may require that these statements be filed electronically.

~~***SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.***~~

~~*(a) **Prohibition.** No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with*~~

~~*knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated or implied in the campaign communication.*~~

~~*(b) **Definitions.** Whenever in this Section the following words or phrases are used, they shall mean:*~~

~~*(1) "Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement that refers to one or more clearly identified candidates or ballot measures. The term "campaign advertisement" does not include:*~~

~~*(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;*~~

~~*(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or*~~

~~*(C) material distributed to all members, employees and shareholders of an organization, other than a political party;*~~

~~*(2) "Internet Advertisement" includes paid internet advertisements such as "banner" and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.*~~

~~*(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement.*~~

~~(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not apply to violations of this Section. Notwithstanding the 60-day waiting period in Section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.~~

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter *1* has occurred may file a complaint with the Ethics Commission, City Attorney, or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any voter, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter *1*.

(1) No voter may commence an action under this ~~S~~*s*ubsection *(b)* without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The voter shall deliver the notice to the City Attorney at least 60 days in advance of filing an action. No voter may commence an action under this ~~S~~*s*ubsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another voter has filed a civil action against the defendant under this ~~S~~*s*ubsection.

(2) If the City Attorney or District Attorney obtains a civil or criminal judgment against the defendant, or if the Ethics Commission determines that the defendant violated the provisions of this Chapter, as a direct result of the voter's notice under this subsection (b), then the voter shall be entitled to recover 25% of any administrative or civil penalties assessed against the defendant. The voter is entitled to recover his or her share of penalties from the government within 90 days of the resolution of the civil, criminal, or administrative proceeding.

(3) A Court may award reasonable attorney's fees and costs to any voter who obtains injunctive relief under this ~~S~~subsection *(b)*. If the Court finds that an action brought by a voter under this ~~S~~subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

* * * *

(e) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under Administrative Code Chapter 28 initiate debarment proceedings against any person for a violation of Chapter1 in conformance with the procedures set forth in Administrative Code Chapter 28.

SEC. 1.170. PENALTIES.

(a) CRIMINAL. Any person who knowingly or willfully violates any provision of this Chapter *1* shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Section*s* 1.114*, 1.126, or 1.127* of this Chapter shall be punishable by a fine of not less than $5,000 for each violation

or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Sections 1.114, *1.126, and 1.127* of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater.

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter *1* shall be liable in a civil action brought by the civil prosecutor for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Sections 1.114, *1.126, and 1.127* or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater.

(c) ADMINISTRATIVE. Any person who ~~*intentionally or negligently*~~ violates any of the provisions of this Chapter *1* shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter *2* the following words or phrases are used, they shall mean:

"Anything of value" shall include any private advantage or disadvantage, financial or otherwise; and any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment; but does not include compensation and expenses paid by the City, contributions as defined herein, gifts of travel subject to California Government Code Section 89506(a), or gifts that qualify for gift exceptions established by State or local law.

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent.

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.

"Immediate family" shall mean spouse, registered domestic partner, and dependent children.

~~(a)~~ "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file *a* statement~~s~~ of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

~~*(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.*~~

"Prohibited fundraising" shall mean requesting that another person make a contribution; inviting a person to a fundraising event; supplying names to be used for invitations to a fundraiser; permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; providing the use of one's home or business for a fundraiser; paying for at least 20% of the costs of a fundraiser; hiring another person to conduct a fundraiser; delivering or otherwise forwarding a contribution, other than one's own, by whatever means either by mail or in person to a City elective officer, a candidate for City elective office, or a candidate-controlled committee; or acting as an agent or intermediary in connection with the making of a contribution.

"Solicit" shall mean personally requesting a contribution from any candidate or committee, either orally or in writing.

"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Prohibitions.** In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain financial gain or anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or candidate for City elective office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(4) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

*(b) **Exception: public generally.** The prohibitions set forth in subsection (a)(1) shall not apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public and the effect is not unique. For purposes of this subsection (b):*

(1) A significant segment of the public is at least 25% of:

(A) all businesses or non-profit entities within the official's jurisdiction;

(B) all real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) all individuals within the official's jurisdiction.

(2) A unique effect on a public official's financial interest includes a disproportionate effect on:

(A) the development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;

(B) an official's business entity or real property resulting from the proximity of a project that is the subject of a decision;

(C) an official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;

(D) an official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;

(E) a person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or

(F) an official's personal finances or those of his or her immediate family.

SEC. 3.209. RECUSALS.

*(a) **Recusal Procedures.** Any member of a City board or commission, including a Member of the Board of Supervisors, who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing or acting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

*(b) **Repeated Recusals.** If a member of a City board or commission, including a Member of the Board of Supervisors, recuses himself or herself, as required by the California Political Reform Act, California Government Code Section 1090, California Government Code Section 84308, or Section 3.207 of this Code, in any 12-month period from discussing or acting on:*

(1) three or more separate matters; or

(2) 1% or more of the matters pending before the officer's board or commission,

the Commission shall determine whether the officer has a significant and continuing conflict of interest. The Commission shall publish its written determination, including any discussion of the officer's factual circumstances and applicable law, on its website. Thereafter, if the Commission determines that the officer has a significant and continuing conflict of interest, the officer shall provide the Commission with written notification of subsequent recusals resulting from the same conflicts of interest identified in the written determination. With respect to such officers, the Commission may recommend to the official's appointing authority that the official divest or otherwise remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting interest, the

Commission may recommend to the official's appointing authority that the official be removed from office under Charter Section 15.105 or by other means.

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a political campaign.*

*(b) **Fundraising for Appointing Authorities.** No member of a board or commission may engage in prohibited fundraising on behalf of (1) the officer's appointing authority, if the appointing authority is a City elective officer; (2) any candidate for the office held by the officer's appointing authority; or (3) any committee controlled by the officer's appointing authority.*

Section 3. Effective and Operative Dates. This ordinance shall become effective 30 days after enactment. This ordinance shall become operative on [TBD]. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. Appropriation. There is hereby appropriated $230,000 from the General Reserve to fund administrative and enforcement costs required to implement this ordinance, which shall be appropriated to the Ethics Commission and made available on the date the ordinance becomes effective. Any portion of this appropriation that remains unspent at the end of Fiscal Year [TBD] shall be carried forward and spent in subsequent years for the same purpose. Additionally, it shall be City policy in all fiscal years following depletion of this original appropriation that the Board of Supervisors annually appropriate $10,000 for this purpose, to be adjusted annually to reflect changes in the California Consumer Price Index and rounded off to the nearest $100.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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Category	Title	Date	Summary
Corruption Generally	**San Francisco District Attorney's Office and Federal Bureau of Investigation Form Task Force to Combat Corruption In San Francisco**	Feb. 16, 2016	The criminal task force is called the San Francisco Public Corruption Task Force and it will be designed to combat public corruption in the City and County of San Francisco.
Land Use - Contractors	**Figures Scrutinized by FBI Loom Large in Hunters Point Shipyard Project**	July 2016	federal court filings and over 3,000 pages of documents obtained from San Francisco's Office of Community Investment and Infrastructure has revealed new details about business relationships between real estate developer Lennar Urban and several individuals who have been investigated by the FBI.
Land Use - Contractors	**Feds: Well-known Oakland contractors conspired to cheat government**	April 2017	The founders of a well-known Oakland construction company, the son of an Oakland councilman, a former state Veterans Affairs official and other Bay Area contractors have been indicted by the federal government in construction bid-rigging schemes.
Land Use	**Building Booms and Bribes: The Corruption Risks of Urban Development**	July 2016	Changes in the price and value of land in a given area can also create the opportunity for windfall, and associated corruption risks.
Land Use	**When political contributions erode trust in L.A.'s land-use system**	Jan. 2017	Real estate developers seeking exceptions from city land-use laws to build multimillion-dollar projects have poured money into campaign accounts and other funds controlled by Los Angeles Mayor Eric Garcetti and City Councilmembers.
Land Use	**Ex-Palm Springs mayor and 2 developers charged with corruption involving $375,000 in bribes**	Feb. 2017	Pougnet, 53, and developers Richard Meaney, 51, and John Wessman, 78, were charged with a combined 30 felony counts of corruption, including paying and accepting bribes, conflict of interest, perjury and conspiracy to commit bribery. Pougnet served as mayor for eight years before stepping down in 2015
Land Use	**A $72-million apartment project. Top politicians. Unlikely donors.**	Oct. 2016	Blanco is among more than 100 campaign contributors with a direct or indirect connection to Samuel Leung, a Torrance-based developer who was lobbying public officials to approve a 352-unit apartment complex, a Times investigation has found.

Category	Title	Date	Summary
Behested Payments	**California officials arranged $28 million in payments to favored nonprofits**	July 29, 2015	California lawmakers and other state officials arranged for donors, many with business at the Capitol, to contribute $28 million to nonprofit organizations, local museums and other favored causes during the first half of the year, according to the most recent filings with the Fair Political Practices Commission.
Behested Payments	**Gov. Jerry Brown's charities rake in cash through 'behested payments'**	August 12, 2016	In this year's first three months, donors directed by the governor gave more than $2.73 million in tax-deductible contributions to two charter schools Brown helped launch as Oakland's mayor.
Behested Payments	**'Behested Payments' Add Another Layer of Money in Politics**	July 25, 2016	"Public officials raise money for charity because they're public officials and people want to be on their good side," said Bob Stern, who co-authored the state's campaign finance law, but did not play a role in writing the later section on behested payments.
Behested Payments	**'Behested Payments' Let Private Groups Curry Favor with Politicians — New Law Will Limit Disclosure**	Oct. 16, 2015	In all, politicians have directed more than $120 million to private groups since state ethics regulators started requiring disclosure in 1997 — $28 million this year alone.
Behested Payments	**Maienschein Is King of Third-Party Payments**	June 26, 2015	Over the past 18 months, state politicians have reported $33.7 million in behested payouts, according to a Voice of San Diego review.

Press Log/SF Corruption Probes/1997-2000; page one of five

TO: SFCC BOARD
FROM: Charles Marsteller (415/292.3441)
RE: S.F.Corruption Probe

Marsteller heard Joe Remcho state that he told Mayor Brown 'he was in the race of his life'; so Brown brought Sacto-style politics to SF in 1999

FBI Raids/Grand Jury

08.01.99	SFE	FBI Seals Off S.F.Agency	HRC Raid
08.02.99	SFE	FBI Probes HRC Staff, Papers	HRC Raid
08.03.99	SFC	FBI Intensifies Probe of Two SF Agencies	HRC/HA Raids
08.03.99	SFE	FBI's SF Bribe Probe	HRC/HA Raids
08.03.99	SFC	FBI Intensifies Probe of Two SF Agencies	HRC/HA Raids
08.03.99	SFI	FBI Seizes Housing Agency Records	HRC/HA Raids
08.04.99	SFC	Subpoenas Issued for Records at Redev.Agency	Redevelopment/HA
08.06.99	SFE	FBI Seizes More City Records	HRC/SFUSD/DPW/Airport
08.08.99	SFE	Contracts for SFO a Focus of FBI Probe	Airport Raids
08.11.99	SFE	FBI Probe Turns to Bayfront Property Proposals	Lennar Raids
08.17.99	SFE	Supervisors Seek Public Hearing on FBI Probe	HA
08.17.99	SFE	Feds Subpoena Housing Authority Workers	HA
08.26.99	SFC	Mayor Brown's Silence About a City Scandal	FBI Raids
09.03.99	SFE	Outrage at Coverage of Rights Panel Probe	HRC Raids
02.02.00	SFE	Probe Hits Mayor's Office	Grand Jury
02.15.00	SFE	Grand Jury Subpoenas of Brown's Meetings	Grand Jury

Walker

08.01.99	SFE	FBI Scruitinizes Mayor's Contractor Pal	Walker
08.04.99	SFC	FBI Probe Zeroing in on Brown Buddy	Walker
08.05.99	SFC	Brown Denies Tie to Probe Figure	Walker
08.05.99	SFC	Charlie Walker Throws Big Bashes for Mayor Each Year	Matier & Ross
08.06.99	SFC	A Dirty Ring Around City Hall	Walker
11.28.99	SFE	FBI Probe Blamed on Racism	Walker
12.01.99	SFE	Mayor Calls Pal's Remarks Racist	Walker

Walker's False 501(c)(3) Non-profit (Third Street Economic Development Corporation)

01.22.98	SR	2000 Attend Bash for Brown	2nd Anniv ($140)
08.04.99	SFE	Brown Pal Falsely Claims Tax Exemption	Walker's 501(c)(3)

Walker's Non-profit City Grant

10.18.99	SFE	Funding Under Fire	Walker City Grant
01.28.00	SFE	City Told to Repay HUD Grant	Walker's 501(c)(3)

Walker/Parks & Recreation

06.21.00	SFC	Party Time (Missing $2K)	Walker Theft?

Norman

08.03.99	SFC	SF Exceeds Minority Goals in SFO Expansion	Scott-Norman
08.03.99	SFE	SFO Beats Its Goals for Minority Contracting	Scott-Norman
08.21.99	AP	Company that Won Minority Contracts Controlled by Whites	Scott-Norman
08.22.99	SFE	FBI Probe Focuses on Minority Builder	Scott-Norman
08.22.99	SFE	Minority-Owned Firm--Not	Scott-Norman
08.22.99	BEE	Report: Minority Firm Run by Whites	Scott-Norman
08.24.99	SFE	Ammiano, HRC Leader Want Probe of Hunters Point Firm	Scott-Norman
03.21.00	SFC	Jail Sought in Minority Contract Probe	Scott-Norman
04.28.00	SFC	Five Indicted in Airport Fraud Probe	Scott-Norman/HRC
04.28.00	SFC	Federal Probers in SF Hope to Catch Ever-Bigger Fish	Matier & Ross

Norman Bayview Land Deal**

03.21.00	SFC	S.F.Reviews Bayview Land Deal	Norman/Stony Hill
04.19.00	SFC	Bayview Project Developer May Get Extension	Norman/Stony Hill
06.28.00	SFC	Bayview Development Proposal Quashed	Norman/Stony Hill

Lennar			
08.11.99	SFE	FBI Probe Turns to Bayfront Property Proposals	Lennar
04.05.00	BV	No Love Lost on Lennar	Lennar
07.12.00	SFC	More Low-Cost Housing Called for at Hunter's Pt.	Lennar
07.18.00	SFI	Shipyard Plan Blasted by Bayview Residents	Lennar
07.21.00	SFC	Shipyard Development Plan Receives First Stage Approval	Matier & Ross
Accu-crete, Inc of LA			
10.24.99	SFE	SFO Work Went to Outsider	Accu-crete
Jefferson			
08.10.99	SFC	Life's Dandy if You're a Pal of Brown	Jefferson (by Garcia)
08.11.99	SFC	SFO People-mover Documents Subpoenaed	Jefferson
Tudor-Saliba			
08.08.99	SFE	(Week's Summary)	Tudor-Saliba
00.00.99	SFC	Bart Checks its Minority SFO Contracts	Tudor-Saliba
12.07.99	SFC	SFO Contractor in Legal Tangle	Tudor-Saliba
Airport			
08.03.99	SFC	SF Exceeds Minority Goals in SFO Expansion	Scott-Norman
08.03.99	SFE	SFO Beats its Goals for Minority Contracting	Scott-Norman
08.06.99	SFE	FBI Seizes More City Records	HRC/SFUSD/DPW/Airport
08.08.99	SFE	Contracts for SFO a Focus of FBI Probe	Airport
08.11.99	SFC	SFO People-mover Documents Subpoenaed	Jefferson
08.12.99	SFE	SFO Chief Testifies About Contracts	Airport
10.24.99	SFE	SFO Work Went to Outsider	Accu-crete
11.28.99	SFE	Builders at SFO Face Audit	Renne Probe
00.00.99	SFC	Bart Checks its Minority SFO Contracts	Tudor-Saliba
12.07.99	SFC	SFO Contractor in Legal Tangle	Tudor-Saliba
01.16.00	SFE	How FBI's SFO Probe Changed Direction	
03.22.00	SFW	SF International Airpork	
04.28.00	SFC	5 Indicted in Airport Fraud Probe	Zula Jones/Scott-Norman
04.28.00	SFC	Federal Probers in SF Hope to Catch Ever-Bigger Fish	Matier & Ross
04.28.00	SFE	City Official, 4 Execs Indicted	Zula Jones/Scott-Norman
05.19.00	SFC	5 Plead Not Guilty to SF Minority Contract Rigging	Zula Jones/Scott-Norman
06.19.00	SFE	Accused City Official Still Playing Key Role at Agency	Zula Jones
07.12.00	SFE	City Commission Won't Oust Contract Official	Zula Jones/Civil Serv.
07.13.00	SFC	SF Worker to Stay on Job Despite Indictment	Zula Jones
09.19.00	SFE	Suspect opposes release of affidavit	Egelko
09.21.00	SFC	City Official Requests Sealing of Documents	no byline
11.04.00	SFC	Affidavit Unsealed in SF Probe	Hoge
11.04.00	SFE	Affidavit accused official of shreading evidence	Finnie
11.21.00	SFC	Black-Owned Firms Say They Were Cheated	Hoge
12.03.00	SFC	Dispute Over Cost of SFO Terminal	Hoge
Human Rights Commission Mismanagement MBE/Zula Jones (later indicted re: Mayor Lee)			
09.03.99	SFE	Outrage at Coverage of Rights Panel Probe	HRC Raids
10.14.99	SFE	Rights Agency Panel Probes its Director	Bamba
10.31.99	SFE	HRC Chief: Review Left to Staff	Bamba
04.28.00	SFC	5 Indicted in Airport Fraud Probe	Zula Jones/Scott-Norman
04.28.00	SFC	Federal Probers in SF Hope to Catch Ever-Bigger Fish	Matier & Ross
04.28.00	SFE	City Official, 4 Execs Indicted	Zula Jones/Scott-Norman
05.19.00	SFC	5 Plead Not Guilty to SF Minority Contract Rigging	Zula Jones/Scott-Norman
09.19.00	SFE	Suspect opposes release of affidavit	Egelko
09.21.00	SFC	City Official Requests Sealing of Documents	no byline
11.04.00	SFC	Affidavit Unsealed in SF Probe	Hoge
11.04.00	SFE	Affidavit accused official of shreading evidence	Finnie

Jonnie Robinson			
06.11.00	SFE	Airport Contract Under Scruitiny	Steered Contract
Kevin Williams (attacked by Zula Jones)			
05.24.00	SFE	FBI Witness Says Demotion was a Reprisal	Kevin Williams
06.14.00	BV	Whistles are Blowing in the City	Kevin Williams
06.14.00	BV	The Tyranny Within	By Kevin Williams
12.22.00	SFC	Testimony Led to Demotion SF Rights Officer's Suit Says	Finnie & Williams
Renne SFO Lawsuit			
12.04.99	SFC	3 Firms Buck at Probe of Airport Contracting	Scott-Norman
03.21.00	SFC	Jail Sought in Minority Contract Probe	Scott-Norman
Krystal Trucking (Phillip & Maryann Rogers)			
09.02.99	SFC	FBI Probes Firms Run by Wife of Major Trucking Contractor	Rogers
09.03.99	AP	FBI Investigating Trucker Who Benefited from Min.Assistance	Rogers
04.02.00	SFE	Report on Trucking Company was Ignored	Rogers
Hensel Phelps			
08.20.99	SFC	Behind FBI Probe of SF Contracts	Hensel Phelps
09.07.99	SFC	Corrupt Contracting Nothing New in SF	Hensel Phelps
Cowan			
09.11.99	SFC	Lawmakers OK Plan for Bay Ferry Agency	Cowan
07.14.00	SFC	Politics Submerges Deal for Bay Area Ferry Service	Cowan
SKS/Bryant Square			
*01.05.00	BG	Zoning for Sale	Porterfield & Thompson
01.05.00	BG	Reject Bryant Square	Editorial
05.04.00	SFC	SF Dot.Com Project Before Panel Today	Bryant Square
06.27.00	SFC	Disputed Mission District Dot Com Project Ok'd	Bryant Square
Emerald Fund/Alemany			
07.17.00	SFC	Alemany Battle Over Too Tall Project	Emerald Fund
07.18.00	SFC	Neighbors Lose Battle on Development	Emerald Fund
07.25.00	SFI	Controversial Alemany Development Clears Hurdle	Emerald Fund
Sutro Tower			
04.30.00	SFE	FBI Probes Approval of Sutro Tower Expansion	FBI
05.05.00	SFE	Interim Zoning Administrator Gets Job	Badiner
05.25.00	SFE	Tough Sutro Hearing Rejected	Permit Appeal
05.31.00	BG	Sutro Sleaze	Lobbyist Contributions
06.14.00	BG	Yee Calls Hearing on Sutro Tower Decision	SF BOS
08.04.00	SFE	City's planners approve Sutro's antennas	Bulwa
Department of Building Inspection			
03.15.00	SFC	SF Building Inspection Office Focus of Probe	Rudy Pada
03.16?.00	SFC	Full Probe of Bribe Charge Is Promised	Pada/O'Donoghue
07.11.00	SFC	FBI Probes SF Bldg Inspectors	
09.26.00	SFC	Building Official Sets Off Firestorm in Slander Suit (Jen)	Wallace & Sward
09.27.00	SFC	Judge Likely to Toss Suit Against Two SF Officials (Jen)	Wallace & Sward
10.13.00	SFC	Judge Bills Jen for SF Legal Fees (Jen)	Sward
11.01.00	SFC	Neighbors Battle SF Agency Over Remodeling Project	Wallace & Sward
11.10.00	SFE	Well-paid insiders slash red tape for builders (Jen)	Walsh

O'Donoghue

07.17.00	SFC	The House that Jack Built	O'Donoghue

Housing Authority

09.14.99	SFC	Informant Charged in S.F.Housing Probe	Baker/Section 8
09.15.99	BG	Living High Off Public Housing	Smith Contract
09.22.99	SFC	24 Charged in Housing Authority Bribe Case	Section 8
09.22.99	SFE	Housing Authority Bribery Arrests	Section 8
11.16.99	SFC	Four Indicted in SF Housing Probe	Section 8
04.04.00	SFC	U.S.Inspectors Assail S.F.Housing Authority	Audit #1
04.04.00	SFE	SF Housing Chief Fires Back After Critical Audit	Audit #1
04.07.00	SFC	New Report Slams SF Housing Chief	Audit #2 (Cleveland)
08.31.00	SFC	Housing Bribery Detailed	Hoge
09.01.00	SFC	SF Bribery Saga-Star Witness Says Boss Ratted Her Out	Hoge
09.14.00	SFE	Housing exec: 'I didn't take bribes"	Finnie & Williams
09.15.00	SFC	SF Housing Official Denies Taking Bribes	Hoge
09.18.00	SFE	Housing bribery cases: pure greed, prosecutor says	Finnie & Williams
09.19.00	SFE	Bribery case winding down	Finnie & Williams
09.28.00	SFC	SF Housing Official Guilty of Bribery	Hoge
09.28.00	SFE	Jury splits verdict in bribery trial	Finnie & Williams
10.01.00	SFE	Housing chief to face prison	Finnie & Williams
12.06.00	SFW	The Great Minnow Hunt	Byrne

Antenore, Former Planning Commissioner

09.19.00	SFC	SF Mayor Fires Commissioner for Views on Growth	Baker
09.19.00	SFE	Planner fired for stand on growth	Finnie
09.20.00	SFE	Real estate pros named to SF planning panel	Finnie
09.20.00	SFE	Willie's guillotine	Editorial
09.21.00	SFE	Newest planner is Robert Lurie kin	Finnie
09.26.00	SFC	Ammiano Calls for Hearing	Baker
09.26.00	SFE	Ammiano challenges planning appointee	Lelchuk
09.29.00	SFE	Commisioner accuses Ammiano of racism	Kim
11.01.00	BG	Ending Backroom Planning	Antenore

Special Assistants/Patronage

09.15.99	BG	Living High Off Public Housing	Smith Contract
09.15.99	BG	Patronage Politics: Favors & Favoritism	Blackwell
09.15.99	BG	Ending Patronage Politics	Editorial
05.09.00	SFE	Mayor Wants Own School Czar	Cortines
06.19.00	SFC	SF Fire Chief Bends Rules to Hire Someone Special	Matier (re: Francois)
06.27.00	SFE	Brown's Cadre of S.A.Mushrooming	Lelchuk
11.16.00	SFC	Brown Foe Says Mayor Has a Patronage Army	Epstein re: Yee
12.19.00	SFI	What, Exactly Does Ray Cortines Do?	Gershon
03.30.01	SFE	City Jobs: Shame on Somebody	Hwang/Merrill
04.04.01	BG	Friends or Foes: Supv.Peskin wants S.A.to be less Special	Blackwell
04.04.01	SFE	Curious Hiring in Special Assistants	Hwang/Merrill
04.05.01	SFE	Peskin Wants Roster of S.A.	Hwang
05.19.99	SFI	Reclassifying Assistants Problematic	Aldrette
07.28.01	SFC	CGJ Critical of 630 Aids in SF	Sullivan

Comer Marshall			
05.12.00	SFE	Brown to Non-profit: Ax Boss or Lose Cash	Comer Marshall
05.16.00	SFE	Mayor: No Threat to Non-profit	Comer Marshall
05.17.00	SFE	Federal Probe of Program for Minority Loans	Comer Marshall
08.01.00	SFE	Fed Probe of Alleged Threat by Mayor	Comer Marshall
08.02.00	SFC	Alleged Threats by Aide to SF Mayor Being Inv.	Gene Coleman
08.18.00	SFC	Min.Business Group Under Federal Probe will be Shut Down	Hoge
IPO (list incomplete)			
04.05.00	SFC	Mayor Brown has Gone to Market	IPO
04.04.00	SFE	SF Mayor Makes a Bundle on Stock Picks	IPO
04.07.00	SFC	SF Mayor had Inside Track for IPOs	IPO
04.11.00	SFE	Mayor's IPO Firm Wins Deal	Morgan Stanley
Meriweather/Pier 30-32			
07.05.00	BG	No Cash, No Contract	Meriweather
07.05.00	BG	Meet Me in the Alley	Meriweather
07.05.00	BG	Clean Up the Sleaze	Editorial
07.26.00	BG	Take 'em to Court	Meriweather
Eller Media Billboards			
12.16.98	BG	Sneak attack: Kaufman railroads unconstit.newsrack law	Lyman
11.01.99	SFC	Brown Getting By With a Lot of Help From His Friends	Matier & Ross

*articles quoting SF Common Cause

SFC	SF Chronicle	BG	SF Bay Guardian	BEE	Sacramento Bee	SFW	SF Weekly
SFE	Hearst Examiner	SFI	SF Independent	SR	SF Sun-Reporter	BV	SF Bayview

note: The SFC Archives avail.to subscribers only; Fang Examiner offline; general search via Google using keywords "Marsteller" "San Francisco" generates most post-2000 news items-many by secondary sources.

note: The term 'Independent Expenditure Committees' or 'Independent Committees' is best avoided acc.to Bob Stern, author of the CA Political Reform Act (1974), written for then Secy of State Jerry Brown (Bob later served for many years as the President of the Center for Governmental Studies/Los Angeles). Stern advocates for the use of the terms 'candidate' and 'non-candidate (ie.controlled) committees to avoid falling into the use of the terms preferred by IEC sponsors as such terms prejudge the nature of the committee.

note: There are three types of Conflicts of Interest: Actual, Potential and Appearance. The public is acutely sensitive to all three. The appearance of conflict is frequently minimized by elected & appointed officials.

**Berri McBride/TX, Theodore Cook/San Mateo; Robt.Upton/San Rafael, Ralph Butterfield & Al Norman/SF

Supplemental Press Log by CM.Marsteller (one of four pages):

Nov.2001 Election		
*10.17.2001	Spending cap off in city atty race	Lelchuk/SFC
Walter Wong, Permit Expediter		
*09.07.2001	Powerhouse pushes projects in SF (w/Willie's backing)	Sward/SFC (also M&R)
Kimiko Burton v.Jeff Adachi/Public Defender		
*03.03.2002	SF.Public Defender: State Senate leader's clout...	Finnie-Wms/SFC
PG&E v.Municipal Utility District (MUD)		
*09.19.2001	Creativity explored (Sutton attempt to quash pd.ballot arguments)	Miller/SFBG
*12.03.2002	PG&E campaign donation disclosed	Mason/AP (nationwide)
*12.04.2002	Ethics Complaint cites PG&E contributions	Hampton/SFE
*10.20.2004	Big fines over PG&E donations in '02 vote	Herel/SFC
*10.27.2004	Repeat offender (Sutton re: PG&E)	Jones/SFBG
PG&E and San Bruno Gas Explosion		
*03.08.2011	For safety's sake	Bowe/SFBG
Joseph 'Joe' Lynn (Campaign Finance Officer/SF Ethics & SF Ethics Commissioner appt'd by DA.Hallinan)		
*01.10.2003	Ethics boss raps worker for revealing PG&E error	Williams/SFC
*09.23.2004	New ED (Exec.Director) at SF's Ethics Commission	Dignan/BT (d.age.49/'06)
Nov.2003 Election for Mayor		
*07.14.2003	They would be mayor: Campaign filing period opens	SFC
City Tow		
*03.11.2003	City Tow furor sparks call to change bid law	SFC
Rank-Choice Voting Implementation		
*02.17.2003	Instant runoff a question for mayor's race	Wildermuth/SFC
*02.07.2004	Instant voting on ballot in Berkeley (IRV/RCV)	Bulwa/SFC
*11.15.2011	Critics aim to end RCV after SF mayoral race	Williams/CR
SF.Police Department Indictments		
*03.03.2003	The Mayor's Reaction: He protects his friends	SFC
*03.05.2011	Critics aim to end RCV after SF mayoral race	Fouhy/AP
Carolyn Carpeneti, Brown's fundraiser/mother of his child		
*07.13.2003	Love & money: Mayor's fund-raiser got millions (15%)	Wms/SFC (nationwide)
*07.16.2002	Tammany Hall at the Golden Gate	Eisele/online
Larry Badiner, former Zoning Administrator & 750 Van Ness		
*01.15.2005	Planning official OK's switch to condos (tosses affordable)	Goodyear/SFC
Eileen Hansen, Ethics Commissioner		
*02.22.2005	Hansen (d.2016) appointment could be a turning point...	Jones/SFBG
PROP G/2008 Granting Exclusive Development Rights/Hunter's Point for Lennar		
*06.03.2008	Lennar spending records sums on PROP G	Jones/SFBG

Supplemental Press Log by CM.Marsteller (two of four pages):

Oakland Supervisor Rebecca Kaplan		
*06.20.2014	Facing criticism, Rebecca Kaplan kills campaign fund	Artz/EBT
SF.Power Broker Bios: Julie Lee, Ron Conway, Aaron Peskin		
02.00.2007	Captain of the skyline (Aaron Peskin, end of 1st term)	Chris.Smith/SF.Mag
12.00.2012	Rose Pak is Winning	Chris.Smith/SF Mag
12.00.2012	It's Aaron Freakin' Peskin	Chris.Roberts/SF Mag
12.00.2012	Ron Conway...Spin.the.wheel.w/Bay.Area's...sugar daddy	Scatena/SF Mag Infographic
Mayor Gavin Newsom		
02.11.2003	Newsom modifies story on loans	Wms/Finnie/Gordon
*10.29.2003	The branding of Gavin Newsom	Brahinsky/SFBG
*01.07.2004	To probe where many probes have gone before (DBI)	Sward/SFC
*04.20.2005	The never ending campaign (Newsom's debt)	Jones/SFBG
*07.18.2007	Return of the Soft Money Orgy	Eskenazi/SFW
*10.13.2009	Newsom takes donations from SF contractors	Knight/SFC
*12.22.2009	Campaign loyalists now in Newsom's inner circle	Knight/SFC
*09.07.2010	Play at work, or more at play?	Bowe/SFBG
Newsom Replacement		
*01.14.2009	Long odds on top sup being mayor	Staff/SFC
Mayor Edwin Lee		
*09.09.2012	Inner circle, outsized power	Cote/SFC
*09.10.2012	Lee's cronies powerful, critics say (updated)	Cote/SFC
*04.04.2013	Mayor Lee's trip to China raises questions of ethics/influence	Jones/SFBG
*04.08.2013	Complaint: Mayor Ed Lee's China trip funding skirted law	Roberts/SFE
*08.17.2016	Mayor's Allies Flood SF Politics w/Corporate Cash	Woodall/Stoll/SFPP
Budget & Overtime		
*01.31.2004	Mixed reaction to mayor's pay cut requirement	Hetter/SFC
*03.03.2008	Overtime overload	McCormick/SFC
Pay-to-Play: Indictments: Keith.Jackson/Nazly.Mohajer/Zula.Jones (see Zula's 2000 indictments): select items:		
01.28.2016	Lee donor won city contract for SF.fire truck ladders	Sabatini/SFE
01.29.2016	Video: Arraignment of pol.operators in corruption case postponed	Lamb/SFE
02.11.2016	Charges should be dropped agnst SF pol.operatives, say lawyers	Lamb/SFE
02.24.2016	Who might be next? SF's long-running pol.corruption	Dolan/LA.Times
10.06.2016	Former SF officials plead not quilty in corruption case	Bay City/SFE
03.03.2017	SF.corruption a game that's too easy to play	Staff/SFC
Dept.of Bldg.Inspection & (IT.Tampering/Permit Expediters/Atty-Lobbyists)		
*01.07.2004	To probe where many probes have gone before (DBI)	Sward/SFC
*08.23.2005	Ethics a perennial issue at SF Agency (DBI)	Wallack/Vega/SFC
*09.06.2006	New rules offered for Bldg.Dept (moonlighting/union.rules)	Selna/SFC
*04.24.2013	Targeting Lobbyists (Expediters/Atty-Lobbyists like Brown)	Cote-Reilly/SFC
Gerardo Sandoval		
*08.24.2005	Sandoval's pay to wife at issue in assessor race	Gordon/SFC
Nov.2005 Election		
*08.26.2005	In search of ballot nuggets	Gordon/SFC

Supplemental Press Log by CM.Marsteller (three of four pages):

PROP.A's: City College Bonds: #1/2001: Sutton; #2/2005: Day/likely Berg & Sutton		
*09.19.2001	Creativity explored (Sutton attempt quash pd.ballot arguments)	Miller/SFBG
*00.00.2006	City College funds diversion (Dr.Day Arrest; at behest of...)	Williams/SFC
	note: Jim.Sutton atty for both Chancellor Day/his prosecutor, DA.Kamala Harris (memo)	
PROP M: Panhandling Prohibition		
*08.23.2003	Anti-begging campaign rolls ahead (going after big bucks)	Gordon/SFC
*10.27.2003	Mayoral rivals get boost from initiatives (Prop.M 60x greater)	Hoge/SFC
Mirkirimi		
*03.22.2012	Mayor officially suspends sheriff	Gordon/Cote
Public Sector Salaries		
*03.30.2008	Cities pay huge salaries despite fiscal crisis	McCormack/SFC
Lobbyists		
*01.27.2009	City Considers Loosening Lobbyist Rules	Eskenazi/SFW
*03.30.2009	Lobbyists dislike plan to force more disclosure	Lagos/SFC
*04.24.2013	Targeting Lobbyists (Expediters/Atty-Lobbyists like Brown)	Cote-Reilly/SFC
*08.01.2016	SF Ballot Measure Takes Aim at Lobbyist Fundraising	Arroyo/SFPP
District Attorney's Furniture Gift		
*04.01.2013	DA's office makeover may have skirted the rules	Bowe/SFBG
*04.03.2013	City Insider: Gascon gets flak over gift	Cote-Reilly/SFC
City Attorney Herrera		
*05.05.2011	City Atty recuses self from probe	Cote/SFC
2010 Elections		
*10.25.2010	Money.pours.in.to.tilt.elections.sp.interest group's.way	Gordon/SFC
2011 Elections		
*11.06.2011	Will feuds stop after election	Knight/SFC
SF.Development		
02.01.2007	San Francisco 2020 (SOM Model of SOMA on cover)	Tannenbaum/SFMag
*07.01.2010	Through Two Mayors, Connected is Land Developers...	Hawkes/SFPP
03.23.2016	The deep roots of SF's housing crisis by Prof.Rich'd.Walker/EBEx	republ.by.Redmond/48.Hills
05.24.2016	*Density done right* The 100% affordable alternative (a coalition)	Supv.Peskin.Opinion/SFE
Hospital Rebuild		
*02.12.2009	Econ.Rx: Hospital Boom Cures SF Job Ills	Matt Smith/SFW
Public Financing		
*11.22.2005	SF: A test tube for public financing of campaigns	Staff
*12.15.2009	Voter Pamplet to Cease Listing Which Candidates Agreed to Limits	Eskenazi/SFW
*11.13.2011	Public financing a major player in mayor's race	Cote/SFC
SF Lawyer Lobbyist Loophole		
*04.24.2013	Targeting Lobbyists (Expediter/Atty-Lobbyists like Brown)	Cote-Reilly/SFC

Supplemental Press Log by CM.Marsteller (four of four pages):

2011 Election		
*11.13.2011	Public financing a major player in mayor's race	Cote/SFC
Ethics Performance		
*11.13.2007	Ethics under attack (small committee treasurers)	Witherall/SFBG
*01.14.2009	City Insider: Experienced prosecutor wanted (at Ethics)	Knight/SFC
*06.08.2012	City Insider: A need for reforms (at Ethics)	Gordon/SFC
Pension Reform		
*02.16.2011	Adachi and Ballard's pension reform gloves come off	Phelan/SFBG
Little House Demolition (1860 Historic Structure)		
*04.01.2009	Out with the old (1860 house)	Bowe/SFBG
*04.06.2009	Does 'bureaucracy' equal 'corruption?'	Redmond/SFBG
PROP K & L Duel/2000		
*11.02.2000	Big Bucks for Prop K to Fight Grassroots...	Zipper/GGX
James 'Jim' Sutton (Political Attorney to many ie.Brown, Harris, etc)		
*00.00.2000	Complaint re: No on PROP O/2000 (failure to timely file)	FCPP fine: $1700 (lied)
*09.19.2001	Hall Monitor: Creativity Explored	Miller/SFBG
*02.04.2004	The political puppeteer	Blackwell/SFBG
*10.27.2004	Repeat offender (Sutton & PG&E)	Jones/SFBG
*00.00.2006	City College funds diversion (Dr.Day Arrest; at behest of...)	Williams/SFC
	Jim.Sutton atty for both Day/his prosecutor, DA.Kamala Harris (see her file)	
CA.PROP 25		
*02.09.2000	The PROP 25 perplex	Woodward/SFBG
CA PROP 34/2000 John Burton		
*09.20.2000	Ballot Bully (John Burton)	Woodward/SFBG
SF.Planning & Urban Redevelopment (SPUR)		
*12.12.2007	Polishing SPUR	Witherall/SFBG
DA.Candidate Fazio/1999		
*10.12.1999	Fazio invite earns top cop's rebuke	Gallegher/SFI

SFC=Chronicle SFE=Examiner SFBG=Guardian SFBT=Bay.Times AP=Assoc.Press SFW=Weekly SFM=SF.Mag
SFPP=Publ.Press CR=CA.Report GGX: GG.Express EBT=E.Bay.Times CW=Cap.Wkly SFI=SF/Indep EBX=EB.Xpres

*quotes.CM.Marsteller (b.1950/Wash.DC, raised.in.good.govt.Montg.Co,MD) grad,School.of.Public/Int'l.Affairs/GWU & West.Coast.Institute/Stanford; Worked 13 yrs for Electeds (Federal, MD state, Montg.Co,MD local & SF Mayor) Client Svcs/Addiction-HIV; Educator teaching Int'l.Medical Doctors/UCSF. Active in Public Financing/elections in MD (1974) & in SF (SF.Prop N/1995; CA.Prop 208/1996, & SF.Prop O/2000, via MD & SF Common Cause (SF.Coordinator 1995-9; SFCC Board Chair/1998-2000). Relocated from MD to SF, CA Aug.4, 1982. cm/2017

COMPARATIVE CHART – PAY-TO-PLAY LAWS

	Prop J Revision	NYC Law	SFEC Version
What individuals are prohibited from giving?	"Person who seeks or receives [a public benefit]": • Board of directors, chairpersons, CEO, CFO, COO, president, VP, ED, deputy director, • any person with a 20% ownership interest in the party, • a subcontractor or sub-beneficiary, or other document proposing or comprising the public benefit, • any committee defined by Article I, Chapter I as sponsored or controlled by the party, • any person with financial interest as well as that financially interested persons Board of directors, chairperson, CEO, etc…, • any lobbyist, • consultant, • attorney, • architect, • permit expediter, • or other professional prescribed by SFEC regulation… (unless licensed professional required)	• CEO or equivalent, • CFO or equivalent, • COO or equivalent, • 10% ownership control, • Senior managers with substantial discretion and oversight in business transactions with the City	Persons with a "Financial interest": • 10% ownership or $1,000,000 interest, • principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors in an entity with a 10% ownership or $1,000,000 interest
What type of "business dealings" or "public benefits" are covered?	• Land use decision, • Underwriting services, • Franchise, • Business, professional, or trade licenses, • Tax, penalty, or fee exception, abatement, reduction, waiver, not applicable to general public, • Tax savings, • Cash or other thing of net value to recipient, including investment or non-contractual grant (excluding city employment)	• Land use actions, • Contracts, • Franchises, • Concessions, • Grants, • Pension fund investments, • Economic development agreements, • Real property agreements	• Land use decisions • Contracts, includes: o Franchises, o Concessions, o Grants, o Pension fund investments, o Development agreements, o Real property agreements
	Prop J Revision	NYC Law	SFEC Version

COMPARATIVE CHART – PAY-TO-PLAY LAWS

What type of political activities are limited or prohibited?	The following are prohibited: • a contribution, • a payment to a slate mailer organization, • a gift, • a payment made to an agency for use of agency officials (18944), • a behested payment, • any other payment to a nonprofit or business entity, • a contract that is not widely available to the public, including employment, • a contractual option, • an offer to purchase stock or other investment, • any other personal pecuniary interest, emolument, or other thing of value that is not widely available to the general public. • **Prohibited fundraising, including:** • Requesting that another person make a contribution, award, or payment, or offer; • Inviting a person to a fundraising event; • Supplying names to be used for invitations to a fundraising event;	• Contributions limits are lowered for affected persons	• Contributions are prohibited o From a contractor (or potential contractor) to an elected official (or a candidate for his seat) that must approve the contract o From a party with a financial interest in a land use decision to (1) a Member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices • Behested payments are prohibited o By a contractor at the behest of an official who must approve the contract o By a party with a financial interest in a land use matter to the officials listed above

COMPARATIVE CHART – PAY-TO-PLAY LAWS

	• Permitting one's name or signature to appear on a solicitation for contributions or payments or an invitation to a fundraising event; • Permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event; • Providing the use of one's home or business for a fundraising event; • Paying for at least 20 percent of the costs of a fundraising event; • Hiring another person to conduct a fundraising event; • Delivering a contribution, or payment, award, or offer, other than one's own, either by mail or in person to an elected City officer, a candidate for elected City office, their controlled committee, or a source directed by the officer or candidate; • Acting as an agent or intermediary in connection with the making of a contribution, payment, award, or offer...; • Serving on the finance committee of a campaign or recipient committee.		

Initial Prop J Proposal		Staff's June Ordinance Proposal		Staff's August Ordinance Proposal		
Topic and Ordinance Section	Description of Proposition Section	Topic and Ordinance Section	Description of Staff's Proposed Section	Topic and Ordinance Section	Description of Staff's Proposed Section	Rationale for Staff's Proposal
Personal and Campaign Advantages Ban for Public Beneficiaries (1.126)	provides that persons who receive a public benefit or person with financial interest in the benefit may not provide a campaign or personal advantage to a public official, including the elected official, board on which they serve, their subordinate or appointees.	Conflict of interest; and limited and narrow contribution ban (3.206, 207, and 1.127)	Prohibiting persons with certain land use matters in the City from giving campaign contributions and behested payments. Expanded conflict of interest provisions.	Conflict of interest; and limited and narrow contribution ban (3.206, 207, 1.126, and 1.127)	Prohibiting persons with certain land use matters in the City from giving campaign contributions and behested payments. Prohibiting persons contracting with the City from giving campaign contributions and behested payments. Expanded conflict of interest provisions.	Amendments balance policy goals with recent case law. Amending the conflict of interest code and strengthening its enforcement reinforce the Proposition's and the City's corruption interest in a legally enforceable way. Staff would still prohibit persons with certain land use decisions in the City from making contributions, based on that group's history of scandal and abuse of campaign finance and ethics laws. (Staff will continue to develop a legislative record to underpin its arguments going forward). Behested payments are targeted because of their use as a channel for political favors.
Fundraising Restrictions (1.122)	This section prohibits public beneficiaries and certain members of city boards, commission and dept. heads from engaging in certain solicitation and fundraising activity.	Political Activity Restrictions for Public Officials (3.231)	Restrict the fundraising activities of public officials, including City Board members, Commission members and certain department heads.	*Same as June.*	*Same as June.*	Amendments balance free speech and association issues with the City's interest in having neutral, effective decision-makers that act in the public's benefit. Staff believes that limiting the fundraising and political activity of public officials is necessary and lawful to avoid persons serving in the interest of the public being subject to undue influence or coercion.

Intra-Candidate Transfer Ban (1.122)	Transfer of contributions from one committee of a candidate to another.	True Source/Laundered Contributions Prohibited Practices (1.114.5)	True Source/Laundered Contributions prohibition that reinforces the laundered contributions prohibition in the Political Reform Act.	True Source/Laundered Contributions Prohibited Practices (1.114.5)	True Source/Laundered Contributions prohibition that reinforces the laundered contributions prohibition in the Political Reform Act. Behested payments to ballot measure committees must be reported. Committees receiving contributions must collect certain attestations from contributors.	The intra-candidate ban remains unconstitutional. However, Staff has advanced a true source/laundered contributions ordinance provision in addition to Section 84301 of the Political Reform Act. This section advances the anti-corruption interests of City law and makes it less likely that contribution limits will be skirted via laundered activities and behested payments.
Debarment ((1.126(g))	Prohibits public beneficiaries from doing business with government for a specified period if they violate section 1.126 or other CFRO provisions.	Debarment (1.168)	The Commission may recommend that a person be debarred from doing business with the City for violations of CFRO.	Debarment (1.168)	The Commission may recommend that a person be debarred from doing business with the City for violations of CFRO.	Staff would only recommend debarment for knowing and willful violations of CFRO.
Citizen Suit (1.168)	Allows citizen plaintiff to bring and recover 50% of any civil penalty	Citizen Suit (1.168)	Citizen plaintiffs are entitled to recover 25% of any civil or administrative penalty awarded from the agency or office.	*Same as June*	*Same as June*	Because of due process concerns, Staff does not support the notion that a citizen should be able to recover penalties through a court from the defendant directly. However, Staff agrees with the Proposition's proposal to give citizens access to civil penalties but would have the penalties collected from the government directly, rather than the defendant. Also, in order to obtain a share of penalties awarded in an action, an agency must bring the action as a direct result of the citizen's notice; citizens are not able to seek penalties if an agency does not pursue enforcement. This will avoid the danger of frivolous suits.

Database Requirement	This section provides that the Commission will adopt a database to track public beneficiaries and other city contracts to enforce the law and make data available for public consumption.	Database and Disclosure Portal	The disclosure requirements contained in Sections 1.126 and 1.127 will provide the information necessary to create a database of persons who contract with the city or have a financial interest in a land use matter.	*Same as June*	*Same as June*	The Controller and Ethics Commission Executive Director are launching a staff project team in early Fiscal Year 2018 to identify specific goals and approaches for tracking and accessing public contracts and other decisions. The Commission will continue to work with its vendors to ensure online access is available to retrieve and analyze information on spending in City elections.

pillsbury

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August 23, 2017

Via Email

Ms. LeeAnn Pelham
Mr. Kyle Kundert
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: **Proposition J and Campaign Finance Draft Ordinance**

Dear Ms. Pelham and Mr. Kundert:

Pursuant to your request for feedback on the August 21, 2017 version of the Proposition J and Campaign Finance Draft Ordinance (the "Ordinance"), I am submitting the following comments. Please incorporate these comments into the record of a public hearing convened by the Commission.

Section 1.114.5(c)(2); Assumed Name Contributions. This provision prohibits a person from making a contribution to a candidate or committee using payments received from others on the condition that it be used as a contribution. If adopted, this provision may unlawfully prohibit contributions to political committees and political parties. Generally persons, individuals and entities, make contributions to PACs and parties with the knowledge and intent that the recipient use those funds to either make contributions to candidates and other committees or to make expenditures supporting or opposing candidates or other committees. To prohibit this activity would result in the infringement of a person's First Amendment associational rights.

Section 1.124; Additional Disclosure Requirements for Contributions Made by Business Entities. Section 1.124 will mandate that all committees required to file campaign reports with the Commission obtain and disclose, in addition to a donor's name, address, contribution date and amount, the following additional information about each donor who contributed $5,000 or more in a single election cycle, if the donor is a limited liability company ("LLC"), corporation, limited partnership, or a limited liability partnership: (a) a listing of the business entity's directors and

principal officers, including, but not limited to, its President, Vice President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, and members of the Board of Directors; and (b) whether the business entity received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of San Francisco. If such funds were received, the name of the agency that provided the funding and the value of the contract or grant must be disclosed. This information must be provided to the Commission at the same time that a committee is required to its file semi-annual or preelection campaign disclosure reports with the Commission.

Section 1.124 imposes an incredible burden on all committees, including general purpose PACs, ballot measure committees, and other primarily formed committees to request and disclose this information. In addition, current campaign reporting forms and software do not accommodate such extraneous information.

Similarly Section 1.124 imposes an incredible and unnecessary burden on potential donors that are LLC's, corporations, and partnerships. Essentially, in order for these businesses to make donations of $5,000 or more to any PAC, ballot measure committee, and other political committees, they would have to provide all of the required information, including detailed information regarding City contracts or grants for the past 24 months, an unreasonable requirement.

Given the extensive information that must be reported, at a minimum, campaign committees should be given 30 calendar days from the date the contribution was received to file the required report.

Laws which impact First Amendment rights must demonstrate an important interest and employ means closely drawn to avoid unnecessary abridgment of associational freedoms. Buckley v. Valeo, 424 U.S. 1, 25 (1976). An ordinance which requires disclosure of detailed City contractual or grant information for the past two years does not appear to be closely drawn. The public has a right to know which entities are making campaign contributions, the recipients of those contributions, and the amount of those contributions, but that right should not extend to unrelated information about such donors. In addition, such information has no relationship to campaign contributions that an entity may wish to make to PACs, ballot measure committees, and other political committees.

Although contribution disclosure requirements are generally viewed as less restrictive than a ban on contributions, such disclosure requirements are still subject to exacting scrutiny requiring a substantial relationship between the disclosure requirement and the sufficiently important governmental interest. Citizens United v. FEC, 558 U.S. 310, 366-367 (2010).

It has been asserted that Section 1.124 is needed to determine the true sources of contributions made to PACs, ballot measure committees, and other political committees. If the important governmental interest is to ensure that the true sources of contributions are disclosed, requiring a business entity to disclose its principal officers, members of its board of directors, and detailed information about its City contracts and grants will not meet the test of a substantial relationship between the disclosure requirement and the governmental interest. Instead, Section 1.124 appears to be an attempt to discourage business entities from participating in City elections.

Section 1.125; Additional Disclosure Requirements for Bundled Contributions. This section requires any committee controlled by a City elective officer that receives bundled contributions by a single person totaling $5,000 or more to file a special report disclosing, among other things, the identity of the bundler, the contributions bundled, and any lobbying matters the bundler attempted to influence the City elective officer over the past 12 months. The officer's committee must report this information at the same time that the committee is required to file its campaign reports with the Commission.

The reporting provision creates at least two problems. First, requiring the committee to report this information at the same time that the committee must file its campaign reports does not give the committee sufficient time to obtain the required information, especially since the information must cover the prior 12 months. This provision would also require disclosure within 24 hours if the bundled contributions are received within 90 days prior to an election. Instead of requiring that the report be provided at the same time campaign statements are due, a more reasonable approach is to give committees at least 14 business days to research and disclose the requested information.

The second problem is that this provision may result in City elected officers and/or staff members becoming involved in political activity on the job, an unlawful activity. It is unlikely that an elected City officer will research his or her records to determine whether or not a bundler attempted to influence the officer regarding specific legislative or administrative action over the prior 12 months. That task would likely be given to staff members to perform; however, California Penal Code, Section 424, prohibits the use of public resources for political activity, including the use of staff time. California Government Code, Section 8314, also prohibits the use of staff time for campaign activities. San Francisco Campaign and Governmental Conduct Code, Section 3.230(c), prohibits City officers and employees from engaging in political activity during working hours or on City premises. Based on the foregoing, researching City records by the City elected officer or the officer's staff in order to complete campaign related reports may result in a violation of all of the foregoing laws.

Section 1.126; Contribution Limits – Contractors Doing Business With the City. Proposed language in this section will prohibit certain City contractors from making behested payments during specified times. Since behested payments include payments to charities made at the behest of an elected City officer, this provision would prohibit those contractors from making, and elected City officers from soliciting, charitable payments needed for a variety of purposes, including payments to the Red Cross for emergencies created by earthquakes, floods, and other natural disasters, or for sporting events, such as the International Olympics, to name a few. Since such charitable payments are made for the public good, this provision should exempt behested payments made to charities. This provision could prohibit our City from competing against other cities for the Olympics and similar events.

The subsection numbering in this section (a – e) needs to be corrected (a – f), including references to the subsections within subsections (d)-(f).

Section 1.127; Contribution Limits – Persons with Land Use Matters Before A Decision-Making Body. Persons with land use matters are being unfairly targeted in Section 1.127. An individual or entity, and affiliated entities of the foregoing, with a financial interest (an ownership interest of at least 10% or $1M in a project or property that is the subject of a land use matter; an individual holding the position of President, Vice President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, and members of the Board of Directors in an entity with at least 10% ownership interest in the project or property; or the developer of the project or property) in a land use matter before certain City agencies, and certain executive officers of that entity (Board of Directors, Chairperson, Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer), are prohibited from making certain behested payments and contributions to the Mayor, a member of the Board of Supervisors, the City Attorney, candidates for the foregoing offices, and controlled committees of any of the foregoing, at any time from a request or application regarding a land use matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling.

Appearance before the following City agencies regarding a land use matter will trigger the prohibition on behested payments and contributions if the requisite financial interest is met: Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Department of Building Inspection, Office of Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Planning Department, Port Commission, and the Port of San Francisco.

As currently drafted, subsection (c) appears to prohibit all behested payments and contributions. This subsection should clarify that the prohibitions only apply during the prohibited period set forth in subsection (b).

For the same reasons set forth above regarding Section 1.126, behested payments to charities should be exempt from the prohibition.

Subsection (f) (1) requires the City agency responsible for the initial review of any land use matter to inform any person with a financial interest in a land use matter of the prohibitions in this section. Since a person with a financial interest is so broadly defined to include not only the entity but its executive officers and all members of an entity's board of directors, this will create a tremendous burden for City agencies.

Subsection (f)(2) requires any person with a financial interest in a land use matter to file a report with the Commission within 30 days of submitting a request or application. Since a person with a financial interest is broadly defined to include the entity, its executive officers, and all members of its board of directors, this provision would impose a tremendous burden on the entity, its officers and board members. Such reports would also be duplicative of the report filed by the entity.

Whether or not any behested payments or contributions are made, persons with a financial interest in land use matters before the specified City agencies must file a detailed report with the Commission within 30 days of submitting a request or application for a land use matter. Given the Developer Disclosures Law already in effect, such required filings simply create additional unfair burdens on developers. If a developer is already required to file reports with the Commission under the Developer Disclosures Law, that developer should be exempt from filing a report under this section.

Section 1.135; Supplemental Pre-Election Statements. This section has been amended to impose an additional preelection statement four days before the election. Since California law already requires 24 hour reporting for contributions and independent expenditures of $1,000 or more which are made during the last 90 days of the election through the day of the election, an additional preelection report is not needed. This will just result in additional work for a campaign committee's treasurer.

Section 1.168(b)(2); Enforcement – Civil Actions. Current law generally permits any voter to bring an action to enjoin violations of, or to compel compliance with, the provisions of the City's campaign law, so long as the voter has first provided notice to the City Attorney of intent to commence an action. If injunctive relief is obtained, a court may award reasonable attorney's fees and costs to the voter.

Subsection (b)(2) would permit the voter to also recover 25% of any penalties assessed against a defendant if the action against the defendant was the direct result of the voter's notice. Subsection (b)(2) would result in unjust enrichments to voters and encourage frivolous lawsuits. The focus should instead remain on actions to cease violations of the law or to compel compliance with the law.

Section 1.170; Penalties. Subsections (a)-(c) appear to mandate that a violation of any provision in the Chapter must result in a criminal, civil or administrative proceeding. There are no provisions which give discretion to the criminal, civil or administrative authorities regarding whether or not to go forth with a proceeding.

Sections 3.203 and 3.207. These sections create new conflict of interest provisions, including new definitions.

As you know, the state's conflict of interest laws and its detailed regulations mandate recusal when financial interests conflict with an official's private interests. Numerous FPPC advice letters have been issued over the years providing much needed clarity in interpreting the conflict of interest laws.

The use of new terms, such as "financial gain" or "anything of substantial value" would impose additional standards which will create unnecessary confusion. These terms are undefined and will likely lead to inadvertent violations. Because state law currently provides comprehensive regulation of conflicts of interest, Sections 3.203 and 3.207 are not needed.

Section 3.209(b); Repeated Recusals. Subsection (b) interjects the Commission into the affairs of other boards and commissions. If a member of the Board of Supervisors, or any other City board of commission, is required to recuse himself or herself in any 12 month period from participating on three or more separate matters, or one percent of the matters pending before the officer's board or commission, the Commission may recommend to the officer's appointing authority that the officer should be removed from office.

This provision is not needed. State law requires recusal when a matter before an officer's board involves that officer's private financial interests. As long as the officer does not participate in the decision affecting his or her financial interests, no law has been violated and no further action is needed.

Thank you for considering my comments.

Very truly yours,

[redacted]

Anita D. Stearns Mayo

To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: San Francisco Human Services Network
Council of Community Housing Organizations
San Francisco Tenants Union
Haight Ashbury Neighborhood Council
IFPTE Local 21
Date: August 23, 2017
Re: Revised Prop J – comments on August 21st draft ordinance

We respectfully submit these comments on the August 21 "Revised Prop J" draft ordinance. These comments represent the concerns of a broad cross-section of San Francisco community-based nonprofit organizations. We continue to support the Commission's tireless work in addressing corruption and the appearance of undue influence in elections and in the city's general decision-making process.

1) Behested payments ban

We have significant concerns about the proposed changes to Section 1.126 of the Campaign and Governmental Conduct Code. We believe converting the present state law requiring disclosure of behested contributions to a total ban is extreme and disproportionate with potentially broad and adverse consequences. It is even more problematic given the broad definition of behests.

The impact of this new law will have a severe and chilling impact on the ability of nonprofit organizations to fundraise for legitimate and worthy causes. Existing state law already requires **disclosure of behested payments in excess of $5000**, and San Francisco elected officials are subject to these requirements. A list of behested payments is readily available to the public. **We collectively support this approach to assure transparency and democratic process**, including the disclosure requirements in Sections 114.5(b) and 1.123 of the draft ordinance.

However, **the proposed ban on 'behested' payments goes much further than state law – or in fact, any jurisdiction, and will negatively impact worthy social and civic causes.** There is a long and important tradition of our elected officials making public appeals for contributions to charities from the Red Cross to the Food Bank to the Opera. As written, the proposed expansion of Section 1.126 severely impairs the value of such appeals by making it illegal for a wide sector of our community to respond and contribute.

For example, this new law would bar tech companies that provide IT support to the library from contributing software to schools if members of the school board appealed for support. Supervisors would not be able to solicit contributions to important organizations that provide health and social services to vulnerable residents of their districts, and the Mayor would be restricted in his call for wealthy companies to support innovative programs for the homeless. Caterers, consultants, and board members of corporations would have to think twice whether they had a contract with the city before attending a charitable event where an elected official was on the program.

We believe that banning these contributions as currently drafted would result in significant and unintended consequences. Section 1.104 defines "made at the behest of" very broadly: *under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or officer.*

This broad language implies that when an elected officer endorses a policy proposal, all city contractors would be barred from contributing anything to that effort. Even when an organization's mission aligns perfectly with the project, the organization – as well as its leadership and board of directors -- would not be able to contribute to a very worthy cause. If the contractor contributes independently of the behest, the organization would be at risk of frivolous citizen complaints and/or investigation by the Ethics Commission, which would be required to make a subjective assessment of the circumstances surrounding the donor's intent.

We trust that none of these scenarios is within the intent of the Ethics Commission and staff when drafting these code changes. Nonprofits are under considerable pressure to raise funds independently to augment City funding, and we should not enact laws that hamper their ability to do so by deterring donations.

In summary, we oppose the proposed ban on behested payments, and ask the Commission instead to strengthen the disclosure requirement of California Government Code Section 82015 by including similar disclosure requirements in the local code.

2) <u>Specific provisions and suggested language</u>

A) Section 1.104: Definitions: Financial Interest

This section defines "financial interest" as anyone with an ownership interest of at least 10% or $1 million in a land use matter; anyone holding the position of director or principal officer, including executive staff *or member of the Board of Directors*; or the project developer.

We are deeply concerned about this legislation's proposed infringement on the civil rights of nonprofit volunteer Board members – who include some of the most civically engaged people in the City. Nonprofit directors have no financial interest in the organization, its contracts and the City's funding decisions, its programs and activities, or its land use matters. Yet despite the lack of corrupting conflicts of interest, this definition includes them in the legislation's prohibitions on contributions and behested payments.

In fact, we have doubts as to whether these provisions, which completely disenfranchise private individuals, would withstand a Constitutional challenge. Board volunteers' lack of financial interest negates the risk of a quid pro quo transaction. Therefore, the legislation is not closely drawn to avoid unnecessary abridgement of First Amendment freedoms. Other safeguards exist, particularly the requirement to disclose behested payments of $5000 or more.

Nor do we believe this is a good policy, as it forces volunteers to sacrifice their civil rights if they wish to donate their services to a nonprofit. Ultimately, it robs nonprofits – on whom the City relies – of their ability to attract Board members who would share their time, expertise, leadership, influence, donations and fundraising assistance.

We therefore urge the Commission to amend the language defining "financial interest" to include only "<u>compensated</u> members of Board of Directors" and to exempt unpaid 501(c)(3) Board members from any contribution and behested payment bans.

B) Section 1.126: Contribution Limits – Contractors Doing Business with the City

For the reasons stated above, we ask that the Commission reject the proposal to expand Campaign Code 1.126 by banning behested payments from contractors, and instead strengthen local disclosure requirements for payments of $5,000 or more.

C) Section 3.209(b): Recusals. Repeated Recusals.

San Franciscans all benefit when nonprofit leaders share their expertise through public service on City boards and Commissions, and such representation is common in health and human service departments. However, their service sometimes requires them to request recusal, particularly when they work for an organization with contracts that come before that Commission. San Francisco does not use a master contract or multi-year contracts for nonprofit providers, so many organizations have multiple contracts covering each program or service.

We are deeply concerned that the proposed Ethics Commission review of repeated recusals would deter nonprofit representatives from serving on Commissions, or subject them to enhanced and unnecessary scrutiny for their appropriate response to potential conflicts of interest related to the very outside employment that made them desirable as Commissioners.

We urge the Commission to exclude these situations as evidence of a "continuing and significant conflict of interest." We suggest language stating that: "This section does not apply to recusals pertaining to City grant or contract approvals for the officer's employer, where that employer is a 501(c)(3) nonprofit organization."

D) Training and legal counseling for City contractors

This legislation, as well as prior laws and ballot measures, impose significant requirements on nonprofit City contractors. This regulatory framework is increasingly extensive, and requires legal expertise to understand and comply. However, it's wasteful and burdensome for the City to expect each of its contractual partners (even small nonprofits) to obtain the type of legal counsel necessary to ensure compliance.

We urge the Ethics Commission to take responsibility for assisting City contractors in understanding their obligations under good government laws by organizing and conducting training activities, producing helpful materials, and providing legal resources and expertise to any contractor seeking technical assistance with these laws.

ALLIANCE FOR JUSTICE

PRESIDENT
NAN ARON

CHAIR
KEN GROSSINGER

August 23, 2017

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Sent via e-mail to leann.pelham@sfgov.org

Re: "Prop. J" and Campaign Finance Revision Project

Dear Ms. Pelham:

I am writing on behalf of Alliance for Justice (AFJ) to share our concerns regarding the Commission's draft "Revised Prop. J" ordinance. AFJ is a national association of more than 120 civil rights, environmental, and other social and economic justice organizations. Through AFJ's Bolder Advocacy program, we provide training, educational resources, and free technical assistance to nonprofits so that they can confidently advocate for community change. Many of the groups with whom we work will be affected if this ordinance were to be enacted in its current form.

We agree with many of the recommendations proposed by the San Francisco Human Services Network and Council of Community Housing Organizations-led coalition in their letter dated August 18, 2017. Given Bolder Advocacy's unique focus, we would like to highlight some specific concerns about the proposed ordinance's potential impact on nonprofit advocacy.

Behested Payment Ban for City Contractors

AFJ supports reasonable campaign contribution limits and disclosure at the state and local levels. We also recognize that Section 1.1.26 of the Campaign Reform Ordinance already prohibits city contractors from making campaign contributions to city officials with power over their contracts. But expanding Section 1.126(b) to also prohibit behested payments by city contractors —the organizations, principal officers, and board members— would negatively impact nonprofits in three ways.

First, the behested payments ban would make it more difficult for bona fide charities, including organizations that provide vital services to San Francisco residents and those that support important governmental functions, to raise money with the help of government officials. By

imposing an outright ban on top of existing disclosure requirements, the proposed ordinance would blur the distinction between a behested payment, a gift, and a campaign contribution as it is commonly understood by charities in California.

Aside from impeding cooperation between charities and government, this false equivalence between behested payments, gifts, and campaign contributions is at odds with state law. When the California Legislature amended the Political Reform Act in 1997 to distinguish behested payments from campaign contributions, it explicitly recognized that "payments made by others to assist in the conduct of such governmental, legislative, or charitable activities, even 'at the behest of' an elected officeholder are neither 'gifts' nor 'contributions' and should *not be subject to limits*."[1]

Second, the proposed ban on behested payments by city contractors risks infringing on the right of unpaid nonprofit board members to participate in the political process. Like all other San Franciscans, nonprofit board members in San Francisco have the constitutional right to political expression in their capacity as private citizens. Yet proposed changes to Section 1.126(b) would even ban unpaid board members of nonprofit organizations that contract with the city from making contributions and other payments at the behest of public officials, even if the board member has no financial interest in the organization's city contract and does not participate in its negotiation.

Once again, this extreme restriction is at odds with analogous provisions of state law. State pay-to-play rules prohibit a party seeking a state contract, license, permit, or other entitlement for use from making a contribution of more than $250 to an officer of the agency awarding the contract, license, or permit.[2] However, these rules apply only to a person who is either a party in the proceeding,[3] a participant in the proceeding,[4] or to an agent of the party/participant.[5] Moreover, the official soliciting or accepting a contribution must know or have reason to know that the party, participant, or agent has a financial interest in the proceeding.[6] The FPPC has advised that under state law, for example, a Planning Commissioner may accept a campaign contribution from a board member of an organization that applied for an entitlement from the Planning Commission, as long as the board member was not a party, participant, or agent in the proceeding, and did not have a financial interest in the proceeding.[7] As currently written,

[1] Senate Rules Committee Senate Floor Analysis of SB 124 (4/30/97) (emphasis added).
[2] Government Code Section 84308.
[3] Section 84308(a)(1) (defined as "any person who files an application for, or is the subject of, a proceeding involve a license, permit, or other entitlement for use").
[4] Section 84308(a)(2). (defined as "any person who is not a party who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision").
[5] FPPC Regulation 18438.3(a) ("agent" is defined as a person who "represents the party [...] in connection with the proceeding").
[6] FPPC Regulation 18438.7(a).
[7] *Petzold* Advice Letter, No. A-03-094.

1.126(b) does not distinguish between unpaid nonprofit board members and financially interested parties who actually participate in city contract negotiations.

Third, the behested payments ban could cause nonprofits with city contracts to violate the ordinance at no fault of their own because of the private political activities of their board members. This danger, in turn, may lead some nonprofits to avoid recruiting engaged members of their communities to serve on their boards.

Repeated Recusals

Finally, we recognize the need for robust conflict of interest laws to prevent corruption and the appearance of impropriety in government decision-making. However, Sections 87100 et seq. of the California Political Reform Act, California Government Code Section 1090, and California Government Code Section 84308 already provide for robust recusal mechanisms in the event that a government official has a conflict of interest—as well as stiff penalties for noncompliance. Section 3.209 of the proposed ordinance would empower the Commission to also suggest the removal of board and commission members who recuse themselves repeatedly in accordance with current law. We fear that the specter of being removed from office simply for complying with ethics laws could deter paid nonprofit staff and executives from lending their valuable expertise and the voices of the communities they serve to governmental boards and commissions. We therefore oppose this provision.

For the foregoing reasons, we respectfully request that the Commission consider changes to the aforementioned sections of the draft Prop. J ordinance.

Sincerely,

Toren Lewis,

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Bolder Advocacy Program
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Campaign Finance Reform Ordinance Revision Project
Written Comments of Brent Ferguson
Counsel, Brennan Center for Justice at NYU School of Law
Submitted to the San Francisco Ethics Commission
August 14, 2017

Introduction

The Brennan Center has reviewed the Ethics Commission's drafts of the Campaign Finance Reform Ordinance revision and accompanying documents intended to strengthen San Francisco's campaign finance and ethics rules. We fully support the effort to protect the integrity of city government and ensure that city residents have access to meaningful information about campaign spending and the activities of their elected officials, and believe the proposals are a strong step in the right direction. To make them even stronger, we propose several amendments to the new provisions governing contributions by government contractors and disclosure, as explained below. We are available to discuss any of the comments and suggestions in more detail, and work with the Commission on subsequent drafts.

Contributions by Government Contractors

We have focused our review on the provisions that would amend the law regulating contributions and donations made by government contractors and prospective contractors. Our comments will focus on the original draft ordinance presented in March (the "March Draft"), the most recent draft (the "August Draft") and the staff memorandum dated June 21, 2017 (the "Staff Memo").

Most importantly, we applaud the Commission's dedication to strengthening laws designed to curb harmful pay-to-play practices in city government. Courts and legislatures across the country have recognized the special threat of corruption that occurs when those who seek government contracts or other payments are allowed to donate to politicians who make decisions about those contracts.

We read the August Draft to make several significant changes to current law. Among other changes, it:

(1) Narrows the current ban on contributions by contractors such that it only applies to recipients who are "individual[s] holding a City elective office" (by the omission of current C&GCC §§ 1.126(b)(1)(B)&(C));[1]
(2) Broadens the current ban on contractor giving such that it also includes "behested payments"[2] to elected officials (§ 1.126(b)(1)); and
(3) Separately prohibits contributions and behested payments by any person with a financial interest in a land use matter being considered by certain city government bodies (§1.127(b)).

These amendments are narrower than those proposed in the March Draft, and likely reflect the concerns about the breadth of the March Draft expressed in the Staff Memo. We agree with Staff that some of the "public benefits" enumerated in the March Draft are outside the scope of the benefits often contemplated by common ethics and campaign finance laws, and may be difficult to define in some circumstances. For example, if a "public benefit" includes "tax savings resulting from a change in the law," it would likely be quite difficult to define the proper class of beneficiaries, inform them, and keep track of the individuals and businesses restricted from contributing.

We also agree generally with the Staff's admonition that legislatures and regulatory bodies should seek and discuss empirical evidence before restricting the ability to contribute, both to improve the efficacy of such restrictions and to ensure their constitutionality. Yet while empirical evidence is desirable, it does not necessarily need to come from within the jurisdiction considering a particular measure. As the U.S. Court of Appeals for the Second Circuit noted when reviewing New York City's contractor contribution limit, "[t]here is no reason to require the legislature to experience the very problem it fears before taking appropriate prophylactic measures."[3] In fact, legislatures can and should consider evidence from other jurisdictions, social science, precedent, and common sense, as well as local experiences, to determine the best method by which to prevent corruption.[4] The Brennan Center recently issued a report that categorizes and summarizes the most relevant research on corruption created by contributions (and other spending),[5] and maintains an up-to-date online database with studies and evidence

[1] We recognize that § 1.126(e) of the August Draft requires individual contractors to attest to awareness "that contractors are prohibited from making contributions to candidates for elective office in the City." Thus, if the omission of candidates and committees from the prohibition in § 1.126(b)(1) is unintentional, our comments on those sections are inapplicable.

[2] A behested payment is "a payment made for a legislative, governmental, or charitable purpose made at the behest of a City elective officer or candidate for City elective office." § 1.126(a).

[3] Ognibene v. Parkes, 671 F.3d 174, 188 (2d Cir. 2011).

[4] *See, e.g., id.* at 189 (considering a report finding that government contractors were more likely to give large donations and more likely to give to incumbents, leading to "an appearance that larger contributions are made to secure ... whatever municipal benefit is at issue"); Wagner v. FEC, 793 F.3d 1, 16-20 (D.C. Cir. 2015) (reviewing state laws and weighing "the enormous increase in the government's reliance on contractors," which "necessarily poses an increased threat of both corruption and coercion," in upholding federal prohibition on contractor contributions).

[5] BRENT FERGUSON & CHISUN LEE, DEVELOPING EMPIRICAL EVIDENCE IN CAMPAIGN FINANCE CASES, BRENNAN CTR. FOR JUSTICE 2016, https://www.brennancenter.org/publication/developing-empirical-evidence-campaign-finance-cases.

from across the country.[6] We encourage the Commission to review the database and report while the staff continues to develop a legislative record.

With those considerations in mind, we support the August Draft's provisions targeting government contracts and those with a financial interest in the city's land use decisions, though it may be permissible to include other classes of public beneficiaries listed in the March Draft. The final decision on which beneficiaries to include should be based on the considerations discussed in the previous paragraph, as well as the practical limitations of defining groups of affected beneficiaries and ensuring that the law can be fairly and thoroughly applied to them.

With these general comments in mind, we suggest the following specific changes and clarifications:

1) *Prevent those who have recently contributed from contracting with the government.*

Both the August Draft and the codified version of § 1.126 prohibit contributions from prospective contractors starting on the date that contract negotiations begin. Yet those who plan to seek government contracts may make contributions in advance of the commencement of contract negotiations. Thus, we recommend amending § 1.126 such that those who have made contributions in the last twelve months may not enter a contract or contract negotiations with the government. Other jurisdictions have adopted this method of regulation. For example, New Jersey uses an eighteen month limitation for contractors,[7] and the Securities and Exchange Commission prevents investment advisors from providing paid services to government entities within two years after making a contribution.[8]

2) *Ensure that the government contractor prohibition in § 1.126 applies to candidates and committees controlled by candidates and officeholders.*

The current version of § 1.126(b) prohibits contributions to "individual[s] holding a City elective office," but does not mention contributions to candidates.[9] Any contribution ban or limit should apply to all candidates equally, whether they are incumbents or challengers[10] — failing to include candidates could raise constitutional issues and lead to claims that incumbents are disadvantaged. And because challengers may win elections, it is important to ensure that they are not allowed to receive contributions from potentially corrupting donors.

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[6] *Money in Politics: Empirical Evidence Database*, BRENNAN CTR. FOR JUSTICE (2017), https://www.brennancenter.org/analysis/money-politics-database.

[7] N.J. STAT. ANN. § 19:44A-20.14 ("The State . . . shall not enter into an agreement or otherwise contract to procure from any business entity services or any material, supplies or equipment, or to acquire, sell, or lease any land or building, where the value of the transaction exceeds $17,500, if that business entity has solicited or made any contribution of money . . . within the eighteen months immediately preceding the commencement of negotiations for the contract or agreement."). The law was upheld in *In re* Earle Asphalt, 950 A.2d 918 (2008), *aff'd*, 966 A.2d 460 (2009).

[8] 17 C.F.R. § 275.206(4)–5(a)(1) (prohibiting provision of "investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser"). A similar rule was upheld in *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995).

[9] *See* note 1, *supra*.

[10] *See* Davis v. FEC, 554 U.S. 724, 738 (2008) ("This Court has never upheld the constitutionality of a law that imposes different contribution limits for candidates competing against each other.").

3) *Clarify the scope of the "behested payments" prohibition in § 1.126 and § 1.127.*

Under § 1.126(a), a behested payment is any payment made for a legislative, governmental, or charitable purpose at the behest of an elected official or candidate. Presumably, the definition intends to include payments made to charities, and possibly independent political groups, at the request or suggestion of a candidate or elected official. However, § 1.126(b)(1) only prohibits behested payments "to" an elected official. Thus, it is not completely clear whether the prohibition includes payments made at the request of that official directly to a charity or another group that is not controlled by that official.

While the language in § 1.127 is clearer because it prohibits all behested payments, rather than those made "to" an elected official, it may still be helpful to clarify that the ban applies to all payments made at the behest of an elected official, even if the official does not control the recipient entity.

Disclosure

We support the Commission's effort to strengthen disclosure rules: the Staff Memo is correct to point out that since *Citizens United*, states and cities have seen election spenders use creative ways to avoid disclosing their true identities, and it is important to ensure that voters know the true source of the funds behind campaigns and advertisements.

Section 1.114.5(b) of the August Draft prohibits "assumed name contributions" and the Staff Memo suggests that the Commission adopt regulations to ensure it can find the "true source of a person's donation." We agree with both the prohibition and the suggestion for the Commission to adopt detailed rules. However, we suggest an alteration to the language of § 1.114.5(b) — the August Draft prevents donors from giving "in a name other than the name by which they are identified for legal purposes," which may be interpreted only to prevent donors from misidentifying themselves. Some donations may come from legitimate, legally-formed groups whose names provide little information about their true sources of money. We recommend requiring donors to name the "original source" of all contributions, and defining "original source" as funds that are raised from sources such as salary or investment income, not from contributions or gifts. Under the "original source" requirement, any person or group making a contribution will need to report the underlying sources of their money if that money came from contributions by others.

We also strongly support the provisions in the August Draft that require elected officials to report certain contacts with (1) those who they have asked to make large donations to outside groups (§ 1.123(b)(7)), and (2) major bundlers (§ 1.125(b)(5)). Broadening disclosure requirements to cover interactions with donors can both help inform voters about elected officials' priorities and deter behavior that would create the appearance of corruption,[11] such as an elected official repeatedly meeting with a donor to a supportive super PAC. The August Draft requires elected officials to report contacts that occur before the contribution is made; we recommend that the provisions be expanded such that elected officials would also need to report

[11] For a lengthier discussion of the utility of disclosure laws that focus on officeholder and candidate activity, *see* Brent Ferguson, *Congressional Disclosure of Time Spent Fundraising*, 23 CORNELL J.L. & PUB. POL'Y 1 (2013).

the same type of contacts if made within twelve months after the contribution. Thus, the rule would cover donors who give money before an election in the hope of favorable treatment afterwards.

Conclusion

Once again, we fully support the Commission's goal of reducing the influence of wealthy donors and providing more thorough information to city residents. We hope that these comments have been helpful and we are prepared to discuss in greater depth these and other changes the Commission may consider.

August 18, 2017

To the Honorable Chair Peter Keane and the Honorable Ethics Commission,

Thank you for the opportunity to comment on the latest version of Revised Prop J. As citizen advocates who are deeply committed to protecting our government from corruption and undue influence, we continue to believe that Revised Prop J will provide our city's leaders and citizens alike with critical tools for combatting corruption and for promoting public confidence in the integrity of our elections and government decisionmaking processes. We write to express our support for the latest version of Revised Prop J, and to again call on the Commission to utilize the considerable bandwidth of the U.S. Supreme Court's campaign finance jurisprudence to re-incorporate provisions of the original Revised Prop J that were absent in the latest draft.

Background

Represent San Francisco is a non-partisan, grassroots group of citizen-advocates devoted to fighting corruption and improper influence in San Francisco government through structural reform solutions. We work to support anti-corruption measures such as Revised Prop J through local advocacy, outreach, communications, and coalition-building efforts.

Revised Prop J and conflicts of interest

Simply put, San Francisco's current campaign finance and conflict of interest laws have failed to adequately address the ongoing appearance and reality of corruption in our city politics. Gaps in the city's conflict of interest laws leave substantial room for pay-to-play politics to seep in and influence the way the city functions. Without real solutions, these loopholes will remain open.

Revised Prop J is a strong step in the right direction, but unfortunately, the Commission's latest version significantly waters down some of the original proposal's most important provisions. For example, instead of prohibiting members of city boards and commissions, along with the heads of city departments, from fundraising on behalf of *any* elected official or candidate for elected office (as Los Angeles does), the Commission's new proposal only bans fundraising on behalf of the person who will ultimately appoint that member. Yet as explained below, the U.S. Supreme Court's current First Amendment jurisprudence does not *require* such narrow tailoring, and one recent Court decision suggests that the Commission has considerable jurisprudential bandwidth when seeking to promote public confidence in the integrity of its institutions.

Revised Prop J and the First Amendment

The First Amendment need not be seen as a barrier to the real-world reform promised by the original draft of Revised Prop J. It has long been a principle of federal and state campaign finance law that a government's interest in preventing corruption or its appearance is not limited to the "giving and taking of bribes" by politicians,[1] as such obvious examples are "only the most blatant and specific attempts of those with money to influence governmental action." Instead, the U.S. Supreme Court has recognized that corruption is "inherent in a system

[1] *Buckley v. Valeo*, 424 U.S. 1, 27 (1976).

permitting unlimited financial contributions"[2] and thus involves a broader dynamic capable of justifying broader regulation. As such, the parameters of the "prohibited fundraising" provision in the latest version of Revised Prop J are clearly supported by the city's interest in combatting corruption or its appearance: When high-ranking officials responsible for representing the public interest are permitted to use their influence to raise money for the very officials responsible for appointing them, the integrity of our government faces a clear threat.

But a recent U.S. Supreme Court decision also demonstrates the jurisprudential bandwidth that exists for a broader policy aimed at reducing non-linear conflicts of interest and undue influence in the name of promoting public confidence in the integrity of government institutions. In its 2015 decision *Williams-Yulee v. The Florida Bar*, the Court upheld a state restriction on the personal solicitation of campaign contributions by judicial candidates.[3] This restriction did not require that the judge or judicial candidate have determinative capacity over a potential donor's case, or that the donor even have an active interest before the judge. Instead, what mattered was that the public's confidence in the integrity of the *institution* was at stake, and that even absent a linear relationship between the potential donor and the judge or judicial candidate, the state had the constitutional capacity to narrow the permissible fundraising relationship between the two parties. While the original version of Revised Prop J went beyond the context of judicial elections to address workarounds to San Francisco's current conflict-of-interest laws, it did so in the pursuit of the same state interest affirmed by the U.S. Supreme Court in *Williams-Yulee*: promoting public confidence in the integrity of government institutions. It cannot be said that this interest is diminished, or is not of equal or greater value, when applied to executive or legislative institutions.

Overall, while the precise scope of this provision has not been litigated, it certainly cannot be said that any U.S. Supreme Court ruling explicitly precludes the Commission from relying upon the city's interests in both combating corruption or its appearance and promoting public confidence in the integrity of its boards, commissions, and departments, to advance such a provision. If anything, *Williams-Yulee* suggests that there is ample room in federal jurisprudence for expansive policies aimed at promoting the public's confidence in government integrity. Thus, the original version of this provision as it appeared in the first draft of Revised Prop J is indeed compatible with the First Amendment, and we urge the Commission to re-incorporate it into its next draft.

Altogether, we applaud the Commission's leadership in this process so far, and are confident that its efforts will set an example that can be followed by others at the state and local levels. If we can further assist in any way, please do not hesitate to contact us.

Sincerely,

Represent San Francisco

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[2] *Id.*

[3] 575 U.S. ___ (2015).

To: San Francisco Ethics Commission and Director LeeAnn Pelham

From: San Francisco Human Services Network
Council of Community Housing Organizations
San Francisco Tenants Union
Senior and Disability Action
API Council
Haight Ashbury Neighborhood Council
IFPTE Local 21

Date: August 17, 2017

Re: Revised Prop J -- comments on July 31st draft ordinance

We respectfully submit these comments on the July 31st "Revised Prop J" draft ordinance. These comments represent the collective views of a broad cross-section of community-based San Francisco housing, health and human service, and public policy nonprofit organizations. As expressed in previous comments submitted June 12th on the initial ordinance, we do support this legislation's goals to reduce corruption and the appearance of undue influence in elections and decision making processes.

The revisions staff has made for this current draft ordinance does address a number of issues in the June version, and we thank the staff and Commission for that significant effort. We appreciate that the latest version adds a $5000 contribution threshold in Sec.1.124 and the revision of Section 1. 127 which clarifies coverage of those with land-use matters before a decision making body. We also appreciate the clarification in Section 1.168 Enforcement for the procedures for collection of civil penalties. However we have outstanding concerns about the proposal's impacts which are outlined below.

Sec. 1.126. Contribution Limits -- Contractors doing business with the City

- The revised ordinance expands Campaign Code 1.126 proposes to also ban behested contributions by City contractors (including principal officers and volunteer Boards of Directors). Current law and the proposal also include any subcontractors. Sec 1.126 is already very restrictive, this expansion to "any behested payment" is effectively a complete prohibition on campaign contributions by volunteer board members. **This Sec 1.126 expansion is seriously problematic** particularly for nonprofits and volunteer boards. Instead of a ban on behested payments, the commission should ensure *disclosure* of behested contributions as state law already requires for donations of $5,000 or more.

- "Made at the behest of" is also very broadly defined in Sec. 1.104, including under the direction of, in cooperation, consultation, cooperation or concert with, *or even merely at the request or suggestion of.* "Request or suggestion" are vague terms and should be clarified or deleted.
- The City typically does not have multi-year contracts with nonprofits, though it does with for-profit businesses. The current Sec 1.126 law bans contributions between the commencement of contract negotiations, and six months after contract approval – which may provide a small window of time for allowable nonprofit contributions each year. The revised ordinance extends the window to twelve months after contract approval, which closes that window completely. The result is effectively a permanent ban on contributions for nonprofits and their volunteer board members to ballot measures. We ask that you retain current language.
- It remains unclear if intent is relevant to the discussion. If an elected official solicits a contribution to a ballot measure, but you intended to donate anyway, is it considered a behest? How would that be determined? Please clarify this language
- The same concern arises with charitable donations. If a contracting organization or affiliated officer or director has a favorite charity that they donate to – and then a public official asks them to donate to that charity, does that mean they can no longer donate because it's now a behested payment? While this legislation is intended to prevent quid pro quo (such as securing a contract in exchange for donating to an elected official's pet cause), it also has the potential to hurt nonprofit fundraising by barring much-needed contributions to our nonprofits, and to services for disadvantaged San Franciscans.
- Bottom Line: Section 1.126 should not be expanded to ban behested payments. Clear disclosure requirements can be established mirroring state law standards as needed to ensure transparency of these contributions. But prohibiting them, as the draft ordinance proposes, will have chilling implications for nonprofit organizations and labor unions and their volunteer boards.

<u>Sec. 1.124. Disclosure by business entities</u>

- We are concerned about the sheer volume of information required to be reported (principal officers and directors, name of funding agency, value of contract or grant). Some nonprofit organizations have very lengthy lists of contracts, so such reporting could be quite onerous and would provide a disincentive to their civic engagement.
- The City Controller maintains a vendor database that already has information on contracts and grants, including funding agencies and amounts. The City also just implemented a new financial system (PeopleSoft) that will place all City contracts and grants into a single database for all departments, making information even easier to access. Therefore, this new Sec 1.124 detailed disclosure reporting seems redundant and unnecessary. We request that instead of the extensive paperwork, simply add a

checkbox asking campaign donors whether they have any City contracts or grants within 24 months. The campaign committees can report that information, and the Ethics website should provide a link to the Controller's vendor database.

Sec. 1.123.(b)(7) Additional disclosure requirements

- The disclosure provision to list all lobbying contacts within 12 months is onerous, and would have a chilling effect on civic participation. Well-heeled ballot measure advocates have no problem raising funds, but nonprofit advocates often need elected officials to help raise funds. The language is also too broad in its sweep by applying to *indirect* solicitations as well as direct solicitations. We request either a bright line clarification of what constitutes an indirect solicitation or a deletion of the word "indirect."

Sec 1.125(c) Additional disclosure requirements

- The ordinance has an exception for paid fundraising staff that collect contributions. But there is no exception for grassroots campaigns that use volunteers in these roles. We request that volunteer fundraising "staff" be exempted, which is how many grassroots campaigns raise money.

Sec. 1170 Penalties:

- We are concerned that, since San Francisco law includes the potential for organizations to have to register as expenditure lobbyists, the potential 4-year revocation of a lobbying license could bar an organization from lobbying. Please add clarifying language that this applies to an individual. This section should also clarify who will have the authority to impose such a ban, through what process and what due process protections are available.

Sec. 1.114.5(b). Assumed name contributions

- This requires contributors to be identified by their legal name. The legislation should clarify that when nonprofits that have a fiscal sponsor make contributions, the donor should be listed as the project making the contribution, not the fiscal sponsor. This will provide the public with the most relevant information. This is consistent with state law.

Sec. 3.207. Conflicts of Interest for City Elective Officers, Boards and Commissions

- We are concerned about whether the ordinance as drafted discourages nonprofit representatives from serving on Commissions and Boards. We suggest this section be clear that it is not a barrier to nonprofit fundraising as part of a person's primary employment beyond compliance with disclosure and conflict of interest requirements.

Sec. 3.209. Recusals

- Again, we want to encourage nonprofit representatives to serve on Commissions and share their expertise with the City. The "repeated recusals" section could result in nonprofit representatives whose organizations have multiple city contracts that require annual approvals (often the case with social services agencies) being flagged for a "continuing and significant conflict of interest." This is a potential chilling effect to serving on commission and boards. The repeated recusal provisions should not apply in this situation.

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-whistle-blower-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/

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.

COMISSIONER 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 fron unclean franchises, may hold up his hands and say, `Preserve me from these banc 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 wh 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 tr and others.
>
> In the more than a century since that time, Pacific Gas and Electric has compiled a rec peddling, corrupt practices and efforts to undermine city policy. They were a significa Newsom's decision to fire Public Utilities Commission Executive Director Susan Leal efforts to create a public power option. They faced the largest fine in city history for fa hundreds of thousands in campaign contributions against a public power ballot measu being sued by the City Attorney for efforts to thwart the city from providing power to and operated buildings in violation of the current policy. They are the focus of a federa 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 subj and 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 bec 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 brib

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.

ttp://www.huffingtonpost.com/2012/05/29/recolog
y-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 t
http://www.nytimes.com/2012/04/01/us/as-mayor-edwin-m-lee-cultivates-business-treat
questioned.html

""There's a distinct difference between pursuing policies that raise the tide for everyboc
politics to reward one particular supporter's investment," said Aaron Peskin, a former B
president who is now head of the local Democratic Party. "This is about rewarding a ma
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-
ocal-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-treat
uestioned.html

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

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

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

The impact of such businesses is equal to the impact of those seeking land
approvals yet these companies would be free to make behest payments, its officers to m
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 o
)pics 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
genda," said Mark Pincus, the billionaire cofounder of Zynga who is partnering with Hoffman to s
Imagine 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
sonate 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
geted 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 billl
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 requir

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 i 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 eplaces FOE's proposal for SFEC to debar 1.126 violators with ability for SFEC to merely recom dmin. Code Chapter 28 for any CFRO violator, which SFEC can already do – the practical effect (bility of the SFEC to recommend Admin. Code Chapter 28 debarment for CFRO violators *only* earing 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. Unde 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.

iiven 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 uthority to work on any refinements of the language.

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

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

Kundert, Kyle (ETH)

From:	Sonja Trauss [redacted]
Sent:	Saturday, August 5, 2017 3:26 PM
To:	Pelham, Leeann (ETH); Blome, Jessica (ETH); Kundert, Kyle (ETH)
Cc:	Jesse Mainardi; Gabriel Metcalf; Christine Johnson; Ryan Patterson; Peter Cohen
Subject:	Comment letter on CFRO Revisions to be heard August 28, 2017

To the people cc'd:

If you only read one part of this letter, skip to **Section 1.127**

To:

LeeAnn Pelham, Executive Director, leeann.pelham@sfgov.org

Jessica Blome, Deputy Director/Director of Enforcement and Legal Affairs, jessica.blome@sfgov.org

Kyle Kundert, Senior Policy Analyst—kyle.kundert@sfgov.org

I am both the ED of a non-profit and now, a candidate for office in San Francisco. I am writing to comment on the upcoming potential revisions to the campaign finance reform ordinance.

Before getting into specifics, I would like the Commission to consider that one of the goals of the Ethics Commission is to reduce the role of "big money" in politics. Unfortunately, because compliance with reporting regulations is labor intensive, and knowing the regulations requires technical sophistication, the status quo actually *requires* "big money" in order to participate in politics.

Irrespective of the merit of the new proposed requirements, the commission should be cognisant that it will be the richest, most sophisticated, knowledgeable, and well connected political players who will be able to comply with them perfectly. Those are the parties who will be able to afford to pay the lawyers, consultants and accountants who are inevitably necessary for compliance.

The people that the Ethics Commission presumably most wants to encourage to add their voices to the political conversation - grass roots activists, non-professionals - are the ones who are caught up and fined by Ethics Commission regulations.

Another characteristic of Ethics Commission regulations, in general, that reduces the credibility of the Commission and of the laws themselves is that (1) the laws are so broad and vague that the people you are regulating are perpetually out of compliance with them, but (2) most of the time the laws are unenforceable.

As a practical matter, these two failures cancel each other out - most people are out of compliance most of the time, but it's impossible to detect most violations. But why build a machine that is broken in two places, and nonetheless limps along? Why not build a machine that isn't broken, and therefore works smoothly, fairly and in concert with clearly articulated goals?

This letter references this document: https://sfethics.org/wp-content/uploads/2017/08/CFRO-Revision-Draft-Ordinance.pdf

Section 1.114.5(a)

Section 1.114.5(a) Is a good example of a regulation that will only be violated by exactly the type of political participant the city most benefits from encouraging: unsophisticated political players. It's not intuitive that a committee would need to have all of that information at the time the check is deposited. A reasonable person would guess that they need the information by the time they file.

What public purpose is served by creating an opportunity for an unsophisticated participant to mess up? What difference would it make to the intent of the law for that information to be collected after the check is deposited, but before the report is filed?

Section 1.123(b)

Section 1.123(b) has the problem that is characteristic of the whole code: mostly unenforceable and also so broad it will be regularly violated:

Consider this interaction:

> Jane Kim enthusiast to Jane Kim: I really want to help you achieve your goals! I want to donate $10,000 to your campaign.
>
> Kim: Thank you so much, I can only accept $500 for my campaign, but John Elberling is running a ballot measure I care about called Prop X.
>
> Enthusiast: Ok great I'll talk to Elberling.
>
> Jane forgets about the conversation, because the job of an elected official involves talking to about 100 people a day. 5 weeks later enthusiast X calls Elberling intending to donate $9,500, but Elberling convinces him to up it to $15,000. 72 hours after that, evidently Jane Kim has run afoul of the Ethics law, without knowing it.

Or worse, Jane talks to her campaign staff and volunteers about how important Prop X is to her, and the above conversation happens between the donor and the staff or volunteer. That subordinate immediately forgets about the conversation.

What is the point of this? The law already requires that Enthusiast X's identity be reported when he or she donates to the ballot measure. What is gained by the public knowing that Jane or her subordinate and this Enthusiast had a conversation about the ballot measure 5 weeks before the donation occurred, or, more accurately, what is gained by (1) exposing elected officials to yet another path to censure and (2) creating a rule whose violations are mostly undetectable?

Section 1.124

Why are donations from corporations prohibited, but donations from LLCs & partnerships permitted?

The code should be predicable. If there is some philosophical principal underlying the prohibition on corporate donations, it should also apply to LLCs & Partnerships.

Section 1.125

Section 1.125 is only going to be violated by unsophisticated committees. It creates a large and ambiguous gray area, and it punishes, again, the very types of candidates the ethics commission seems like they should want to promote - candidates without a lot of money.

When a candidate has a party, a volunteer sits at the door collecting donations. At the end of the party the volunteer hands the stack of checks to the candidate or the candidate's staffer in charge of donations. Is that volunteer bundling? According to the wording of the law currently, yes. According to what seems to be the intent of the law, no.

This section has an exception for *paid* staff. What if a candidate has no paid staff? This section increases the reporting burden on campaigns that are *not* professionalized. Is the point of this commission to "get money out of politics" or is it to ensure that the *only* political participants are moneyed and professionalized?

What if a supporter emails 20 people with a link to the candidate's website saying, "this is a great candidate, please donate." That email results in $5000 worth of donations. According to the wording of the law this isn't bundling, but according to the intent of the law, it seems like it should be.

I understand that this section wants to make visible the supporters who are themselves particularly effective fundraisers. As written, it will allow sophisticated fundraisers to remain undetected. Now that online donation is possible, I'm not sure there is a way to detect bundlers.

Section 1.126

I don't understand Section 1.126, which is itself an important criticism. Candidates for office should be able to understand the code that regulates them without the candidate having to pay a high priced professional to interpret it for them.

If you want to get money out of politics, do not create situations that require political participants to spend money.

The underlying concept of Section 1.126 is easy to understand - city contractors can't make donations - which makes the fact that this section is inscrutable less excusable.

Section 1.127

Section 1.127 doesn't make any sense as written.

The meat of the prohibition is in S 1.127(b)(1):

> No person [with] a land use matter before [a number of boards] shall make any behested payment or prohibited contribution at any time from the filing or submission of the land use matter until twelve (12) months have elapsed from the date that the board or commission renders a final decision or ruling.

Ok, so far so good. Let's look and see what the definition of "filing or submission of the land use matter" is. Section 1.127(b)(2):

> For purposes of this subsection (b), the date of "filing or submission" of a land use matter in the form of an ordinance or resolution is the date on which **the ordinance or resolution is introduced at the Board of Supervisors.** (emphasis added)

The vast majority of land use matters before this Section's list of boards & commissions never involve "an ordinance or resolution introduced at the Board of Supervisors."

For example: under the normal process, a project is first heard by the Planning Commission. Depending on the type of decision made by the Planning Commission, the decision (and project) can be appealed to **either** the Board of Supervisors **or** the Board of Appeals.

At the time the project is actually "before the Planning Commission" this law will consider the project to not yet have been filed or submitted.

In addition, no decision before the Board of Appeals will ever be considered by this law to have been filed or submitted, because no particular decision can be heard by both bodies. It's one or the other.

If you have questions about the entitlement process, please get in contact with Christine Johnson, Planning Commissioner, cc'd here in this email.

Despite the long list of Boards and Commissions in this Section, as a practical matter this section will only apply to projects that come before the Board of Supervisors. Perhaps the intent is, in fact, to create a regulation that applies very narrowly. If so, please rewrite this section to be internally consistent.

As mentioned several times in this comment letter, the Ethics Commission regulations should be accessible, clear, and comprehensible to an average San Francisco resident.

Regarding the exceptions in **Section 127(d)(1):**

> the land use matter only concerns the person's financial interest involves his or her primary residence;

This isn't even really a sentence. Is it supposed to read,

> the land use matter only concerns the person's financial interest **and** involves his or her primary residence;

?

I also don't understand what is intended by adding "only concerns the person's financial interest."

Assuming the edit I guess here is correct, let's look at some scenarios.

> Scenario 1: A retired couple own a small house in Noe Valley. Before they sell it and move to Palm Springs, they decide to spend a couple of years making it much more valuable by doubling its size. A neighbor files a CEQA lawsuit and the matter winds up before the Board of Supervisors.
>
> The couple visits with Board members, makes contributions to charities and ballot measures the Supervisors favor and thereby gain the warm feelings and personal affection of enough Board members that their neighbors' CEQA appeal is defeated.

Under the current version of the law, this would be PERMITTED because the matter concerns the person's current residence and only concerns their financial interest.

Scenario 2: A retired couple own a small house in Noe Valley. They sell the house to a couple who has one infant child, and move to Palm Springs. The new owners are planning to eventually having 2 more children, so they decide to spend a couple of years making the house bigger to accommodate their family, in addition to making it more valuable. A neighbor files a CEQA lawsuit and the matter winds up before the Board of Supervisors..

The couple visits with Board members, makes contributions to charities and ballot measures the Supervisors favor and thereby gain the warm feelings and personal affection of enough Board members that their neighbors' CEQA appeal is defeated.

Under the current version of the law, this would be PROHIBITED, because the matter concerns both the applicants' financial interests, and also serves a practical need.

Scenario 3: A non-profit procures a piece of land and intends to build supportive housing for people coming out of prison.

A retired couple owns a house next door and was planning on selling the house in the next couple of years so they could retire to Palm Springs. Believing the addition of ex-cons to their neighborhood will reduce the sale price of their house - harming their financial interests - the couple files a CEQA suit against the project.

The couple visits with Board members, makes contributions to charities and ballot measures the Supervisors favor and thereby gain the warm feelings and personal affection of enough Board members that their CEQA appeal is granted and the non-profit gives up on trying to build the supportive housing.

Under the current version of the law, this would be PERMITTED, because the matter concerns the applicants' primary residence and only their financial interests.

Are the outcomes in these scenarios consistent with the goal of this section?

My suggestion on how to remedy this arbitrary application is to take out the exceptions in Section 127(d) altogether. If the intent of the Ethics Commission is to prevent the decision making abilities of the Board of Supervisors from being compromised by financial favors, why have any exceptions at all? Why should some types of entities be allowed to corrupt the decision making process, but not others?

For the same reason, the exception in Section 127(d)(2) should also be removed. There's nothing particularly moral or pro-social about non-profits. They can be controlled by boards and staff that don't have the best interest of the pubic in mind. Many gay conversion therapy organizations, for instance, are non-profits, but they are so harmful and anti-social that their activities have been outlawed in many states. There's nothing special about non-profits that should give them a path to legal bribery.

On page 15, line 23 here, why does it say "6" instead of "4"?

Section 1.135(c)

The addition of another reporting requirement in S 1.135(c) again, adds expense and risk in particular to committees that receive smaller donations. If a committee has smaller donations, it is the kind of committee the commission should be encouraging, not burdening with increased reporting requirements.

Section 1.168(b)(2) and 1.168(c)

Again, this section is going to apply mostly to unsophisticated, poorly resourced, unprofessional political participants. The "big money" political players will have access to the money and attorneys necessary to defend against enforcement suits, and, if found liable, to pay the penalties. Ad hoc citizens' groups who unknowingly violate any of the numerous,

byzantine, poorly articulated elements of the CFRO will be bankrupted just by trying to defend themselves from potentially frivolous accusations.

Section (c) in particular, increases the risk involved with participating in politics. Long term, repeat players and professional compliance accountants will have records dating back up to seven years and will be able to defend themselves in the event of a complaint brought many years after the fact. Amateur citizens groups might disband after the first election they participate in. The treasurer could be any individual who may or may not have held onto the folder of receipts and filings involved with their committee.

Section 3.203 and Section 3.231(b)

The definition of the phrase "prohibited fundraising" is way too broad. Returning to a theme from the beginning of this letter, a definition like this delegitimizes the commission by being impossible to enforce and criminalizing the bulk of ordinary political activity.

The two elements of the definition that seem especially problematic are "acting as an agent or intermediary in connection with the making of a contribution," and "inviting a person to a fundraiser."

Politics is inherently social. It is made up of conversations and relationships. These conversations take place over email, social media, telephone, in person. Now that social media exists, individuals are able to publish and broadcast messages generally and don't know the impact of their messages. For instance, does "inviting a person to a fundraiser" include posting a link to a fundraiser on social media?

"Acting as an agent or intermediary in connection with the making of a contribution" would be an extremely broad category under any circumstance, but especially in the age of personal publishing. Voters should, and many do, post on social media their list of endorsements for upcoming elections. If a voter posts a message about a ballot measure or candidate he or she supports, a reader clicks through to the candidate or ballot measure webpage, the reader agrees that the candidate or ballot measure is worth supporting and the reader makes a contribution, the original voter is arguably "acting as an intermediary in connection with the making of a contribution."

Any time a person passes along - whether by conversation, by writing a letter to the editor, posting a window sign, wearing a t-shirt - a favorable impression of a candidate or ballot measure to a person who winds up later making a donation, that person is "acting as an intermediary in connection with the making of a contribution." Political campaigns, especially grass roots campaigns, rely on supporters to spread the good word about candidates & referendums.

Is it really the intent of the Ethics Commission to prohibit or criminalize this kind of behavior?

The only place "prohibited fundraising" is currently used in the new code is with reference to people who are appointed to boards & commissions. If the intent of this proposed change is to keep these appointees out of politics after their appointments, then this definition should go directly into Section 3.231(b).

I'm concerned that even if these prohibitions did narrowly apply to appointed commission members, and never to any other categories of residents, that they might be unconstitutional restrictions on political speech. It's not clear that the Constitution would allow a municipal ethics commission to effectively pass a gag rule on political speech by people who serve on local commissions and boards.

Please email me a copy of the final draft of the proposed changes that will be released on Aug 21st, 2017

Thank you for reading,

Sonja Trauss
[redacted]
San Francisco, CA 94103

To: San Francisco Ethics Commission

From: Friends of Ethics

Subject: Behest Payments Record/Prop J

Date: August 3, 2017

Friends of Ethics has reviewed the posted Ethics Commission filings from April 2015 to the current date. We now provide on behalf of Friends of Ethics and Represent.us San Francisco chapter our analysis of the reported Behest contributions. We conclude with our observations and objections to the staff proposal that behest contributions reforms be limited to only donors who have a land use matter up for decisions.

This is one provision of the proposed Revised Proposition J (pay to play) measure pending at Ethics. We will have recommendations dealing with other provisions.

BEHEST PAYMENT LAW

California requires elected officials to report any donations they seek for charitable or governmental purposes.

Officials disclosures 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. During this lag reporting time, there can be important matters for the donor being decided by city officials without public knowledge of the donor's response to behest payment requests. We recommend that Ethics adopt a local deadline that is more timely.

While the requirement is a state law, the reports are filed locally at the San Francisco Ethics Commission. That agency changed how it posts the reports to make them easier for the public to view beginning in April 2015.

State law provides for penalties up to $5,000 for each violation, including failure to timely file reports.

SAN FRANCISCO BEHEST PAYMENTS, APRIL 2015 TO DATE

In the past 27 months, nearly $20 million ($19,846,707) was contributed by 102 sources.

The lion's share ($13,978,636) came from businesses and interests who retained lobbyists to pursue city approvals while contributing at the request of city officials who in turn provide the approvals.

We believe this is a strong indication that those with current city matters are a significant element in Behest contributions.

The top contributors were Salesforce ($2,440,712), Ron Conway ($1,130,000), Kilroy Realty ($566,000) Parks Alliance (as a pass-through for other donors) ($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.

In most cases, the Behest payments did not go to nonprofits or agencies providing services, including human services and housing, to San Franciscans. A significant amount went to efforts related to Mayor Lee's duties in office or for projects that showcased him.

Lee's reports indicate that $1,095,550 went toward the City Hall Centennial Celebration while $3,0485,750 was donated toward the cost of the 2015 US Conference of Mayors meeting in San Francisco. Salesforce accounted for $2,440,750. The Mayor, as co-host of the Women's Foundation conference, obtained $200,000 in Behest payments for that.

Much of the Behest payments came during the period when Mayor Lee was facing voters for re-election.

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).

BEHEST PAYMENT SOURCE PROHIBITION

Ethics staff seeks to amend the current proposed restriction on Behest payments aimed at any entity seeking city approvals to only those entities involved in land use decision.

It bases this on a record of questionable relationships between city officials and donors of Behest payments who are seeking land use decisions.

Under the staff proposal, it appears that Behest payments could continue to be made following this reform by the following entities on record during period from April 2015 to current date:

- Twitter
- Lyft
- Recology
- Microsoft
- AT&T
- Facebook
- Ron Conway
- San Francisco 49ners
- Pacific Gas and Electric
- Registered lobbyists including Platinum Advisors and Lighthouse Public Affairs
- Sf.citi
- United Airlines
- United Business Bank, Union Bank, Wells Fargo
- San Francisco Association of Realtors
- Health industry entities including Dignity and Kaiser
- Walgreens

In some cases, the Behest contribution is as much as $1 million, and others are in amounts of $100,000 to $200,000. Most are in the range of $10,000 to $50,000.

COMPLIANCE ISSUES

The Ethics Commission posted disclosures appear to indicate that some officials are failing to meet the state law requiring disclosures in 30 or 60 days, depending on whether the disclosure is directly to Ethics or to the official's designated reporting officer.

In the most extensive delinquencies, reports have been filed 18 months after the Behest payments were made. These cases loom largest when the failure to disclose extends over a period when an official was up for election or a period when decisions important to the donor were being made.

Friends of Ethics strongly recommends that the Ethics Commission review the filings for timeliness and refer those that are not in compliance with the law to the state Fair Political Practices Commission.

In addition, Friends of Ethics recommends that disclosures be filed directly with the Ethics Commission to avoid a 60-day delay.

Friends of Ethics also strongly recommends that the original proposal that prohibits Behest donations from those seeking city approvals be the standard and the staff proposal limiting this to those with land use matters be rejected.

We believe that the definition of those seeking city approvals include those donors who are seeking an appointment or reappointment to a city position, who are acting on behalf of others seeking city approvals, and those who may be facing penalties under city law.

We also believe it should extend to Behest payments made to entities that have family members as employees or officers, using the same criteria as currently exists in the city's conflict of interest law for city officials.

It also should include a prohibition on donors who are negotiating or discussing hiring a city official or a person covered in the official's conflict of interest laws.

We believe the public would be well served if Behest payments provided directly to an official or to an agency under an official's authority, such as the 2015 U.S. Conference of Mayors expenses, disclose information on spending. In particular, it would be a public service if the disclosure of Behest payments in these situations name any city employee paid or provided a bonus, or any contract awarded from the funds by the mayor, in amounts above $500, and the purposes of the payment, be listed. We make this recommendation in part on the past history of funds being spent for staff or for contracts awarded noncompetitively.

Oliver Luby, 7/27/17

Comments on staff's J proposal compared to FOE's J proposal

1. None of the proposed additions to CFRO or the Conflict of Interest ordinance (Article III, Chapter 2 of the Campaign & Gov Code) advance bad policy, with the exception of **1.168j** *(see below under #2)* and **1.168b2**. 1.168b2 is new reward system for voters suing for injunctive relief (offered as a replacement for private right of action for penalties):

   a. Is poorly worded –
      i. "or if the Ethics Commission determines that the defendant violated the provisions of this Chapter as a direct result of the voter's notice under this section" creates an ambiguity – the drafter is trying to say "if the SFEC determines a violation as result of the voter's notice," but it can also be read to mean "if the SFEC determines a defendant committed a violation due to the voter's notice," which obviously doesn't make sense.
      ii. The placement of the commas in the first sentence suggests that the voter may collect 25% of the penalties under the following circumstances:
         - Voter sends notice to City Attorney of intent to sue defendant for equitable relief – SFEC becomes aware of violation from that notice and fines defendant;
         - Voter sends notice to the City Attorney of intent to sue defendant for equitable relief – Whether or not initiated because of voter notice, City Attorney sues defendant & gets penalties;
         - Voter sends notice to the City Attorney of intent to sue defendant for equitable relief – Whether or not initiated because of voter notice, DA prosecutes defendant & gets civil penalties – *SCENARIO WILL NEVER OCCUR – CFRO DOES NOT AUTHORIZE CIVIL SUITS BY DA.*

   b. Creates a mechanism for private plaintiffs to argue that they are due 25% of penalties that government would normally have gotten 100% of. Unlike a private lawsuit for penalties with a required notice provision, this mechanism does not incentivize the government doing its job. It incentives filing notices of intent to sue (regardless of whether lawsuit will actually be filed) over complaints filed with SFEC. Creates ongoing litigation risk for the SFEC related to "as a direct result of the voter's notice."

2. The only components of FOE's Revised Prop J that were utilized:

   a. **Debarment** – Replaces FOE's proposal for SFEC to debar 1.126 violators (*see 7b below*) with ability for SFEC to merely recommend debarment per Admin. Code Chapter 28 for any CFRO violator, which SFEC can already do – the practical effect of this is to limit the ability of the SFEC to recommend Admin. Code Chapter 28

debarment for CFRO violators *only* after SFEC has held hearing on merits or respondent agrees to the recommendation in a stipulation.

b. **Restricting political activity by Board members and Commissioners** – Staff claims to mirror LA 49.7.11.C, but FOE's proposal more accurately did so.
   i. FOE proposal: Board & commission members **& Dept. Heads** can't engage in prohibited fundraising for any City elective officer or candidate
   ii. SFEC staff proposal: Expanded to City elective officers who have been appointed (interesting and possibly good);
   Board & commission members can't engage in prohibited fundraising only for appointing authority

c. **Recusal (3.209)** – only requires recusal under state conflicts of interest (existing law!) or for officials "whose independence of judgment is likely to be materially affected within the meaning of Section 3.207(a)(5)" [staff revising to be more bright line]; ignores the much stronger Richmond Municipal Code Section 2.39.030 (Disqualification), though the entire Richmond **Chapter 2.39 - REGULATION OF CAMPAIGN CONTRIBUTIONS FROM PARTIES AND PARTICIPANTS IN ENTITLEMENT PROCEEDINGS** was repealed; staff should further consider how to push the envelope here – none of their memos address recusal.

3. SFEC staff proposals ignore FOE's proposed Purpose & Intent edits, which were largely copied from the original Prop J - The original Prop J was adopted by the voters – a serious effort should be made to honor their intent within constitutional parameters.

4. The staff proposals regarding earmarking (1.114) and assumed name contributions (new 1.114.5) are good, though 1.114.5c incorrectly references 1.114, not 1.114.5

5. The staff proposals for contributions made by business entities (1.124 - Farrell) and bundlers (1.125 - Peskin) are good, however, the new 1.124 requirements should be integrated into 1.114.5; still reviewing 1.123 (Peskin) [*afterthought comment made at IP meeting* – to the extent possible, 1.124 requirements should be integrated into standard cal format e-filing, rather than a difficult form; there are campaign finance policy problems with entity contributions in general, so extra disclosure about them is generally a good idea; the opposition that exists to 1.124a3 in particular may stem from a feeling in the political community that this effects the backers of one camp of politicians more than other, so (1) consider other forms of disclosure to balance this (namely adding disclosure about "land use decisions" received from SF) and (2) possibly consider limiting this to only contributions over a certain size]

6. Existing comparative law utilized by FOE's Revised J that staff neither incorporated nor fully vetted: *I notified staff in writing a while ago about the first two of these*

a. Los Angeles' Campaign Finance Law (Section 49.7.38(A)(3)) - addition of 1.170(i)(3) to make misdemeanor conviction for any violation of CFRO a basis for a judge to deny the violator the ability to serve as a City lobbyist or City contractor for 4 years
b. LA's law (49.7.35(C)) debarment law applying to contractors; recommended by Campaign Legal Center. *See 2a above*

c. LA's 49.7.36 prohibits contributions and fundraising by bond underwriters

7. Policy inconsistency between proposed 1.127 and existing 1.126:
   a. Persons seeking land use decisions can't make behest payments, but contractors can [staff is fixing this].
   b. *Current* 1.126 applies the contribution prohibition to the party's officers, board, 20% owners and sub-contractors, whereas the proposed 1.127 applies the prohibition to a person with a financial interest (defined 10% or $1 mil interest in property/project) and their affiliated entities. *Example*: Board members of developer entity with a financial interest could freely contribute to Supes approving the project.

8. FOE reforms of 1.126 that staff dropped:
   a. Broadening "person who contracts with"
   b. Broadening "contract"
   c. Extending a prohibition period from 6 months to 1 year (and for those who do receive the contract)
   d. Triggering the prohibitions when contracts are approved by appointees or subordinates of City elective officers
   e. Mandating that the City & County must develop an integrated Campaign Finance and Contracts database, which would replace the antiquated paper contract reporting, aid compliance and enforcement, and enhance transparency
   f. Mandating that the City & County provide 1.126 notice in requests for proposals, bid invitations, etc.

9. FOE reforms of 1.127 that staff dropped from FOE's 1.126:
   a. i. Broadening coverage or "land use matter" – examples: zoning changes, sub-divions, master, specific & general plans; are DDAs covered by 1.127's development agreement reference?
      ii. **Expansion of Peskin's original definition** of "land use matter" to include "any other non-ministerial decision regarding a project" is good, but does it cover the preceding a.i above? Also, both Peskin's definition and the staff definition still contain an **ambiguity** – does "with a value or construction cost of $1,000,000 or more" apply to the last item in the list or the entire list?
   b. Extending a prohibition period from 6 months to 1 year
   c. Triggering the prohibitions when the land use matters are approved by appointees or subordinates of City elective officers

d. Authorizing the SFEC to propose by regulation database integration between 1.127 disclosures and Campaign Finance
e. Mandating that the City & County provide notice of 1.126/1.127 to persons engaged in prospective business with, from or through the City & County

10. FOE reforms of 1.170 that staff dropped:
    a. Creating penalties up triple the amount provided in excess of 1.126/1.127 (parity with 1.114 violations) – *also needs to be applied to 1.114.5.*
    b. Banning those convicted of criminal violations of CFRO from serving as a lobbyist or contractor for 4 years, if approved by the court – *see 7a above*

11. Private suits for penalties – The staff memo prioritizes maintaining agency control of the penalty process over ensuring that the law is enforced. Staff's concerns regarding inability to pay and mitigating factors can be addressed by adding further technical provisions to FOE's proposal. Given that the Political Reform Act's private suit provision for penalties is what FOE modeled the Prop J citizen suit provision on, staff should undertake an exhaustive review of the history of the PRA's citizen suit provision, including contrasting their policy concerns with the policy benefits, prior to opposing the concept for CFRO.

12. Staff refuses to apply fundraising restrictions on private parties; their memo's constitutional timidity on this doesn't sync with LA's application of such restrictions to contractors and bond underwriters

13. Timidity in pushing the envelope regarding the nexus between public benefits and personal/campaign advantage
    [What RepresentUs and former Commissioner Paul Melbostad said at today's IP meeting]

14. 3.207 – additional conflicts of interest – only restates existing state law? [When local law simply copies state law to allow local jurisdictional enforcement, I am in favor of citing to the law directly (to create consistency), unless the variation from the state provision is done intentionally to create better policy]

15. Will staff not propose any reforms to address Slate Mailer Organization abuses?

Support Letter, Proposed Legislation concerning City Officers, Board Members and Commissioners who fail to submit SEI Form 700

To: Commissioner Quentin Kopp
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
415-252-3100
Cc: <jessica.blome@sfgov.org>,
[redacted]

July 25, 2017

Dear Judge Kopp,

I am strongly in favor of your legislative proposal to reinvigorate good government and ethical behavior among our city's officers, commissioners and board members.

It is my understanding that under your proposal any such officer, board member or commissioner who fails to submit the required Statement of Economic Interests (SEI) Forms shall be prohibited from voting – and, perhaps, even prohibited from debate and discussion – on whatever agency, board or commission they serve until such time that the requisite ethics reports are forthcoming.

I recently participated in a hearing where two of the six City officers participating in the process had not filed such reports in over two years (i.e. they had filed neither their 2015 nor 2016 reports). This hearing was before the Board of Appeals on July 12, 2017, and I was there to represent neighborhood interests on Appeal No. 17-088.

How disheartening as a citizen it is to take the time and expend limited resources to participate in a government process when the very people appointed to oversee that process in a fair and transparent manner have not taken *their* time nor expended *their* resources to satisfy the minimal ethics requirements set forth under state and local law.

By not submitting their SEI forms in over two years, the Board members at the July 12th hearing did two things which tainted the administrative review. First, they deprived everyone participating in that process from knowing whether or not they had a conflict of interest-- for that is the very nature of the SEI requirement. Second, they showed a marked disrespect for the review process and for the participants by not fulfilling the minimal requirements to hold their offices. (*)

On many occasions, I have asked my neighbors to participate in review processes and hearings such as the one on July 12. I can tell you from experience the largest hurdle to overcome is the intransigence and passivity that results from citizens' believing that their voice doesn't matter, that City government is made up of cliques, and that should they take the time to go to a hearing, they will not be treated with respect.

This is precisely what makes the second consequence of the board members failure to file their ethics reports so insidious. By not showing respect, by not having a sense of fairness, they are telling the City at-large, "Don't come here. Don't interfere with our little club. We are too busy doing things the way we choose. Your voice doesn't matter."

It is time for the Board of Supervisors to help the Ethics Commission do the job we expect as San Franciscans. And how fortunate the Board is to have you as a Ethics Commissioner, someone with a deep experience in so many aspect of government and law.

Thank you for taking the time to initiate this legislative process, and please let me know if I may ever be of assistance to you on this or any other matter.

Marc Bruno
[redacted]
San Francisco, CA 94133

(*) To clarify, one delinquent member is on the Board of Appeals; the second, appearing July 12th for the appellant, is a member of the Board of Examiners.

PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 21, AFL-CIO
An Organization of Professional, Technical, and Administrative Employees

June 20, 2017

Peter Keane, Chairperson
LeeAnn Pelham, Executive Director
San Francisco Ethics Commission
25 Van Ness Ave., Suite 220 San Francisco, CA 94102
Fax: 415 - 252 - 3112

Dear Chairman Keane and Executive Director Pelham:

We appreciate the Commission's ongoing work to reduce corruption and undue influence in San Francisco. However, we find the proposal to revise Proposition J difficult to understand and duplicative of other ordinances. We are concerned that it would have a chilling impact on civic engagement.

Collective bargaining
We appreciate that collective bargaining agreements are exempt from the measure. However, our members sometimes receive a "public benefit" from the contract, including grievances, arbitrations, meet and confer, equity adjustments and similar labor activities. In some cases it affects one person and another cases it may include all of our members. We respectfully request that the exemption of collective-bargaining be expanded to cover these types of activities, including Project Labor Agreements. We are happy to work with your staff on specific language.

Campaign contributions - Volunteer, Nonprofit Boards of Directors
We are concerned about the ban on personal contributions to candidates and the way that it is proposed to be expanded. Our Executive Committee is made up of members elected by their peers who serve in an unpaid capacity to guide the organization. The proposal infringes on the civil rights and First Amendment rights of these leaders to participate in civic life.

This has the potential to discourage our civically oriented members from serving in leadership because not only will they not be able to make personal donations to candidates, it appears that they would also be barred from asking friends to contribute or even lend their name as an honorary committee member for a fundraiser. We rely on these leaders for their expertise, leadership, and community involvement to guide our work and our involvement in the community at large.

Under the current proposal, they would be effectively banned from any engagement, even in their capacity as private citizens, in the types of campaign activities that are common to San Francisco political campaigns.

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South Bay Office: 4 North Second Street, Suite 430 San Jose, CA 95113 T: 408 291-2200 F: 408 291-2203
Oakland Office: 1440 Broadway Oakland, CA 94612 T: 510 451-4982 F: 510 451-1736
Martinez Office: 649 Main Street #226 Martinez, CA 94553 T: 925 313-9102 F: 925 313-0190
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Would this also apply to our Executive Committee if they make donations to the union's political action fund, which in turn makes contributions to candidates? We expect our leadership to be active in all aspects of the union including donations to the PAC.

The definition of "personal and campaign advantage" appears to apply a $0 threshold to gifts. Previously, the Commission allowed, incidental "gifts" of up to $25. Under this proposal, if we invite an incumbent official who is up for election to speak to a group of our members at lunch, we wouldn't even be able to give them a sandwich.

Would we be prohibited from having elected officials running for office or candidates as keynote speakers at our major meetings because they would derive a 'personal advantage' from the exposure?

Enforcement and penalties

We have serious reservations about allowing private citizens to file citizen suits for violations of Campaign Code 1.126. We believe that unions could be targeted for the most minor of infractions by antilabor forces. In fact, a well-funded organization has recently opened offices in California, including one in the Bay Area. They have a record of filing harassing and frivolous lawsuits against labor unions, for the most unintended and minor of infractions with the goal of disrupting union work and costing tens of thousands of dollars to defend. We are sure that you understand that in the Trump era, this is very troubling to us.

We look forward to working with you in the coming months to craft legislation that avoids unintended consequences for labor and non-profits and meets our shared goal of reducing corruption.

Sincerely,

[redacted]

Bob Muscat
Executive Director

cc: San Francisco Labor Council, Public Employees Committee

pillsbury
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June 15, 2017

Via Email

Ms. LeeAnn Pelham
Mr. Kyle Kundert
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: **Proposed Ordinances Regulating Campaign Contributions**

Dear Ms. Pelham and Mr. Kundert:

Pursuant to your requests at the May 2017 Commission meeting and the subsequent Interested Persons meeting, I am submitting the following comments regarding recent legislation proposed by members of the San Francisco Board of Supervisors. Please incorporate these comments into the record of a public hearing convened by the Commission.

File No. 161196: Campaign Contributions from Business Entities

As currently drafted, this proposed legislation will require San Francisco candidates, PACs, and primarily formed committees to obtain and disclose, in addition to a donor's name, address, occupation, employer, contribution date and amount, the following additional information about each donor which is a limited liability company ("LLC"), S corporation, or a partnership: (a) its purpose, (b) a listing of the entity's principal officers, including its President, Vice President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, and Director; and (c) whether the entity received funds through a contract or grant from a federal, state or local governmental agency within the last 15 years for a project located in San Francisco. If such funds were received, the entity must also disclose the name of the governmental agency that provided the funding, the amount of funds provided, and the date of the governmental contract or grant agreement. This information must be provided to the Commission at the same time that campaign disclosure reports are required to be filed with the Commission.

This proposed legislation imposes an incredible burden on candidates, PACs, and primarily formed committees to request and disclose this information. In addition, current campaign reporting forms and software do not accommodate such extraneous information.

This legislation also imposes an unnecessary burden on potential donors that are LLC's, S corporations, and partnerships. Essentially in order for these businesses to make donations, they would have to provide the candidates, PACs, and primarily formed committees with information going back 15 years, an unreasonable requirement.

Laws which impact First Amendment rights must demonstrate an important interest and employ means closely drawn to avoid unnecessary abridgment of associational freedoms. Buckley v. Valeo, 424 U.S. 1, 25 (1976). An ordinance which requires disclosure of detailed federal, state or local contractual or grant information from 15 years ago does not appear to be closely drawn. In addition, such information has no relationship to campaign contributions that an entity may wish to make to candidates, PACs or primarily formed committees.

Although contribution disclosure requirements are generally viewed as less restrictive than a ban on contributions, such disclosure requirements are still subject to exacting scrutiny requiring a substantial relationship between the disclosure requirement and the sufficiently important governmental interest. Citizens United v. FEC, 558 U.S. 310, 366-367 (2010).

It has been asserted that these types of ordinances are needed to determine the true sources of contributions made to candidates, PACs, and primarily formed committees. However, current state law, which applies to San Francisco campaigns, provides an example of a closely drawn ordinance which requires any entity making contributions to disclose the true source of the contributions. California Government Code Section 84302 prohibits any person from making a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution the donor's name and address (plus occupation and employer, if applicable) and the name and address (plus occupation and employer, if applicable) of the other person. Section 84302 also requires the recipient of the contribution to disclose both the true source of the contribution and the intermediary on the recipient's campaign disclosure report. Failure to make the required disclosures results in an illegal contribution.

If the important governmental interest of this legislation is to ensure that the true sources of contributions are disclosed, requiring an entity to disclose its principal

officers and governmental contracts will not meet the test of a substantial relationship between the disclosure requirement and the governmental interest.

File No. 170029: Disclosure Requirements for Campaign Fundraising and Prohibiting Campaign Contributions from Persons with Land Use Matters.

A. Solicitation of Contributions

This proposed ordinance imposes unreasonable disclosure obligations on City elected officers who solicit contributions for ballot measure and independent expenditure committees. This legislation imposes a 24 hour reporting burden on the elected officer to disclose detailed information not only about the solicited contribution and the contributor but also about whether the contributor lobbied the elected officer during the past 12 months, and if so, details about that matter. The requirement to disclose such detailed information within 24 hours after the contribution is made is unreasonable.

B. Bundling of Contributions

The bundling section of the proposed ordinance is overly broad in its coverage. The term "bundle" generally means collecting and delivering contributions made by others to a candidate or committee. In the proposed ordinance, this term has been greatly expanded to include, among other things, simply requesting a contribution, inviting a person to a fundraiser, supplying names for invitations for a fundraiser, permitting one's name or signature to appear on a fundraising solicitation or an invitation to a fundraiser, and providing the use of one's home or business for a fundraiser.

The proposed ordinance requires any committee that is controlled by a City elected officer that receives bundled contributions totaling $5,000 or more from a single person to disclose, among other things, detailed information about the bundler (including the identification of a City employee's department and job title and a City board or commission member's board or commission), a list of the bundled contributions, the contributors and the contribution dates, and if the bundler attempted to influence the City elected officer during the prior 12 months, detailed information about the matter the bundler sought to influence.

Given the current definition of "bundle," it will be impossible for a controlled committee of a City elected officer to accurately report who has bundled contributions for the committee. Unlike the typical situation where the "bundler" hands over contribution checks to the campaign committee and the committee thus knows who raised the funds, the proposed ordinance makes it impossible for the committee to determine whether any contributions received resulted from bundling activities as

defined in the ordinance. For example, in a typical situation, hundreds of volunteers who work on various campaigns ask anyone they may meet to make contributions to their candidates. Under the proposed ordinance, these volunteers would qualify as bundlers. The various campaign committees which receive contributions would not be able to attribute contributions received to specific volunteers.

The proposed ordinance provides an exception from disclosure for paid fundraising staff, but the exception only applies to one person for each committee. This limit on the exception is not rational. If fundraising staff are paid to raise funds, the candidate's campaign should not be required to disclose such staff as bundlers since payments to the staff must already be disclosed on the candidate's report.

The recent amendments to the City's lobbying law provides an example of how bundling is typically viewed. Section 2.115(f) prohibits lobbyists from bundling campaign contributions. Although in that legislation the term "bundling" is not defined, it is clear from the plain terms of the legislation that only the delivery or transmittal of contributions, directly or through a third party, is prohibited. For purposes of uniformity and clarity, any bundling provision included in the proposed ordinance should be revised to mirror the bundling provision in the lobbying law.

C. Contributions Prohibited from Persons with Land Use Matters

Persons with land use matters are being unfairly targeted in the proposed legislation. "Land use matter" is broadly defined to include (a) applications for permits or variances under the San Francisco Building or Planning Codes, (b) applications for a determination or review required by the California Environmental Quality Act, (c) any development agreement regarding a project with a value or construction cost of $1M or more, or (d) any ordinance or resolution that applies to a single project or property or includes an exception for a single project or property.

An individual or entity with a financial interest (an ownership interest of at least 10% or $1M in a project or property that is the subject of a land use matter) in a land use matter before certain City agencies, and executive officers of that entity (President, Vice President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, and members of the Board of Directors), are prohibited from making contributions to the Mayor, a member of the Board of Supervisors, a candidate for Mayor or the Board of Supervisors, or a controlled committee of any of the foregoing, at any time from the filing or submission of the land use matter until six months have elapsed from the date that the board or commission renders a final decision or ruling.

Appearance before the following City agencies regarding a land use matter will trigger the prohibition on contributions if the requisite financial interest is met: Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Department of Building Inspection, Office of Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission and the Planning Department.

The contribution prohibition is overly broad and a burden of one's First Amendment right to make campaign contributions. Laws which impinge on this right must promote a sufficiently important governmental interest which is closely drawn to avoid unnecessary abridgment of associational freedoms. When laws impose restrictions on campaign contributions, the important governmental interest must be either to prevent corruption or the appearance of corruption. Buckley v. Valeo, 424 U.S. 1, 25 (1976); McCutcheon v. Federal Election Commission, 572 U.S. 188 (2014).

Presumably this legislation is intended to prohibit corruption or the appearance of corruption; however, the proposed legislation is not closely drawn. As stated above, the prohibition applies to contributions to the Mayor, members of the Board of Supervisors, candidates for the foregoing offices, and controlled committees of any of the foregoing. However, it appears that the majority of land use matter decisions would be made by various City agencies and not by the Mayor's office or the Board of Supervisors. Thus imposing a ban on contributions to the Mayor, members of the Board of Supervisors, and candidates and committees of the foregoing, would not meet the test of a substantial relationship between the governmental interest and the prohibition on contributions.

Finally, whether or not any contributions are made, such persons must file a report with the Commission within 10 days of filing or submitting, or receiving written notice of the filing or submission, of a land use matter. Given the Developer Disclosures Law already in effect, such required filings simply create unfair burdens on developers.

Thank you for considering my comments.

Very truly yours,

[redacted]

Anita D. Stearns Mayo

To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: San Francisco Human Services Network
Council of Community Housing Organizations
San Francisco Tenants Union
API Council
Date: June 12, 2017
Re: Revised Prop J

The following comments represent the collective views of a broad cross-section of community-based San Francisco housing, health and human service, and public policy nonprofit organizations. We support this legislation's goals to reduce corruption and the appearance of undue influence, but have concerns about the proposal's complexity, duplication and potential to chill the expression of First Amendment rights by civically engaged San Franciscans.

Nonprofit advocacy and participation in the public policy process

For decades, San Francisco has had a distinct and enviable patchwork quilt of community and faith-based nonprofit organizations that provide a significant degree of our City's health and human services for children, youth and their families, seniors, people with disabilities, homeless families, and people with AIDS; build most of the City's affordable housing; and provide tenant support, legal services and job training. This robust and high functioning system is known and respected widely as "the San Francisco model."

San Francisco also has a rich history of including diverse voices in public policy debates, and the City's nonprofit services sector plays a key role in both representing the voice of neighborhoods and vulnerable communities and in facilitating the direct involvement of residents in the public square. Nonprofits educate, advocate, and promote advocacy by clients and community members on issues central to their missions, with a public purpose – such as investment in housing, healthcare, services, economic development and the arts. That focus on civic engagement is likewise an element of the San Francisco model.

Our nonprofit sector understands the need for clear and enforceable standards of engagement in the political process. Of course, nonprofits are already subject to the allowable limitations under their Federal designations. General prudence is also a rule of thumb—no responsible organization wants to put the clients and communities they serve at risk of losing services. So measures to clarify and strengthen San Francisco's rules around lobbying and campaign activities are welcome, especially as the growing influence of business interests and the rise of "astroturf" lobbying organizations erodes public confidence in local political processes.

But we also need to make sure those proposed measures do not go so far that they snuff out public-service nonprofits' and organized workers' points of view. There should be great care to avoid misconceptions about the intent of legislation and to avoid creating complex and intimidating rules that result in a chilling effect that deters nonprofits and their leadership from engaging in any advocacy and political engagement, creates fear of IRS targeting for noncompliance, makes foundations hesitant to fund nonprofit organizations that engage in public policy, or discourages

civic leaders from volunteering their time to serve on nonprofit governing boards. The Ethics Commission should be seeking an appropriate balance in this effort to clarify and strengthen rules while respecting the critically important advocacy role that the public-serving nonprofit sector plays in San Francisco.

Comments on the Revised Prop J draft

(1) Complexity: This draft is incredibly complex and difficult to understand. While our organizations engage in legislative advocacy, most of our constituents are lay people, not lawyers. We look forward to the upcoming re-draft from Ethics staff.

(2) Duplicative and unnecessary legislation: Other laws already appear to address many of the concerns that this proposal covers, so we question the necessity of portions of this legislation, as well as the confusion that may arise from having multiple laws covering similar subjects. We also have concerns about whether this legislation would supersede other recent ethics laws, and eliminate beneficial provisions incorporated in those laws. For example, how would this new proposal interact with last year's Prop T provisions for gifts, and Supervisor Peskin's 2016 legislation on behested payments?

(3) Expansion of Campaign Code 1.126: This proposal drastically expands the provisions of Campaign Code 1.126 that currently prohibit campaign contributions from executives and Boards of Directors of City contractors to certain public officials with decision-making power over their contracts. The legislation would apply the ban to additional executive-level staff, expand the ban to a long list of public benefits, prohibit not only campaign contributions but any personal or campaign advantage – as well as any fundraising or other activities that would confer such an advantage, extend the length of the prohibition, and expand the list of public officials to which it applies. We have a number of comments on this proposal.

- Our primary concern is the **impact of this proposal on volunteer Boards of Directors for 501(c)(3) nonprofits.** The law already prohibits these individuals from making personal contributions to candidates, but this proposal drastically expands the prohibition. In fact, it would preclude nonprofit Board members from participating in any electoral activity, a ban that already applies to the organizations they serve. **We are deeply concerned about this proposed infringement on the civil rights of some of the most civically engaged people in the City.** Nonprofit volunteer Board members have no pecuniary interest in the City's decision whether or not to provide funding. In fact, we have doubts as to whether these provisions, which completely disenfranchise private individuals, would withstand a Constitutional challenge. Nor do we believe this is a good policy, as it forces volunteers to sacrifice their civil rights if they wish to donate their services to a nonprofit. Ultimately, it robs nonprofits – on whom the City relies – of their ability to attract Board members who would share their time, expertise, leadership, influence, donations and fundraising assistance.
- Furthermore, the legislation achieves its goals through the most onerous mechanism, a **complete ban on campaign contributions and other activities, as opposed to a disclosure requirement.** Board volunteers' lack of financial interest negates the risk of a

quid pro quo transaction. Therefore, this legislation is not closely drawn to avoid unnecessary abridgement of First Amendment freedoms. Other safeguards already exist, such as the City's requirement that candidates disclose any campaign contributions of $100 or more.

- The legislation **goes too far by banning affected individuals from urging others to make campaign contributions.** These provisions go far beyond prior legislation that restricts bundling. Under this reform proposal, executives and Board members of nonprofit City contractors would not only lose the right to contribute to a candidate. They would in fact be barred from any engagement whatsoever, in their capacity as private citizens, in the types of campaign activities that are common to San Francisco political campaigns. For example, they could not even mention casually to a friend or family member that they prefer a particular candidate, and urge their friend to donate. Nor could they participate in a phone bank to raise funds for a campaign, even if they don't reveal their identity or relationship to the contracting organization.
- The Commission should **amend the definition of "public benefits" to exclude entitlements** such as welfare benefits and publicly funded services. We hope that the Commission does not intend to bar poor people from making small campaign donations or urging others to provide financial support to candidates.
- The current contribution ban runs from the beginning of negotiations until six months after contract approval. The new ban would begin from the submission of a bid, and continue for twelve months after approval. For all practical purposes, this is a **complete ban on campaign contributions by affected nonprofit individuals, as most nonprofits have one-year contracts and are perpetually engaged in negotiations with the City.** In contrast, for-profit contractors frequently receive multi-year contracts, and their contracting process is much more intermittent.
- The definition of "personal and campaign advantage" applies a **$0 threshold to gifts.** During the development of Prop T and its implementing regulations last year, the Commission decided that it would be appropriate to adopt some practical exemptions to the provisions limiting gifts by lobbyists. Specifically, the Commission permits a $25 allowance for refreshments at public 501(c)(3) nonprofit events, as well as a list of exemptions incorporated in the State's definition of gifts, such as a reasonable allowance for registration at conference and policy events relevant to the office-holders' job. Does the Commission intend to prohibit similar practical exemptions under this legislation?
- Similarly, nonprofits worked with the Board of Supervisors last year to ensure that Supervisor Peskin's legislation limiting behested payments would not negatively impact nonprofits, or **nonprofit representatives serving on City Boards and Commissions who also fundraise as part of their day job with the nonprofit.** Supervisor Peskin's legislation applies only to parties seeking certain entitlements, and requires disclosure of large contributions. Is the Revised Prop J proposal more restrictive? Would it apply a ban, and/or disclosure requirements that would make it impossible for nonprofit leaders to share their expertise through service on City Commissions?

(4) Enforcement and penalties

- We have **concerns with provisions that empower the Commission to suspend or debar violators.** These powers should apply only to extremely egregious violations, and always in consultation with the contracting department in order to ensure continuity of critical services. The law should also define the process, including due process rights, appeals, and funding for attorney fees should the defendant prevail.
- We **oppose private citizen suits for any violations of Campaign Code 1.126.** This would lead to harassing lawsuits for minor violations, based on the hope of unjust enrichment or personal prejudices against a particular nonprofit. For example, does the Commission intend that a citizen should be able to sue a nonprofit if a volunteer Board member makes campaign contributions without the organization's knowledge?
- Because donors may be unaware of the ban, the onus for compliance should fall on the candidate to avoid punishing individuals – and their organizations – for unintended violations. The law **should require candidates to return contributions to the donor**, rather than forfeiting them to the General Fund.
- We agree that implementation of these reforms would require the City to develop and maintain a **public benefit recipient database.** The current Contract Approval List, which candidates are supposed to use in screening for prohibited contributions, is useless. You have to click on each contract to find a list of prohibited individuals – and there are almost 4000 contracts, many of them years old but still on the list. In many cases, nonprofit contracts are lumped together as "various" with no contractor data at all, and no link to the appropriate filings. As a practical matter, this creates a chilling impact on the ability of nonprofit representatives to donate to candidates, even if they fall outside the ban. It is unfair to enforce the law without a searchable and current list.

(5) Prohibited fundraising: We are concerned about these provisions, which appear in the draft legislation's definitions. This section is confusing, and we would like more clarification as to when and how these provisions apply.

Does this prohibition apply only to recipients of public benefits, and their ability to fundraise for candidates – or does it also apply to behested contributions by public officials? Could it be interpreted to prevent public officials from fundraising – or soliciting behested contributions – for nonprofits that have City contracts? Does it ban fundraising by City Commissioners, including nonprofit representatives who engage in fundraising as part of their jobs? For example, would it prohibit a Supervisor from serving on an honorary committee listed on the invitation to a nonprofits' annual benefit dinner? Would it bar a public official from appearing and encouraging donations at a nonprofit fundraiser, such as an auction to toss public officials into a swimming pool? In short, **would this provision apply an overly onerous burden on nonprofits' ability to fundraise?**

June 12, 2017

To the Honorable Chair Peter Keane and the Honorable Ethics Commission,

Thank you for the opportunity to comment on Revised Prop J. As citizen advocates who are deeply committed to protecting our government from corruption and the undue influence of special interests, we believe that Revised Prop J will provide our city's leaders and citizens alike with critical tools for preserving and promoting integrity and accountability in our elections and government decisionmaking processes. We write to express our support for Revised Prop J and its real-world approach to corruption, to explain how its policies are compatible with existing First Amendment jurisprudence, and to recommend additional measures aimed at closing the "revolving door" between regulators and special-interest industries for the Commission to consider incorporating into Revised Prop J or adopting via the Campaign Finance Reform Ordinance revision process.

Background

Represent San Francisco is a non-partisan, grassroots group of citizen advocates devoted to fighting corruption and challenging the improper influence of well-financed interests in San Francisco government through structural reform solutions. We work to support anti-corruption measures through local advocacy, outreach, communications, and coalition-building efforts.

Revised Prop J and corruption

Simply put, the City of San Francisco's current campaign finance and ethics laws have failed to adequately address the ongoing and ever-increasing appearance and reality of corruption in our city politics. Now is the time for the Commission to push for new laws that reflect a real-world understanding of how influence, bias, and corruption actually operate in our city's elections and decisionmaking processes.

Revised Prop J is a strong step in the right direction: By limiting the potentially corrupting influence of "personal or campaign advantages" by prohibiting city officials from accepting such advantages from potential or actual recipients of public benefits, significantly increasing accountability and transparency by creating an electronic database of public benefit recipients, and by limiting abuses of public office that involve "intermediary" fundraising by restricting how high-ranking officials can fundraise for the very candidates and officials responsible for appointing them, Revised Prop J would build upon previous anti-corruption reforms passed by city voters and help stop Washington, D.C.-style corruption from coming to San Francisco.

Revised Prop J and the First Amendment

It has long been a principle of federal and state campaign finance law that a government's interest in preventing corruption or its appearance is not limited to the "giving and taking of

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bribes" by politicians,[1] as such obvious examples are "only the most blatant and specific attempts of those with money to influence governmental action."[2] Instead, the U.S. Supreme Court has recognized that corruption is "inherent in a system permitting unlimited financial contributions"[3] and thus involves a broader dynamic capable of justifying broader regulation.

Though they have not received as much attention as *Citizens United v. FEC*,[4] recent campaign finance and ethics decisions from the U.S. Supreme Court make clear that there is ample room in federal jurisprudence for innovative policies aimed at promoting good governance. The Supreme Court recently upheld a state restriction on the personal solicitation of campaign contributions by judicial candidates in *Williams-Yulee v. The Florida Bar*,[5] created restrictions on independent expenditures in such races in *Caperton v. Massey*,[6] and adopted strict recusal standards for such decisionmakers in *Williams v. Pennsylvania*.[7] These decisions demonstrate the jurisprudential bandwidth for novel policies aimed at promoting public confidence in government institutions and at eliminating conflicts of interest and undue influence—principles at the heart of Revised Prop J.

Similarly, Revised Prop J's proposals build upon the longstanding government interest in combatting corruption and its appearance. For example, Revised Prop J's ban on high-ranking officials soliciting or receiving contributions from contributors who either seek a public benefit or who received a public benefit during the preceding twelve months is closely tailored to the city's interests in preventing corruption and its appearance *and* in protecting against interference with merit-based public administration. As they relate to Revised Prop J, such interests were not diminished by *Citizens United* or its progeny; in fact, the U.S. Court of Appeals for the District of Columbia unanimously upheld the federal ban on campaign contributions from government contractors just two years ago.[8] While Revised Prop J uses language that is broader than federal law—in part to address workarounds to San Francisco's current conflict-of-interest laws, through which contributors are able to receive more-favorable land use deals, licenses, or permits, as well as tax, fee, or penalty reductions—it does so in the pursuit of the same government interests affirmed by the D.C. Circuit.[9]

Revised Prop J's "prohibited fundraising" provision is similarly supported by the city's interest in combatting corruption or its appearance. When high-ranking officials responsible for

[1] *Buckley v. Valeo*, 424 U.S. 1, 27 (1976).
[2] *Id.*
[3] *Id.*
[4] 558 U.S. 310 (2010).
[5] 575 U.S. ___ (2015).
[6] 556 U.S. 868 (2009).
[7] 579 U.S. ___ (2016).
[8] *See Wagner v. Fed. Election Comm'n*, 793 F.3d 1 (D.C. Cir. 2015), *cert. denied sub nom. Miller v. F.E.C.*, 136 S. Ct. 895 (2016).
[9] *See id.* at 26.

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representing the public interest are permitted to use their influence to support, and even pander to, the very officials responsible for appointing or reappointing them, a clear conflict of interest exists. Even members of Congress recently recognized this dynamic: The House of Representatives is currently considering a bill that would prohibit federal officeholders from soliciting funds from any person for or on behalf of any political committee, or for or on behalf of any person for use for federal election activity.[10]

While the precise scope of Revised Prop J's provisions have not, to our knowledge, been litigated, no existing Supreme Court ruling explicitly precludes the Commission from advancing the city's interest in combating corruption and its appearance via such laws. Such innovative iterations of the anti-corruption interest are indeed compatible with the First Amendment.

Closing the "revolving door"

Revised Prop J demonstrates a serious commitment to addressing conflicts of interest and special-interest influence in government administration and decisionmaking. We hope that the Commission builds on this commitment by considering additional mechanisms aimed at closing the "revolving door" that allows special interests to influence—and even capture—those government bodies charged with regulating them. In particular, the Commission could consider adding provisions that:

(1) Require that employees of city agencies not have registered as lobbyists during the year preceding their appointment;
(2) Require city employees with a direct and substantially related interest in a pending agency rule or contract due to previous employment disclose their interest and not work on the matter;
(3) Require certain agency employees to publicly disclose any job negotiations with, and job offers from, non-government employers as a condition of employment;
(4) Institute a five-year ban on former city employees lobbying a government body;
(5) Ban former city employees who currently receive compensation as a lobbyist from receiving retirement benefits.

We applaud the Commission's leadership so far in this process, and are confident that its efforts will set an example that can be followed by others at the local, state, and federal levels.

If we can further assist in any way, please do not hesitate to contact us.

Sincerely,

Represent San Francisco

[10] *See* H.R. 528, 115th Congress (2017-2018), https://www.congress.gov/115/bills/hr528/BILLS-115hr528ih.pdf.

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VIA EMAIL

May 11, 2017

Ms. LeeAnn Pelham
Mr. Kyle Kundert
San Francisco Ethics Commission
Suite 220
25 Van Ness Avenue
San Francisco, CA 94102

Re: Proposition J Revision Project: Proposed Amendments to City's Campaign Law

Dear Ms. Pelham and Mr. Kundert:

Pursuant to your requests at April's Ethics Commission (the "Commission") meeting and in the subsequent announcement of the "Interested Persons Meetings," I would like to submit the following comments regarding the Proposition J Revision Project ("Proposition J"). Proposition J, if adopted, will incorporate numerous amendments into San Francisco's Campaign Finance Reform Ordinance (the "Ordinance"). Please incorporate these comments into the Commission's public record regarding Proposition J.

The goals of Proposition J are met with current San Francisco laws. The stated purpose of Proposition J is to "[R]educe the corruptive influence of emoluments, gifts, promised employment, and prospective campaign contributions on the decisions of public officials in the management of public assets and franchises and the disposition of public funds by prohibiting such payments and things to officials and their personal interests by any potential or actual substantial beneficiary of such public decisions for a reasonable period." Proposed Sec. 1.100(b)(12).

Current laws in San Francisco already adequately address potentially corruptive influences on public officials from emoluments, gifts, promised employment, and campaign contributions as follows:

- Campaign contributions are limited to $500 per candidate per election, including Citywide candidates, an amount far below what other jurisdictions permit;
- Corporations are prohibited from making campaign contributions to City candidates from their treasury funds;
- City contractors, including members of their boards of directors and their executive officers, and persons with an ownership interest of 20% or more in the contractors, among others, are prohibited from making campaign contributions to City officers and candidates for a specified period of time;
- Contributions to "friends" or officeholder committees are prohibited;
- Lobbyists are prohibited from making campaign contributions to, and bundling campaign contributions on behalf of, City elected officers and candidates if the lobbyists are registered, or have been registered in the previous 90 days, to lobby the officers' agencies or the agencies for which the candidates are seeking election (this provision will become operative on 1/1/18);
- Gifts (anything of value) made for the purpose of influencing City officers and employees in the performance of their official acts are prohibited;
- Gifts to City officers and employees from restricted sources (person doing business or seeking to do business with the department of the officer or employee or who has attempted to influence the officer or employee in any legislative or administrative action during the prior 12 months) are prohibited;
- Gifts of travel from the private sector to certain elected officials may not be accepted until the official files a detailed report with the Commission disclosing information about the cost, among other things, of the trip;
- Gifts to City officers and employers made for referring members of the public to persons or entities for advice, service or product related to City processes, or in consideration for any person's nomination or appointment to City office or employment, promotion, or other favorable employment action, are prohibited;
- Lobbyists are prohibited from making, directly or through a third party, any gifts, including gifts of travel, to City officers and their family members (this provision will become operative on 1/1/18);
- City officers and employees are prohibited from making, participating in making, or seeking to influence a governmental decision (a) in which the officers or employees have a financial interest, or (b) that would affect a person or entity with whom the officers or employees are discussing or negotiating future employment agreements;

- City officers and employees are prohibited from making a contract in which they have a financial interest; they also may not enter into any contracts with the City;
- City officers and employees must disclose on the public record any personal, professional, or business relationships with any individual who is the subject of, or has an ownership or financial interest in the subject of, a governmental decision being made by the officers or employees;
- City officers are prohibited from receiving any compensation to communicate on behalf of any other person with any City officer or employee with the intent to influence a governmental decision;
- Former City officers and employees are prohibited from communicating permanently, or for one year, depending on the circumstances, on behalf of others with City officers and employees with the intent to influence;
- Current and former City officers and employees are prohibited from accepting employment or compensation from a person or entity that entered into a contract with the City during the 12 months prior to the officer or employee's acceptance of the employment or compensation, if the officer or employee personally and substantially participated in the award of the contract.
- City board and commission members who request or solicit charitable contributions aggregating $1,000 or more from a party, participant, or agent thereof, involved in a proceeding regarding administrative enforcement, a license, permit, or other entitlement for use, before the member's board or commission must file a behested payment report with the Commission disclosing the contributions (this provision will become operative on 1/1/18).

Courts tend to favor disclosure versus prohibitions when First Amendment rights are at issue. Proposition J prohibits persons who seek or receive a "public benefit" and meet certain threshold amounts from providing, for a specified period of time, any "personal or campaign advantage" to, among others, public officials who approved or participated in approving the "public benefit." Public officials are similarly prohibited from receiving such "personal or campaign advantages." Proposed Sec. 1.126(b)-(c). The term "public benefit" is broadly defined to include, among other things, contracts, land use matters and decisions, licenses, permits, other entitlements for use, underwriting services, certain tax related matters, franchises and cash. A "personal or campaign advantage" includes, among other things, activities protected by the First Amendment, such as campaign contributions, contributions to slate mailer organizations, charitable contributions, and fundraising activities.

When laws impinge on First Amendment rights, such as campaign contributions, courts have upheld those laws when the government "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." Buckley v. Valeo, 424 U.S. 1, 25 (1976). The Buckley Court recognized that the governmental interest in limiting actual corruption or the appearance of corruption resulting from large individual contributions was a constitutionally sufficient justification. Id. at 26. Given the foregoing standard, it is questionable whether San Francisco's contribution limit of $500 applicable to at large and district election candidates would be deemed to rise to the level of actual corruption or the appearance of corruption.

Although contribution disclosure requirements are also subject to exacting scrutiny, disclosure is generally less restrictive than a ban on contributions. Citizens United v. FEC, 558 U.S. 310, 366-367 (2010). Thus a regulatory scheme which focuses more on disclosure versus prohibitions may find it easier to pass constitutional muster.

To further address the issues of the potential for corruption and transparency, San Francisco has adopted significantly more disclosure laws than most California jurisdictions requiring the disclosure of various types of activities. These disclosure laws include the following:

- Lobbying Law: requires lobbyists to register and file detailed monthly reports disclosing all lobbying activities, including, among other things, each City officer contacted, campaign contributions and gifts. The Law also prohibits the lobbying of a current or former client by a campaign consultant;
- Permit Consulting Law: requires persons who assist permit applicants to obtain permits to register and file detailed quarterly reports disclosing, among other things, each City officer and employee contacted, and campaign contributions;
- Developer Disclosures Law: requires developers of major real estate projects in San Francisco which require EIR certification to register and file five reports disclosing, among other things, the identification of nonprofit organizations to whom the developer made donations of $5,000 or more, if the nonprofit contacted City officers, or provided public comments at public hearings, about the developer's major project; and
- Disclosure of Information on Daily Calendars: requires the Mayor, members of the Board of Supervisors, and other specified elected and non-elected officials to maintain a daily calendar and record in the calendar the time and place of each meeting or event attended by the official in person, by teleconference, or by other electronic means. For meetings or events with 10

or fewer attendees, the calendar must also identify the individuals present and organizations represented.

These disclosure laws, when combined with the laws summarized in the preceding section, demonstrate that the City does not need the additional restrictions imposed by Proposition J.

Proposition J is too complex. Regulatory laws imposing restrictions on First Amendment rights should be clear and straight forward. Unfortunately Proposition J is confusing, not only to lay persons but to practicing attorneys.

As you know, Proposition J, which is based on the Oaks Initiative (the "Initiative"), was introduced in at least five cities in 2000 and 2001, including San Francisco. The Initiative created controversy and was subject to litigation in Santa Monica, Pasadena, Vista and Claremont.

The Initiative was adopted by the voters in San Francisco at the November 2000 election. It was subsequently repealed and replaced by the voters in 2003 with Proposition E, a ballot measure which imposed many of the ethics provisions summarized in the first section above. It is my belief that the Initiative was repealed, in part, because of its complexity and the unnecessary burdens it imposed on City offices and officials.

Proposition J is overly broad in its coverage. There are many provisions in Proposition J which are overly broad and may be subject to a constitutional challenge. For example, Proposition J prohibits all members of City boards and commissions who file statements of economic interests, and other specified officers, from soliciting, directing, or receiving contributions from persons who have, or in the previous 12 months had, a matter pending before the board or commission members. However, Proposition J goes further and prohibits board and commission members from engaging in fundraising on behalf of any elected City officer, candidate, or their controlled committees. Proposed Sec. 1.122(d). The latter provision significantly infringes on a board or commission member's First Amendment right to support or oppose a candidate of his or her choice.

Another example is the provision regulating transfer of funds. This provision permits transfers of funds between a candidate's own controlled committees, but only if the committees are formed for the same office. Proposed Sec. 1.122(c). This provision infringes on a candidate's First Amendment right to fund the candidate's own controlled committees as he or she wishes and serves no compelling state interest to justify this burden. See SEIU v. FPPC, 747 F. Supp. 580 (E.D. Cal. 1990).

Since Section 1.126 of Proposition J significantly expands the limit on contributions and fundraising from City contractors to any person seeking or receiving a public benefit, the definition of a "person who seeks or receives" is overly broad. Proposed Sec. 1.126(a)(1). The definition includes, in part, not only the party or prospective party to a public benefit but extends to that party's board of directors and officers, a person who owns more than 20% of the party, a person with an ownership interest of at least 10% or $1M in the public benefit along with that person's board of directors and officers, and the lobbyist, consultant, attorney, architect, permit expediter, or other professional representing any of the aforementioned persons. This provision is not closely drawn to avoid unnecessary abridgment of associational freedoms guaranteed by the First Amendment.

Similarly the proposed definition of "personal or campaign advantage" is overly broad. It extends beyond campaign contributions to include, in part, payments to slate mailer organizations, charitable donations to City agencies, charitable donations made at the behest of elected officials, and contracts or stock purchases that are not widely available to the general public. Proposed Sec. 1.126(a)(9).

The definition of "public benefit" extends beyond this section's initial regulation of contracts to include almost any possible benefit provided by a governmental entity. Proposed Sec. 1.126(a)(10). This definition is clearly not closely drawn to avoid unnecessary abridgment of associational freedoms.

Excessive reporting required of developers. Proposition J requires any person with a financial interest in a land use matter before specified City departments to file a report with the Commission within 10 days of filing, submitting, or receiving written notice of the filing or submission of a land use matter. The report must identify the board or commission considering the land use matter, the location of the property and its file number, the action requested of the board, commission or office considering the matter, the legal basis for the action, the person's financial interest in the project or property, and, if applicable, the names of the board of directors and executive officers of the person. Proposed Sec. 1.126(e)(3).

As mentioned earlier, the Developers Disclosures Law already requires developers to file detailed reports with the Commission. This provision imposes another unreasonable burden on developers doing business in the City.

Disqualification of officials who receive personal or campaign advantages. Prior to rendering any decision in a proceeding involving a public benefit, Proposition J requires an elected official who received a personal or campaign advantage within the

prior 12 months with a value exceeding $250 to disclose that fact on the record of the proceeding and to recuse himself or herself from participating in the decision if the personal or campaign advantage was provided by a party or participant to the proceeding, or the agent thereof. Proposed Sec. 1.126(f).

Since the definition of a "personal or campaign advantage" is so broadly defined, with some exceptions such as direct contributions or gifts to an official, it will be extremely difficult for an official to know whether or not he or she has received such an advantage. For example, how would an official know whether or not an individual has made any payments to a slate mailer organization, or payments to an agency, or payments to a nonprofit or business entity?

Harsh penalties for violations of Proposition J. In addition to imposing monetary and criminal penalties for violations of Proposition J, debarment has been added. Proposed Sec. 1.126(g). Considering the complexity of Proposition J and the likelihood of inadvertent violations, this option should be one of last resort.

This section also provides that a Commission determination of debarment is final and may not be waived. Given the severity of a debarment, this section should provide for an appeals process. If there is no appeals process, then the debarred party would likely seek a remedy through the court system.

Civil actions by City residents. Proposition J gives City residents the authority to bring civil actions to enjoin violations of the law or to compel compliance with the law. If the resident obtains an award of civil penalties, the resident will receive 50% of the amount and the remaining 50% will go to the City's general fund. Proposed Sec. 1.168(b). (If the intention of the amendment to this section is to change the term "voter" to "resident," that change should be consistent throughout this section.)

This provision appears to result in unjust enrichments to City residents. The focus should be on compliance with the law. To advance the public policy of compliance and not unjust enrichments, provisions giving residents the authority to file civil actions should not include a personal award of civil penalties.

In addition, this section discriminates against higher spending candidates and committees. The provision authorizes a resident to bring a civil action for a violation of the law, but generally only if the violation relates to a candidate, committee, or person that has either raised or spent funds at specified levels. Violators of the law who raise or spend funds below the specified levels are not subject to such civil actions. This provision appears to violate the Equal Protection Clause of the Constitution.

Proposition J creates an extensive reporting burden for the City and/or City officials. Proposition J generally prohibits a person who seeks or receives a public benefit from making a personal or campaign advantage to the official who participated in approving the public benefit, and similarly prohibits the official from receiving the personal or campaign advantage.

In order for an official to know whether or not the official has approved a public benefit for any specific person, all City departments and offices which award public benefits would have to track and maintain this data and provide it upon request to City officials. This imposes a tremendous reporting burden on departments and offices.

Although Proposition J requires that information regarding the approval of all contracts be provided to the Commission in electronic form, it does not mandate similar reporting requirements for other public benefits. Proposed Sec. 1.126(e)(2), (4).

Thank you for considering my comments.

Very truly yours,

[redacted]

Anita D. Stearns Mayo

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: September 20, 2017

To: San Francisco Ethics Commission

From: Kyle Kundert, Senior Policy Analyst
Pat Ford, Policy Analyst

Re: **AGENDA ITEM 4: Staff Memorandum Introducing the 2017 San Francisco Anti-Corruption and Accountability Ordinance (Amending the Initial Proposition J Revision Proposal and Expanding the Conflict of Interest Code)**

Summary: This memorandum outlines Staff's proposed changes to the draft of the Anti-Corruption and Accountability Ordinance given to the Commission at their August 28 meeting and provides the Commission with an amended draft for the Commission's review.

Action Requested: Staff first recommends that the Commission vote to adopt the 2017 San Francisco Anti-Corruption and Accountability Ordinance. Staff next recommends that the Commission vote to submit the 2017 San Francisco Anti-Corruption and Accountability Ordinance to the Board of Supervisors for their legislative consideration.

I. Introduction

At its August 28, 2017, meeting, the Commission heard Staff's presentation outlining a comprehensive revision of the Campaign Finance Reform Ordinance ("CFRO") and the Conflict of Interest Code, now entitled the 2017 San Francisco Anti-Corruption and Accountability Ordinance (the "Ordinance") and took public comment. Several members of the public expressed concern regarding the Ordinance's prohibition on City contractors and parties with financial interests in land use decisions making payments at the behest of certain elective officials. Additionally, at August 28 meeting, Chair Keane offered several amendments, which were accepted by the Commission for review and possible implementation into the Ordinance.

As part of the ongoing review and revision of CFRO, and at the request of the Commission, Staff is presenting this memorandum, which evaluates the amendments proposed by Chair Keane at the August 28 meeting, revisits amendments made to previous versions of the Ordinance, and explains the legal concerns and policy objectives behind those amendments.

This memorandum begins with background on the original proposal to revise Proposition J, which was presented to the Commission in March. The memorandum next outlines Staff's proposed Ordinance and explains why Staff is recommending the amendments to the original proposal where necessary. The memorandum concludes with a proposed draft Ordinance for the Commission's consideration.

II. Background

At the Commission's March 2017 meeting, Chair Keane introduced an initial Proposition J revision proposal, which was based on San Francisco's Proposition J from 2000. In the spring of 2017, as part of the Commission's Annual Policy Plan, Staff began a review of CFRO. In conjunction with that effort, Staff also reviewed several separate proposals to amend CFRO. Staff provided the Commission with memoranda outlining Staff's analysis and review of those items at the Commission's April meeting (Proposition J) and May meeting (proposals of Supervisors Peskin, Ronen, and Farrell). At the May meeting, the Commission expressed its desire to review an initial draft of an ordinance outlining Staff's proposed amendments to Proposition J after Staff reviewed proposals provided by Supervisors Peskin, Ronen, and Farrell. At the Commission's June and August meetings, Staff presented draft ordinances to the Commission, and the Commission provided guidance for further revisions to the Ordinance. Staff held additional meetings of interested persons after each Commission meeting, reviewed written public comment, processed input from national policy and legal research institutions, reviewed the regulatory approaches taken in other jurisdictions, and sought guidance from multiple City departments on implementation matters. Based on the results of this process, Staff has revised the Ordinance, as discussed in the overview of the Ordinance's amended provision provided in Section III.

III. Overview of Ordinance

Staff has presented the Commission with its analysis of initial drafts of the Ordinance, gathered public comment, and continued to research available policy and legal alternatives to ensure that any proposal that the Commission presents to the Board of Supervisors (the "Board") is strong, effective, and meets the goals of CFRO. What follows is an outline of the Ordinance, which ensures compliance with existing legal precedent and reinforces the anti-corruption and accountability interests promoted by CFRO, the Conflict of Interest Code, and the various proposals recently made to the Commission.

A. Preventing Corruption in San Francisco Politics

The Ordinance creates a series of new rules intended to reduce the incidence of corruption and its appearance by prohibiting individuals attempting to secure City contracts or other beneficial governmental outcomes from directing contributions to City officials, candidates, or third parties that are linked to a City official who has authority to approve the contract. Corruption and its appearance is a practice that is destructive to the fairness, openness, and competitiveness of City government, and its existence or mere appearance can reduce public confidence in governmental processes. It is vital that CFRO contain robust and enforceable rules aimed at reducing or eliminating the ability of individuals to obtain favorable outcomes by making targeted monetary contributions. As such, the Ordinance would amend CFRO to further restrict the ability of City contractors, prospective City contractors, and individuals with a financial interest in a land use matter pending before a City agency to make payments

benefitting certain City officials or other organizations with which these City officials are affiliated. These amendments to CFRO further CFRO's stated objectives and promote the intended effects of the various proposals recently received by the Commission.

1. Restrictions on Solicitations by City Officials

The Ordinance prohibits City officials—elected or appointed—from soliciting or otherwise requesting contributions to third parties from any person with a pending matter before the official.

The August 28 draft ordinance ("August draft") prohibited persons with a City contract, persons who are negotiating a City contract, and persons with a land use decision pending before the City from making contributions to City elected officials who must approve the contract or land use decision, officials who sit on a board that must approve the contract or land use decision, or a candidate for such an office. The August draft also expanded the prohibition to cover payments by a contractor or party to a land use decision made at the behest of an official who must approve the contract or land use decision.[1]

After considering public comment, direction from the Commission, and additional Staff review, Staff is now recommending that the Commission remove the behested payment prohibition from Sections 1.126 and 1.127 of CFRO and place the prohibition in the Conflict of Interest Code. The attached draft of the Ordinance implements this recommendation by creating a new restriction in Section 3.207(a)(4) the Conflict of Interest Code that prohibits City officials from soliciting behested payments from individuals who have business before the official. This approach would prohibit any City official, elected or appointed, from using their public position to solicit or otherwise request that a person with business before the official make a donation or give anything else of value for the benefit of a third party. It would no longer penalize a contractor or party to a land use decision for making a behested payment at the behest of an official who has authority over that person's contract or land use matter. Since the newly proposed rules on behested payments would only apply to the conduct of City officials, the Conflict of Interest Code is the most appropriate place to locate the new provisions. The new section, 3.207(a)(4), also simplifies the rules on behested payments by applying it to all City officials and board members.

Staff does not make this recommendation lightly. We understand that the Commission and the public will have questions about the removal of the behested payment prohibition from CFRO, and we are ready to fully address any concerns at the September meeting. Staff made this change in response to public comment from dozens of non-profit organizations and their members, who expressed concern that their organization could be punished if a City contractor/board member accidentally made a behested payment without the organization's consent or knowledge. Under the Ordinance as presented in August, the non-profit organization would have lost City grant funding as a result of their board member's negligence. Staff is sympathetic to this argument and does not believe the Commission or CFRO intended to unjustly punish organizations who are merely associated with a City contractor who commits a violation of law the behested payment prohibition.

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[1] *See* August 28, 2017 Draft Ordinance § 1.126.

Also, prohibiting elected officers from soliciting behested payments from certain parties (but not prohibiting those parties from actually making the behested payments) more fairly allocates the burden and any potential associated penalties, monetary or otherwise, to City officials. Public service is a public trust, requiring officials and employees to place loyalty to the citizens, the laws, and ethical principles above private gain.[2] Following ethical guidelines and eliminating any improprieties, or even the appearance of potential corruption, is imperative to safeguarding the public's trust in government. Without public trust, government doesn't work. The public is willing to delegate authority and sacrifice some freedoms in exchange for an orderly and civilized society, but only if it believes that government is acting in the public's best interest. With this in mind, it is entirely appropriate to place a restriction on elected officials that prevents them from soliciting payments from certain individuals.

To further respond to public comment and the Commission, the new Section 3.207(a)(4) creates narrow exemptions to the formerly absolute prohibition on behested payments. The new provision permits elected officials to ask anyone to donate to a non-profit, charitable organization if (1) there is a state of emergency, (2) the request is made through a communication to the public, or (3) the official's actions are "otherwise required by law ... necessary to carry out the duties of office". Staff believes these narrow exceptions provide clarity for situations in which the need of organizations to obtain money outweighs the interest of preventing corruption.

B. Allowing Citizen Plaintiffs to Recover a Portion of Civil Penalties

The Ordinance would allow a private plaintiff, after notice to the Commission, to bring a civil action, whereby, that plaintiff could recover 50% of any awarded penalty.

The August draft expanded existing rules on citizen suits to allow citizen plaintiffs to recover 25 percent of the penalties assessed against a defendant when the citizen plaintiff had provided notice that directly resulted in the judgment against the defendant.[3] The Commission would have retained control over which alleged violations of CFRO would have been be the subject of an enforcement action. If the Commission and the City Attorney declined to pursue an administrative action or a civil proceeding against a defendant, a citizen plaintiff could have pursued a civil action for injunctive relief but could not have pursued monetary penalties.

Based on the Chair's proposal at the August 28 meeting, Staff has revised the Ordinance to allow citizen plaintiffs to recover a share of civil penalties in cases that the Commission and the City Attorney decline

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[2] The concept that government officials have special ethical obligations to the public is actually quite old. In Ancient Greece Plato called for death for public officials who took bribes. (Laws, 12.955d) In 1215 King John of England signed Magna Carta, which promised among other things, "To no one will we sell, to no one deny or delay right or justice." (Magna Carta, cl. 40) In 1254 King Louis the IX of France promulgated conflicts of interest rules for provincial governors in the Grande Ordonnance Pour la Réforme du Royaume. (Davies, Leventhal, & Mullaney, 2013)

[3] *See* August 28, 2017 Draft Ordinance at § 1.168(b)(2).

to pursue, incorporating the approach taken by the City of Los Angeles.[4] The Ordinance would require a resident, before filing a civil action, to provide written notice to the City Attorney and the Ethics Commission at least 60 days in advance of filing an action. The resident may not commence their action if either the Commission has issued a report finding probable cause or if the City Attorney or District Attorney has commenced legal action. If the Commission or City Attorney fail to issue a finding or take legal action, respectively, the citizen plaintiff may file a civil action and, if successful, shall receive 50 percent of the amount recovered in the action, in addition to costs and reasonable attorneys' fees.[5]

C. Restricting Fundraising Activities by City Board and Commission Members

The Ordinance would prevent City board or commission members from engaging in prohibited fundraising activities for any elective official or candidate for such office.

The August draft would have prohibited members of City boards and commissions from engaging in certain fundraising activities that would benefit the elected officer responsible for appointing the board or commission member, a candidate for that office, or a committee controlled by such an officer or candidate.[6] *Prohibited fundraising* activities included soliciting contributions, inviting individuals to a fundraising event or providing the names of potential invitees, providing one's home as a location for a fundraising event, paying twenty percent of the cost of a fundraising event, or "acting as an agent of intermediary in connection with the making of a contribution."[7]

Based on the Chair's proposal at the August 28 meeting, Staff has revised the Ordinance to reflect the approach to fundraising taken in the City of Los Angeles.[8] The Ordinance would restrict City Board and Commission members from engaging in prohibited fundraising activities for or on behalf of any City Elective Official, candidate of such office, or committee controlled by such an officer or candidate. The Ordinance expands the prohibited activities proposed in the August draft to include the use of a City Board or Commission members official title in a fundraising communication and expands the prohibited fundraising to or on behalf of any elective official rather than only those elective officials who appointed the board or commission member.[9]

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[4] Los Angles Municipal Code ("LAMC") § 49.7.38

[5] To assist in the explanation of the differences proposed in the August draft and that in the LAMC, Staff has prepared a comparative chart on citizen plaintiff suits. See Attachment 1.

[6] *See* August 28, 2017 Draft Ordinance at § 3.231.

[7] *Id.* at § 3.203.

[8] LAMC § 49.7.11

[9] To assist in the explanation of the differences proposed in the August draft and that in the LAMC, Staff has prepared a comparative chart on the fundraising prohibition. See Attachment 2.

D. Fraudulent Concealment

The Ordinance would toll the statute of limitations where a person alleged to have violated Article 1, Chapter 1 of the Campaign and Governmental Conduct Code (CFRO) engages in fraudulent concealment of his or her acts or identity.

Based on the Commission's comments at the August 28 meeting, Staff has revised the Ordinance to reflect the tolling standards set for administrative proceedings under the Political Reform Act.[10] Fraudulent concealment occurs when an alleged violator conceals or suppresses their identity or a material fact subject to disclosure. The fraudulent concealment provision is meant to protect the Commission's jurisdiction, notwithstanding the statute of limitations, in cases where alleged violators have acted to deceive or otherwise conceal discoverable information from the Commission.

IV. Procedural Overview

San Francisco Charter Section 15.102 provides authority for the Ethics Commission to place measures on the ballot by a four-fifths vote of all its members:

> "Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members."

Alternatively, Campaign and Governmental Conduct Code Section 1.103 allows for amendment or repeal of any provision of CFRO by the Board if several conditions are met:

> (1) The amendment furthers the purposes of this Chapter;
> (2) The Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
> (3) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and
> (4) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

Importantly for the Commission to note is that Subsection (c) requires that "*The Ethics Commission approve[] the proposed amendment in advance by at least four-fifths vote of all its members.*" The remaining relevant portions of law, the Commission's By-Laws, require "the act of the majority of the members of the Commission" to reflect an action of the full body.[11]

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[10] California Governmental Code § 91000.5.
[11] San Francisco Ethics Commission By-Laws, Article VII, Section 1.

Based on the above, the Commission would only need a quorum-majority (i.e., 3 members of the Commission) to affirmatively vote on a motion to submit the Ordinance to the Board. However, as a practical matter, the Board cannot vote on the matter without a four-fifths vote of the Commission. Therefore, the Commission should evaluate whether and under what circumstances it would vote to submit the Ordinance to the Board if it does not have the four requisite votes for the Board to approve an amendment to CFRO. If the Commission moved forward based on simple majority vote, the Commission would be required to vote again on the Ordinance prior to a final Board vote.

We look forward to answering any remaining questions and to the Commission's discussion on Monday.

Comparison of Enforcement-Related Provisions

San Francisco vs. Los Angeles

Provision	San Francisco (as Code exists currently)	Los Angeles
Civil Actions Generally		
• General	Any person who intentionally or negligently violates any of the provisions of this Chapter shall be liable in a civil action brought by the civil prosecutor (1.170(b)) The City Attorney, or any voter, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter (1.168(b))	A person who intentionally or negligently violates a provision of this Article is liable in a civil action brought by the City Attorney, the Ethics Commission, or a person residing within the City (49.7.38(B)(1))
• Penalty	up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable (1.170(b))	The amount of liability may not exceed the greater of $5,000 per violation or three times the amount the person failed to properly report or unlawfully contributed, expended, gave, or received (49.7.38(B)(1))
• Statute of Limitations	No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred (1.168(c)(2))	An action alleging a violation of this Article may not be filed more than four years after the date the violation occurred. (49.7.38(B)(5))
Citizen Suits		
• General	Any voter may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter. (1.168(b))	A person who intentionally or negligently violates a provision of this Article is liable in a civil action brought by the City Attorney, the Ethics Commission, or a person residing within the City (49.7.38(B)(1))
• Notice requirement	No voter may commence an action under this Subsection without first providing written notice to the City Attorney of intent to commence an	Before filing a civil action pursuant to this Subsection, a person other than the City Attorney shall first file with the Ethics Commission a written request for the

	action ... at least 60 days in advance of filing an action (1.168(b))	Ethics Commission to commence an action. The request shall contain a statement of the grounds for believing a cause of action exists. The Ethics Commission shall respond within 40 days after receiving the request and indicate whether it intends to file a civil action. (49.7.38(B)(3))
• **Government action that cuts off citizen suit**	No voter may commence an action under this Subsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another voter has filed a civil action against the defendant under this Subsection (1.168(b))	If the Commission indicates in the affirmative and files an action within 40 days after the response, no other action may be brought unless the action brought by the Ethics Commission is dismissed without prejudice. (49.7.38(B)(3))
• **Remedies available to citizen plaintiff**	Injunction (1.168(b))	Injunction; 50% of penalties recovered **If a judgment is entered against the defendant or defendants in an action, a private plaintiff shall receive 50 percent of the amount recovered. The remaining 50 percent shall be deposited into the City's General Fund.** **(49.7.38(B)(4); (C))**
• **Fees and Costs awards**	A Court may award reasonable attorney's fees and costs to any voter who obtains injunctive relief under this Subsection. If the Court finds that an action brought by a voter under this Subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs (1.168(b))	In a civil action, the court may award to a prevailing party, other than an agency, the party's costs of litigation, including reasonable attorneys' fees (49.7.38(D))
• **Factors for Penalty Size**	N/A	In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. (49.7.38(B)(4))

Comparison of Fundraising Prohibition for Certain High-Level City Positions		
	Proposed SF Anti-Corruption & Accountability Ordinance (Sec. 3.231 of Draft Ordinance dated 8.28.2017)	**LA Fundraising Ban (Los Angeles Municipal Code sec. 49.7.11)**
Provision Bans These Offices from Engaging in Prohibited Fundraising	Members of a board or commission who are required to file a statement of economic interests	Members of a City board or commission who are required to file a statement of economic interests or a general manager or chief administrative officer of a City department
Provision Bans Prohibited Fundraising for these Parties	Elective officer (if a board or commission member's appointing authority), any candidate for the office held by the officer's appointing authority; or any committee controlled by the officer's appointing authority.	Any elected City officer, a candidate for elected City office, or a City controlled committee
Definition of Prohibited Fundraising	**"Prohibited fundraising"** shall mean: 1) requesting that another person make a contribution; 2) inviting a person to a fundraising event; 3) supplying names to be used for invitations to a fundraiser; 4) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; 5)providing the use of one's home or business for a fundraiser; 6) paying for at least 20% of the costs of a fundraiser; 7) hiring another person to conduct a fundraiser; 8) delivering or otherwise forwarding a contribution, other than one's own, by whatever means either by mail or in person to a City elective officer, a candidate for City elective office, or a City candidate-controlled committee; 9) or acting as an agent or intermediary in connection with the making of a contribution.	**"Prohibited fundraising"** means any of the following: 1) Requesting that another person make a contribution; 2) Inviting a person to a fundraising event; 3) Supplying names to be used for invitations to a fundraising event; 4) Permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; 5) Permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event; 6) Providing the use of one's home or business for a fundraising event; 7) Paying for at least 20 percent of the costs of a fundraising event; 8) Hiring another person to conduct a fundraising event; 9) Delivering a contribution, other than one's own, either by mail or in person to an elected City officer, a candidate for elected City office, or a City controlled committee; or 10) Acting as an agent or intermediary in connection with the making of a contribution.
Additional Definitions	**"Solicit"** shall mean personally requesting a contribution from any candidate or committee, either orally or in writing. **"Subordinate employee"** shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.	**"Fundraising event"** means an event designed for political fundraising, at which contributions for an elected City officer, a candidate for elected City office, or a City controlled committee are solicited or received.

Kundert, Kyle (ETH)

From: Hickey, Jacqueline (ETH)
Sent: Wednesday, September 20, 2017 8:03 AM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Ford, Patrick (ETH)
Subject: FW: Ethics ordinance - Request to reject ban of behested contributions.

From: [redacted]
Sent: Tuesday, September 19, 2017 8:16 PM
To: Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Ethics ordinance - Request to reject ban of behested contributions.

September 19, 2017

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Dear Commissioners

We write as a broad coalition of nonprofit arts, service, healthcare, and housing organizations and community supporters to express our deep concern over the present proposal before the San Francisco's Ethics Commission to impose a ban on an essential category of charitable donations – what the proposal describes as 'behested' payments. In the name of fighting vague allegations of 'corruption' and 'pay to play' politics, this proposal would treat all behested contributions alike. As a result, the ban will eliminate millions of dollars of legitimate fundraising and cut essential programs that have long benefited and strengthened San Francisco communities.

Under existing state law, "behested" contributions are contributions which are encouraged by elected officials for public or charitable purposes. Under state law behested contributions over $5000 must be reported to oversight agencies. The proposal before the Ethics Commission would convert this disclosure requirement into a total ban if the contributor has any contractual relationship with the city. Because many organizations have some form of contract with the city, from the SF Giants to the Opera to Glide Church, banning behested contributions from these organizations (including their executive staff and board members) will significantly narrow the range of eligible donors in the city. Some of the many programs funded by behested contributions over the past few years included: the City's summer jobs program, Free Muni for youth, research on accountability and fairness in law enforcement, parks programs, and the Women's Foundation. We know of no credible allegations of corruption related to any of these contributions.

We support proposals that target corruption and require disclosure of gifts, but the present proposal is misguided and misdirected. Rather than cracking down on bad actors, the proposal imposes a form of collective punishment on our entire sector. As the nationally recognized nonprofit advocacy organization Alliance for Justice warns, the Ethics Commission's proposal would "impede(e) cooperation between charities

and government" and create a "false equivalence" between charitable contributions and campaign contributions.

For all these reasons, we support proposals to expand disclosure requirements but urge the SF Ethics Commission to reject the proposal to ban behested contributions. A ban is an extreme measure which will have a deeply chilling impact on the city's nonprofit sector, causing far more harm than good.

Sincerely,

Chinatown Community Development Center

Council of Community Housing Organizations

San Francisco Human Services Network

Phoenix Arts Association Theatre

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Kundert, Kyle (ETH)

From: Hickey, Jacqueline (ETH)
Sent: Tuesday, September 19, 2017 8:05 AM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Ford, Patrick (ETH)
Subject: FW: Behested donations

-----Original Message-----
From: Vivian Imperiale [redacted]
Sent: Monday, September 18, 2017 7:23 PM
To: Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Behested donations

Commissioners:
I am opposed to pay-to-play politics. Having groups or individuals give money because they are told to falls blatantly in that category. It plays out as "I did what you wanted, so now I expect you to do what I want."

I came from the non-profit world and know how important donations are. But each non-profit needs their own strategy to find appropriate donors who become involved because they believe in the agency's work. They should be very apprehensive about accepting money from a person who is using them as part of a political game.

I see a need to have such dealings outlawed or closely watched and publicized.

Sincerely,
Vivian Imperiale

Sent from my iPhone

To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: San Francisco Human Services Network
Council of Community Housing Organizations
Date: September 18, 2017
Re: Draft Revised Prop J Ordinance

As coalitions with many member organizations in the broad nonprofit community, we respectfully submit these comments on the draft "Revised Prop J" ordinance, including proposed amendments.

1) Behested payments ban

As we expressed at Interested Persons meetings and in previous written comments, we oppose the proposed ban on behested payments because of the harmful impact on nonprofit fundraising. We instead support an approach that strengthens disclosure laws.

- Remove the prohibition on behested payments.

2) Strong disclosure laws

We support the proposals to increase disclosure requirements (sections 1.114.5(b) and 1.123) in order to increase transparency about public-private philanthropy. We also propose an improvement to strengthen 1.114.5(b)(1): The legislation should impose the reporting requirement on the elected officials soliciting behested contributions, rather than on the donors. That would be consistent with other behested payment disclosure laws, and would be a more effective way to provide transparency around any potential "corruption" related to public officials channeling donations through behests.

- Sec. 1.114.5(b)(1) In addition to the requirement in subsection (a), any City elective officer who solicits contributions that total $5,000 or more from any person in a single election cycle to a ballot measure committee or committee making independent expenditures must disclose the name of the donor, the amount and the recipient of the contribution.
- We also propose that in two years from the effective date of this Ordinance, Ethics staff prepare a report on behested payments summarizing information gleaned from the disclosure and reporting requirements in Sections 1.114.5 and 1.123.

3) Nonprofit Boards of Directors

We oppose the inclusion of volunteer members of nonprofit Boards of Directors in any disclosure or ban in the Ordinance. Nonprofit directors have no financial interest in the organization, its contracts or the City's funding decisions, its programs and activities, or its land use matters. Therefore, corrupting conflicts of interest don't exist. These provisions

disenfranchise private individuals, and discourage civically engaged people from serving on nonprofit boards.

- Section 1.104 Definitions: "Financial interest" shall mean ... (b) holding the position of ..., or compensated member of Board of Directors..."
- Section 1.126 Definitions: "Person who contract with" includes ... as well as any compensated member of that party's board of directors..."
- Section 1.127(b) "... shall also include any compensated member of such person's board of directors..."

4) Repeated Recusals

San Franciscans all benefit when nonprofit leaders share their expertise through public service on City boards and Commissions, and such representation is common in health and human service departments. However, their service sometimes requires them to request recusal, particularly when they work for an organization with contracts that come before that Commission. Many organizations have multiple contracts covering each program or service.

The proposed Ethics Commission review of repeated recusals would deter nonprofit representatives from serving on Commissions, or subject them to enhanced and unnecessary scrutiny for their appropriate response to potential conflicts of interest related to the very outside employment that made them desirable as Commissioners. We urge the Commission to exclude these situations as evidence of a "continuing and significant conflict of interest."

- Section 3.209(b): Recusals. Repeated Recusals. "This section shall not apply to recusals pertaining to City grant or contract approvals for the officer's employer, where that employer is a 501(c)(3) nonprofit organization."

5) Notification: Prospective Parties to Contracts

Section 1.126(e)(1) requires prospective parties to contracts to notify the Ethics Commission at the commencement of negotiations. Section 1.126(e)(2) requires prospective parties to notify the Ethics Commission within 30 days of the submission of a proposal – even though this time period may require bidders to disclose sensitive information about their bid when the RFP process is still open. We believe that any such disclosure requirement should fall on City departments to provide the Ethics Commission with a list of bidders after an RFP process has closed, as well as the identity of the bidder with the winning proposal. This section also requires disclosure of the value of the contract. However, for nonprofit contracts, that information is unknown until the conclusion of negotiations.

6) Citizen Enforcement

We oppose the proposal to permit citizen plaintiffs to receive 50% of penalties recovered in a civil action because of the incentive for harassment and frivolous lawsuits.

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS: P.O. Box 2824, San Francisco, CA 94126-2824 | San Francisco, CA 94111-5998

Anita D. Stearns Mayo
tel: 415.983.6477
anita.mayo@pillsburylaw.com

September 18, 2017

Via Email

Ms. LeeAnn Pelham
Mr. Kyle Kundert
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: **2017 Anti-Corruption and Accountability Ordinance: Behested Payments Provisions**

Dear Ms. Pelham and Mr. Kundert:

Pursuant to your request, I am submitting the following comments regarding the behested payments provisions of the 2017 Anti-Corruption and Accountability Ordinance (the "Ordinance"). Please incorporate these comments into the record of a public hearing convened by the Commission.

General Comments

Proposed language in Section 1.126 will prohibit certain City contractors from making behested payments during specified times at the behest of (a) an elected City officer if the contract must be approved by the elected City officer, the board on which that officer serves, or a state agency on whose board an appointee of that officer serves, and (b) candidates for the elected City office held by the foregoing officer. This Section also prohibits the elected City officer, or a committee controlled by the officer, from soliciting or accepting behested payments.

Similarly, proposed language in Section 1.127 will prohibit persons, including their affiliated entities, with certain financial interests in land use matters from making behested payments during specified times at the behest of the Mayor, a member of the Board of Supervisors, the City Attorney, and candidates for the foregoing offices. This Section also prohibits the Mayor, a member of the Board of Supervisors, the City

Attorney, candidates for the foregoing offices, and controlled committees of the foregoing, from soliciting or accepting such behested payments.

For purposes of both Sections 1.126 and 1.127, the Ordinance defines the term "behested payments" to include a payment made for a legislative, governmental, or charitable purpose.

If Sections 1.126 and 1.127 are adopted as currently proposed, the sections will have a significant negative impact on the ability of the City to raise charitable funds during emergency situations. These provisions will prohibit the Mayor and other elected City officers and candidates from soliciting, and contractors and persons with financial interests in land use matters from making, behested donations to charities during emergencies created by earthquakes, floods, health epidemics, and other disasters.

In addition, Sections 1.126 and 1.127 will prohibit the Mayor and other elected City officers and candidates from soliciting, and contractors and persons with financial interests in land use matters from making, behested payments to various charitable organizations for sporting events, such as the International Olympics, the Special Olympics, and America's Cup, to name a few. Such restrictions will hamper the efforts of City officials to successfully compete against other cities for these events.

Extension of Prohibitions Beyond the Contracting Parties or Those with the Financial Interests

The impact of the prohibitions in Sections 1.126 and 1.127 will extend far beyond the City contractor and the person with a financial interest in a land use matter.

Section 1.126 defines a "person who contracts with" to include not only the party or prospective party to a City contract but also any member of that party's board of directors and principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the bid or contract. Based on this broad definition, individuals serving in any of the foregoing capacities for business or nonprofit entities would be subject to the prohibition. Individuals serving in such capacities are typically the types of individuals who have the resources to assist the City during emergencies or when funds are needed to attract international sporting events to the City.

Similarly, Section 1.127 applies not only to persons with financial interests in land use matters but also affiliated entities of the person. "Affiliated entities" means business entities directed and controlled by a majority of the same persons, or

majority-owned by the same person. The pool of potential donors to assist with needed donations is significantly decreased when affiliated entities are subjected to the prohibition.

Conclusion

Section 1.126 was originally enacted to ensure that contractors wishing to obtain City contracts did not have undue influence over the contracting process by making campaign contributions to elected City officers who have, or could have, influence over the contracting process. The language of Section 1.127 appears to be based on similar language in Section 1.126.

The rationale for eliminating undue influence over the contracting process or the approval process for a land use matter does not apply when behested payments are solicited or made for charitable purposes. When payments are made for charitable purposes, they are made for the public good. Accordingly, Sections 1.126 and 1.127 should exempt behested payments made for a charitable purpose.

Thank you for considering my comments.

Very truly yours,

[redacted]

Anita D. Stearns Mayo

Kundert, Kyle (ETH)

From: LARRY BUSH [redacted]
Sent: Sunday, September 17, 2017 2:31 PM
To: Kundert, Kyle (ETH); Ford, Patrick (ETH); Pelham, Leeann (ETH); Blome, Jessica (ETH)
Cc: Peter Keane
Subject: Fwd: Response to Ethics 8/21/17 CFRO Draft

Follow Up Flag: Follow up
Flag Status: Flagged

Friends of Ethics appreciates the greater robust outreach for this reform proposal, and the attendance of members of the Commission. It matters.

We have only a few points to add to our earlier submitted comments.

1. We urge the Commission to review and update the "Intent and Purpose" section. No new draft has been submitted, but we believe that it would benefit from acknowledging the need to act in view of changes in court decisions that have significantly increased political spending by corporate entities, that California and San Francisco have enacted provisions that relate to the issue of campaign contribution circumvention, and that the Commission recognizes that over time other changes may be desirable as well as greater flexibility for the Commission to act through regulations. In any change, the change must serve the purposes of the act by creating greater and not lesser disclosure and accountability.

2. The contractor contribution provision needs to add a prohibition on "bundled" contributions. This is standard in other city campaign prohibitions, including for lobbyists contributions and bundling. Bundling contributions has a far greater impact than a single contribution.

3. The provision prohibiting contributions and bundling from those seeking city approvals has been the subject of much discussion on how best to provide a workable while narrow definition. We suggest several alternatives that we believe better meet the realities of San Francisco undue influence than the current limitation to contractors and those involved in land use matters:

a) Apply the definition in California code 84308 which deals with solicitation of campaign contributions:
"A proceeding involves action to grant, deny, revoke, restrict or modify "licenses, permits, or other entitlements for use." (Reg. 18438.2.) Section 84308 defines the phrase "licenses, permits, or other entitlements for use" to mean proceedings on all business, profession, trade and land use licenses and permits, and other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts) and all franchises.
Examples of the types of decisions covered by the law include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, cable television franchises, building and development permits, public street abandonments, and private development plans."

In effect, this state provision recognizes the actual or perceived conflict in contributions from these sources.

b.) Adopt the language from New York, as modified by the Campaign Law Center proposal to the District of Columbia, as upheld by the US Court of Appeals, Second Circuit, for "doing business". It adds "economic development agreements" and "transactions with lobbyists." The CLC adds "tax abatements" which we would see as changes in tax policy at the urging of one sector of the city's business community (the 2012 elimination of taxes based on number of employees, the

elimination of tax rates for IPO cash-outs, and tax reductions for those in specified locations such as Market Street on a stretch of a few blocks).
We note that the provision "transactions with lobbyists" is similar to the Seattle law, and would effectively capture those who are seeking a city decision and have hired a lobbyist to accomplish that purpose.

c) use the language in the new ordinance mandating disclosures by commissioners, board members, department heads and others of behest payments taking effect on January 1, 2018.
Note that this disclosure applies to behest payments of $1,000 or cumulative of $1,000, compared to the state requirement of $5,000. It also applies to 527 organizations, which the state does not. It refers to "a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use." It also provides a safe harbor for solicitations when an official acts as an auctioneer at a fundraising event for a 501c3 organization exempt from taxation.

The advantage of these alternatives is that they employ an existing law to a similar situation, while in some cases reaching to new contributions that carry the perception or the reality of pay-to-play.

3. The private right of action based on the Los Angeles law is similar to other San Francisco laws with a private right of action.
The recent law on Owner Move-In Evictions includes a private right of action (https://sfgov.legistar.com/View.ashx?M=F&ID=5338074&GUID=1A0126EC-B0A0-4C25-A07E-D16C4D187B52). It provides for advance notice to the city enforcement agency, a 30 day wait period, action in abeyance if the city acts, and penalties that are two times any excess amounts of rents charges as well as sums reasonable expended to investigate and prosecute the claim. Federal law also not only allows but encourages citizen suits on clean water, clean air and other environmental requirements.

4. Debarments might provide a local version of the federal debarment policyhttps://www.gsa.gov/node/83970

There are two categories with differing standards. Notably, a proposed suspension is immediately made public and can be based on an indictment. A debarment involves a conviction. Consider the recent contract award by MTA to an entity that has been indicted and the rationale that there is not yet a conviction. Under federal rules, an indictment itself is sufficient for a one-year suspension, with appeal rights.

These comments below were submitted earlier:

Section 1.114.5 (b)(1) sets a $5,000 threshold. Friends of Ethics review indicates a more realistic threshold for mandatory reporting is $1,000. This more closely aligns with the record of significant contributions to ballot measure committees and committees making independent expenditures. It also more closely signifies that the donor contribution is far above the average donation to ballot measure on independent expenditure committees. The fact that this is tied specifically to a request for the contribution made by an elected official or candidate further underscores the relationship between the donor and the officer is at least as significant as the relationship between the donor and the campaign committee.

Section 1.123 requiring disclosure of behested payments to the Ethics Commission is an improvement and makes the reporting more timely than the current system.

Section 1.125 Bundled Contributions (b)(4) deals with bundling by a member of a city board or commission. Friends of Ethics believes that members of boards, commissions and appointed Department heads should be prohibited from bundling for candidates or elected officials or their controlled committees. If this provision is intended to encompass non-candidate committees such as

ballot measures or independent expenditure committees, there may be some merit but regulations will be needed to ensure this is not a back door to prohibited support for a candidate. For example, in November 2016 ballot measures that backed the mayor's authority, that hired members of the mayor's staff and that used the mayor's consultants would be an example of the pay-to-play activity that this measure is intended to stop.

Section 1.126 (b)(1) We understand this prohibition on behested payments to an official to mean contributions as well to the office of the elected person, or where the funds will be spent under the authority, direction or recommendation of the elected official or the official's office. This must be clearly understood.
We understand Section 1.126 (b)(2) to refer to behested payments made at the request of the official to another entity. This must be clearly understood.

Section1.127 (a) Definitions for behested payments must include other city officers, not just those listed. The actual fact record shows behested payments made at the request of the District Attorney, who is not included here. The record also shows that the equivalent of behested payments came at the request of the Community College's chancellor, members of the Board of Trustees, and School Board. Inasmuch as the intent is to draw a line through pay-to-play, this provision should also include the Treasurer, who was intensely lobbied by a corporation and the mayor for a ruling favorable to one company; to the Assessor, for property valuations particularly when transfers take place through stock sales. Any behested payments resulting from requests of those officials while matters are pending or recently were pending raises serious questions in the public mind about pay-to-play.

Section 1.127 (b) lists city agencies where land use matters are involved. This list omits the Airport, which has been immersed in controversy over a land use decision on its property. It also omits the School District and the Community College district where there are critical debates over the use of property owned by those entities. For example, the school board entered into agreement over property that it owned on Market Street that became a major retail center. Other locations are similarly undergoing evaluation for housing, including market-rate housing, or retail or commercial office space. It also omits mention of the Recreation and Parks Department that makes decisions on open space and recreation spaces, notably in areas new to development, as well as the Housing Authority that currently has negotiated the land use of hundreds of acres of property under its control. It also fails to note the record of the Fire Department going to the ballot to require set-aside land use for fire stations over the objection of the city controller and other officials. In short, by listing some agencies and not others, the effect is to create an open back door to land use pay-to-play. It would be preferable at a minimum to state "including but not limited to" in order to allow the Ethics Commission to take appropriate action. This also should apply to other provisions in this draft dealing with prohibited actions.

Section 1.127 (c) see above unser (a)

Section 1.127 (d)(2) the phrase "funded in whole or substantial part" needs clarification, as does the phrase "community services." This should not be a back door for entities like the Academy of Art to obtain land use for its educational programs or housing based on a claim that it will serve low income people without a clear demarcation of low income. In the event that this includes programs like the Mexican Museum as part of a market-rate development, this should not become an opportunity to piggy-back developers onto a slim reed that some undefined amount will benefit lower income people.

Section 1.135 Time for filing. The Ethics Commission earlier indicated its desire that reporting not end on the day before the Election but include Election day because of the heavier spending for get-out-the-vote payments. Because reports otherwise are not disclosed until January 31, long after elected officials have been sworn into office and begun voting, there is a significant gap when the public has no information on the donor support. For these reasons, Friends of Ethics believes that the report for the

period ending December 31 should be submitted on January 1 in advance of elected officials taking office.

Section 1.168 (b) Enforcement authorizes ONLY the City Attorney or "any voter" to initiate a civil action. First, it is unclear if this means any "registered voter" or any person who actually voted in the election. It is also unclear if this means a San Francisco voter or a person who is a voter in another jurisdiction. Second, San Francisco generally supports the right of all those affected by decisions, including decisions to enforce laws, to have the ability to participate. Friends of Ethics believes that this provision should allow for a San Francisco resident regardless of whether they are a voter to act to initiative a civil action.

Section 1.168 (e) Debarment. This provision should require that the charging official notify the Ethics Commission and file a public disclosure on what action was taken and the reasons for those action. Otherwise the Ethics Commission hearing results go into a black hole with no public transparency or accountability.

Section 1.170 Penalties. This needs to clarify that the Ethics Commission has the authority to apply penalties when Behested Payment disclosures are not filed within the prescribed time, with an option for increased penalties based on such circumstances as to whether the official took an action that benefited the donor during a period when the reports were due but not filed. The Ethics Commission should have the authority to either increase the penalty above $5,000 or make it cumulative based on the multiple failures of an extended failure to file as required.

Section 3.203 Definitions. This specifically excludes "anything of value" as "gifts of travel." This is diametrically the opposite of the overwhelming vote of San Franciscans in November when they prohibited lobbyists from paying for "gifts of travel" in recognition that this is influence peddling. This exemption must be struck from the final version of this pay-to-play reform. The list of donors for official travel is heavily weighted toward businesses seeking city approvals for their private interests. There can be no justification for this exemption.

Section 3.207 (1) This provision must add Department Heads to the list of member of board of commission. In a charter revision more than a decade ago, the authority to appoint a department head was transferred from the commissions to the mayor. In addition, Department heads have strong reasons for seeking contributions to bond measures that benefit their department's programs as well as to request "behested payments" to "Friends" groups that support the work of the Department. Prohibiting the appointed commissioners but not the appointed department head lacks a compelling justification. The Department Head must be included in all the provisions in this section.
This provision also must include all agencies in San Francisco such as the San Francisco Housing Authority that are quasi-state agency but whose Executive Director and commissioners are appointed by the mayor and/or the Board of Supervisors.

Section 3.209 Recusals. (a) This provision calls for recusal of any appointee or elected official who has a conflict of interest. This should be amended to add "or who has failed to timely file a Statement of Economic Interest." Without a public disclosure of economic interests, the public an can not if there is a conflict of interest. This recusal for failure to file a Statement of Economic Interest shall apply to every vote at every commission meeting until the Form is filed or the number of recusals results in removal from office.

Section 3.231 (a) and (b) This provision needs to add Department Heads who also are appointed, serve at the pleasure of the mayor, and who the fact record shows do make contributions.

(b) This provision must apply to fundraising for any elected official or candidate and not be limited to the "appointing authority." City commissioners and board members are appointed by the mayor but in most

cases are also confirmed (or not confirmed and vetoed) by the Board of Supervisors. By stating "the appointing authority" the Ethics Commission will have created an unenforceable provision or, at a minimum, a back door to contributions that support or oppose officials or candidates at the express or implied request of the appointing authority. The public will see this provision as falling far short of ending the pay-to-play activity they see as impacting City Hall. It should be noted that no such limitation exists in Los Angeles, which was the model for this provision, nor was it suggested by the Board of Supervisors Budget and Legislative Analyst in his June 2012 report to the Board, nor was it included in the San Francisco Civil Grand Jury June 2014 report.

Kundert, Kyle (ETH)

From: LARRY BUSH [redacted]
Sent: Friday, September 15, 2017 9:35 AM
To: Ford, Patrick (ETH); Kundert, Kyle (ETH); Blome, Jessica (ETH); Pelham, Leeann (ETH)
Cc: [redacted] Peter Keane
Subject: Fact analysis on Behest Payments, Commissioners
Attachments: Behest.xlsx; BehestNPO.xlsx; SF_CommissionerContribs_20170626.xlsx; SanFranciscoResults.pdf

I created excel spread sheets on the most recent five years of Behest payments (since mid-2012), and then provided subsets to examine how many Behest donors went to nonprofits and how many of those went to the types of nonprofits represented by the recent opponents to a prohibition who expressed the belief their fundraising would be significantly harmed.

I am attaching my research results and spreadsheets.

The commissioner spreadsheet was developed for us by Maplight.

The errors if any in Behest are mine.

Total Behest Donors: 258 donors totalling $23,136,141
Total Behest donors to NPO's providing direct services for housing or homeless: Zero
Total Behest donors to Mayor for housing: 2 totaling $4,976,000
Total Behest Donors to Nonprofits: 70 totaling $2,680,239 (Parks Alliance, Women's Foundation, SPUR, Salvation Army, United Way)
Total Behest Donors to Mayor for America's Cup, City Hall Centennial: 62 totaling $3,412,902

1. All Behest donors

2. All Nonprofit recipients of Behest

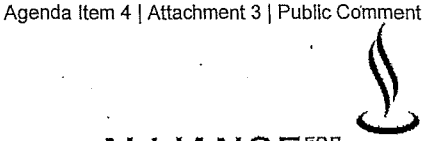
3. All nonprofit recipients providing direct human services, e.g., housing, homeless — zero

total 2 contributions $4,976,000 to Mayor's Homeless Fund paying for specific housing developments, not to nonprofits

4. Commissioner contribution record 2015/2016

5. State law on officials soliciting contributions for other candidates

http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-



August 23, 2017

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Sent via e-mail to leann.pelham@sfgov.org

Re: "Prop. J" and Campaign Finance Revision Project

Dear Ms. Pelham:

I am writing on behalf of Alliance for Justice (AFJ) to share our concerns regarding the Commission's draft "Revised Prop. J" ordinance. AFJ is a national association of more than 120 civil rights, environmental, and other social and economic justice organizations. Through AFJ's Bolder Advocacy program, we provide training, educational resources, and free technical assistance to nonprofits so that they can confidently advocate for community change. Many of the groups with whom we work will be affected if this ordinance were to be enacted in its current form.

We agree with many of the recommendations proposed by the San Francisco Human Services Network and Council of Community Housing Organizations-led coalition in their letter dated August 18, 2017. Given Bolder Advocacy's unique focus, we would like to highlight some specific concerns about the proposed ordinance's potential impact on nonprofit advocacy.

Behested Payment Ban for City Contractors

AFJ supports reasonable campaign contribution limits and disclosure at the state and local levels. We also recognize that Section 1.1.26 of the Campaign Reform Ordinance already prohibits city contractors from making campaign contributions to city officials with power over their contracts. But expanding Section 1.126(b) to also prohibit behested payments by city contractors —the organizations, principal officers, and board members— would negatively impact nonprofits in three ways.

First, the behested payments ban would make it more difficult for bona fide charities, including organizations that provide vital services to San Francisco residents and those that support important governmental functions, to raise money with the help of government officials. By

imposing an outright ban on top of existing disclosure requirements, the proposed ordinance would blur the distinction between a behested payment, a gift, and a campaign contribution as it is commonly understood by charities in California.

Aside from impeding cooperation between charities and government, this false equivalence between behested payments, gifts, and campaign contributions is at odds with state law. When the California Legislature amended the Political Reform Act in 1997 to distinguish behested payments from campaign contributions, it explicitly recognized that "payments made by others to assist in the conduct of such governmental, legislative, or charitable activities, even 'at the behest of' an elected officeholder are neither 'gifts' nor 'contributions' and should *not be subject to limits*."[1]

Second, the proposed ban on behested payments by city contractors risks infringing on the right of unpaid nonprofit board members to participate in the political process. Like all other San Franciscans, nonprofit board members in San Francisco have the constitutional right to political expression in their capacity as private citizens. Yet proposed changes to Section 1.126(b) would even ban unpaid board members of nonprofit organizations that contract with the city from making contributions and other payments at the behest of public officials, even if the board member has no financial interest in the organization's city contract and does not participate in its negotiation.

Once again, this extreme restriction is at odds with analogous provisions of state law. State pay-to-play rules prohibit a party seeking a state contract, license, permit, or other entitlement for use from making a contribution of more than $250 to an officer of the agency awarding the contract, license, or permit.[2] However, these rules apply only to a person who is either a party in the proceeding,[3] a participant in the proceeding,[4] or to an agent of the party/participant.[5] Moreover, the official soliciting or accepting a contribution must know or have reason to know that the party, participant, or agent has a financial interest in the proceeding.[6] The FPPC has advised that under state law, for example, a Planning Commissioner may accept a campaign contribution from a board member of an organization that applied for an entitlement from the Planning Commission, as long as the board member was not a party, participant, or agent in the proceeding, and did not have a financial interest in the proceeding.[7] As currently written,

[1] Senate Rules Committee Senate Floor Analysis of SB 124 (4/30/97) (emphasis added).
[2] Government Code Section 84308.
[3] Section 84308(a)(1) (defined as "any person who files an application for, or is the subject of, a proceeding involve a license, permit, or other entitlement for use").
[4] Section 84308(a)(2). (defined as "any person who is not a party who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision").
[5] FPPC Regulation 18438.3(a) ("agent" is defined as a person who "represents the party [...] in connection with the proceeding").
[6] FPPC Regulation 18438.7(a).
[7] *Petzold* Advice Letter, No. A-03-094.

1.126(b) does not distinguish between unpaid nonprofit board members and financially interested parties who actually participate in city contract negotiations.

Third, the behested payments ban could cause nonprofits with city contracts to violate the ordinance at no fault of their own because of the private political activities of their board members. This danger, in turn, may lead some nonprofits to avoid recruiting engaged members of their communities to serve on their boards.

Repeated Recusals

Finally, we recognize the need for robust conflict of interest laws to prevent corruption and the appearance of impropriety in government decision-making. However, Sections 87100 et seq. of the California Political Reform Act, California Government Code Section 1090, and California Government Code Section 84308 already provide for robust recusal mechanisms in the event that a government official has a conflict of interest—as well as stiff penalties for noncompliance. Section 3.209 of the proposed ordinance would empower the Commission to also suggest the removal of board and commission members who recuse themselves repeatedly in accordance with current law. We fear that the specter of being removed from office simply for complying with ethics laws could deter paid nonprofit staff and executives from lending their valuable expertise and the voices of the communities they serve to governmental boards and commissions. We therefore oppose this provision.

For the foregoing reasons, we respectfully request that the Commission consider changes to the aforementioned sections of the draft Prop. J ordinance.

Sincerely,

Toren Lewis,

Northern California Counsel
Bolder Advocacy Program
Alliance for Justice
(510) 444-6070

436 14th Street| Suite 425 | Oakland, CA 94612

Ethics Commission/Behest ltr

Friends of Ethics reviewed the posted disclosures on Behest payments from 2011 to the present. We note the following information that we believe is relevant now that the Commission is reviewing changes.

San Francisco officials have solicited more than $25 million in Behest payments since 2012.

Mayor Lee's has obtained more than Governor Jerry Brown in Behest payments during this same period, amounting to more than $20 million.

Contributions from business entities seeking city approvals show correlations between the Behest payment donation and a subsequent city approval.

There is a public perception that such payments may be a circumvention of established campaign contribution limits and prohibitions that already apply to corporations, provide an unfair advantage that distorts the integrity of city funding, and harms dissenting shareholder interest in protecting investments from being used to support candidates the individual may oppose.

We recommend two sources to provide a narrow category of prohibited sources for Behest payments.

The US Court of Appeals, Second Circuit definition of "doing business" 1) contracts greater than or equal to $100,000 for the procurement of goods, services, or construction; (2) real property acquisitions or dispositions; (3) applications for approval of transactions involving office space, land use, or zoning changes; (4) certain concessions and franchises greater than or equal to $100,000; (5) grants greater than or equal to $100,000; (6) economic development agreements; (7) contracts for investment of pension funds; and (8) transactions with lobbyists.[7]

http://caselaw.findlaw.com/us-2nd-circuit/1589171.html

The Campaign Legal Center, in their advice letter of July 8 2017 to the District of Columbia, also includes tax abatements.

http://www.campaignlegalcenter.org/sites/default/files/CLC%20Testimony%20in%20Support%20of%20Pay%20to%20Play%20Bills.pdf

Consider these examples:

Kilroy Realty contributed $500,000 on June 24, 2013 at Mayor Lee's request. Six weeks later, on August 15, 2013, City Planning approved Kilroy's request to add six stories to its building at 350 Mission Street. As the city moved forward with other elements of Kilroy's requirements, Kilroy contributed a second $500,000 on January 31, 2014.

San Francisco Waterfront, sponsor of 8 Washington, contributed $10,000 on June 12, 2013. During this period, signatures were gathered to put 8 Washington on the ballot, which qualified on July 12, 2013. During the election, Mayor Lee frequently appeared on behalf of San Francisco Waterfront in mailers and on television ads. The measure lost overwhelmingly in November 2013.

Google contributed $6.8 million on June 13, 2014 to MTA for free Muni for two years for city school children. At the time Google was seeking city approval for a pilot program to allow Google to use city bus stops at minimal cost to transport its employees. Six weeks prior to the Behest payment, on May 1, 2014, Google was sued over its use of city bus stops by a coalition of housing and community organizations.

Coca Cola contributed $10,000 on July 10, 2014 at Mayor Lee's request. At that time, the company was spending millions to defeat a November ballot measure on sugary soft drinks and wanted Mayor Lee to remain neutral. Mayor Lee remained neutral.

An informal count indicates that approximately 120 separate Behest payments were made from 2012 to the current date. About two-thirds of these came from business entities or associations, with the remaining one-third from private individuals or foundations, including family foundations.

The business entities making Behest payments were primarily developers, regulated companies like Recology, PG&E, AT&T, banks, and realtors associations.

This may represent only a partial disclosure because many city officials are not required to disclose Behest payments and disclosures are legally only required for those exceeding $5,000.

There is currently no reporting requirement for city commissioners, department heads, and others who have an influence on city awards of business agreements.

Consider as an example the Rate Setting Board for Recology that includes the Public Utilities Commission Director, the City Administrator and the City Controller. None are required to disclose Behest payments. Recology is among the donors making Behest payments, but if they make donation at the request of these officials it will not be disclosed.

The city officials who made requests for Behest payments include the mayor, the city attorney, and the district attorney, Supervisors. The proposed reform omits required disclosures by members of the school board, Community College trustees, the assessor, the treasurer and the sheriff.

We recommend that the current draft include all elected city candidates as well as all city appointees including commissioners, department heads and officials who must file a Statement of Economic Interest.

We also recommend that the public file the disclosures electronically and in a format of open data searchable.

We further recommend that the law provide these features:

- An exemption during times of declared State of Emergency such as an earthquake or other public danger
- An exemption in cases where a city agreement results from a sealed, competitive bid that is publicly advertised
- An exemption in cases of a declared emergency such as the HIV/AIDS epidemic response, homelessness, and the current opioid crisis. The emergency would have to be officially declared by the Health Department or other city agency or the Board of Supervisors, and would be of a specific duration but could be renewed. There will still be a disclosure and it will require a statement invoking the emergency and the office making the emergency determination.
- An exemption for affordable housing for low-income residents that is funded primarily by public funds from the city, state or federal government. There would still be a disclosure invoking the exemption and identifying the public funding sources.
- A requirement that Behest payments paying for costs under the control of a city official, such as the Mayor's hosting of the US Conference of Mayors of the City Hall Centennial, specify a budget

for how the funds are spent under the same approval procedures for any gift to the city requiring a vote of the Board of Supervisors.

- Authorization for Ethics to impose a penalty and fine for any city official who fails to file disclosures as required by law. This should be based on the amount of the behest payment, whether a decision was made in favor of the donor during the period when the Behest payment was not disclosed, and the length that the report was untimely.

Kundert, Kyle (ETH)

From: LARRY BUSH [redacted]
Sent: Sunday, September 10, 2017 3:11 PM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Pelham, Leeann (ETH)
Cc: Oliver Luby
Subject: Forwarding Campaign Legal Center advice letter re: contribution prohibition

http://www.campaignlegalcenter.org/sites/default/files/CLC%20Testimony%20in%20Support%20of%20Pay%20to%20Play%20Bills.pdf

Note in particular:

"A broader conception of "business dealings": In addition to contracts, the Attorney General's bill would cover grants, tax abatements, and the sale or lease of buildings or land.6 Covering tax abatements and the sale and use of land and real estate is a more comprehensive approach that reflects the numerous ways the District can engage in business dealings and, accordingly, the individuals and entities on the other side of the business dealing that should be covered by a pay-to-play law."

"The Second Circuit has upheld similar laws, including New York City's regulation of contributions from entities "doing business" with the city.16 That upheld law is expansive, covering persons who have received or are seeking contracts, franchises, concessions, grants, pension fund investment contracts, economic development agreements, or land use actions with the city.17"

Ognibene v. Parkes, 671 F.3d 174 (2d Cir. 2011); see also Green Party of Conn. v. Garfield, 616 F. 3d 189 (2d Cir. 2010) (upholding Connecticut's ban on contributions by contractors and their principals). 17 Ognibene, 671 F.3d at 179.

FILE NO. ORDINANCE NO.

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) establish local behested payment reporting requirements; 5) require additional disclosures for campaign contributions from business entities to political committees; 6) require disclosure of bundled campaign contributions; 7) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 8) prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, City Attorney, candidates for City Attorney, and their controlled committees, from any person with pending or recently resolved land use matters; 9) require committees to file a third pre-election statement prior to an election; 10) remove the prohibition against distribution of campaign advertisements containing false endorsements; 11) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) appropriate $230,000 to the Ethics Commission to fund administrative and enforcement costs for this ordinance.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.168, 1.170, adding Sections 1.114.5, 1.123, 1.124, 1.125, 1.127, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"Business entity" shall mean a limited liability company (LLC), corporation, limited partnership, or limited liability partnership.

* * * *

"Developer" shall mean the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department (or other lead agency) under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for a project. For any project sponsor that is an entity, "developer" shall include all of its constituent individuals or entities that have decision-making authority regarding any of the entity's major decisions or actions. By way of example and without limitation, if the project sponsor is a limited liability company, each of its members is considered a developer for purposes of the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its general partners is considered a developer for purposes of the requirements of this Chapter. If the owner or agent that signs and submits the Environmental Evaluation Application will not be responsible for obtaining the entitlements or developing the project, then for purposes of the requirements of this Chapter 1 the developer shall be instead the individual or entity that is responsible for obtaining the entitlements for the project.

* * * *

"Financial interest" shall mean (a) an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter; (b) holding the position of director or principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors, in an entity with at least 10% ownership interest in that project or property; or (c) being the developer of that project or property.

* * * *

"Land use matter" shall mean (a) any request to a City elective officer for a Planning Code or Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary determination at a public hearing before a board or commission under the San Francisco Building Code, the Planning Code, or the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). "Land use matter" shall not include discretionary review hearings before the Planning Commission.

* * * *

"Prohibited source contribution" shall mean a contribution made (a) in violation of Section 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from contributing under Section 1.126, (d) from a person prohibited from contributing under Section 1.127, or (e) from a lobbyist prohibited from contributing under Section 2.115(e).

* * * *

"Resident" shall mean a resident of the City and County of San Francisco.

"Solicit" shall mean personally request a contribution from any candidate or committee, either orally or in writing.

* * * *

SEC. 1.114. CONTRIBUTIONS - LIMITS *AND PROHIBITIONS*.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) ~~*LIMITS*~~ *PROHIBITION* ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection *(b)* shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate or committee to circumvent the limits established by subsections (a) and (b).

(d) PROHIBITION ON CONTRIBUTIONS FOR OFFICIAL ACTION. No candidate may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

~~*(c)*~~ *(e)* AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section *1.114* and Section 1.120, the contributions of an entity whose contributions are

directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section *1.114*, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50% ~~*percent*~~.

~~*(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*~~

~~(e)~~ *(f)* FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section *1.114* or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the *permitted* amount ~~*permitted by this*~~

~~Section~~ to the City and County of San Francisco ~~and~~ by deliver*ing* the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

~~(f)~~ *(g)* RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited, and in addition ~~it~~ is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section *1.114*, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act~~, California Government Code Section 81000, et seq~~.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business; and a signed attestation from the contributor that the contribution does not constitute a prohibited source contribution.

(1) A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(2) If a committee that collects the information required under this subsection (a) and collects a signed attestation, or its electronic equivalent, that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single calendar year, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission disclosing the contributions.

(c) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution may be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, or in the name of another person or combination of persons.

(2) No person may make a contribution to a candidate or committee in his, her, or its name when using any payment received from another person on the condition that it be contributed to a specific candidate or committee.

(d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section 1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.123. REPORTING OF BEHESTED PAYMENTS. *In addition to the disclosure requirements imposed by the California Political Reform Act, City elective officers required to disclose behested payments of $5,000 or more from a single source shall file their disclosure statements with the Ethics Commission within 30 days of the date on which the payment(s) total $5,000 or more.*

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

*(a) **Additional Disclosures.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that, in aggregate, total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

*(a) **Definition.** For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting.

"Campaign administrative activity" shall mean administrative functions performed by paid or volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee's campaign statements, or such campaign consultant's paid employees.

*(b) **Additional Disclosure Requirements.** Any committee controlled by a City elective officer or candidate for City elective office that receives contributions totaling $5,000 or more that have been bundled by a single individual shall disclose the following information:*

(1) the name, occupation, employer, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the individual who bundled the contributions is a member of a City board or commission, the name of the board or commission on which that person serves, and the names of any City officers who appointed or nominated that person to the board or commission; and

(4) whether, during the 12 months prior to the date of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more, the person who bundled the contributions attempted to influence the City elective officer who controls the committee in any legislative or administrative action and if so, the legislative or administrative action that the contributor sought to influence and the outcome sought.

(c) ***Filing Requirements.*** *Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission. Committees shall be required to provide this information following the receipt of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more.*

(d) ***Website Posting.*** *The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.126. CONTRIBUTION ~~*LIMITS*~~ *PROHIBITION* – CONTRACTORS DOING BUSINESS WITH THE CITY.

(a) **Definitions**. For purposes of this Section *1.126*, the following words and phrases shall mean:

"Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

"City Contractor" means any person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District, including any party or prospective party to a contract, as well as any member of that party's board of directors or any of that party's principal officers, including its chairperson, chief executive officer, chief financial officer, chief

operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the party's bid or contract.

"Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

(1) the rendition of personal services,

(2) the furnishing of any material, supplies or equipment,

(3) the sale or lease of any land or building,

(4) a grant, loan, or loan guarantee, or

(5) a development agreement.

"Contract" shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

~~*(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.*~~

~~*(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:*~~

~~(A) the rendition of personal services,~~

~~(B) the furnishing of any material, supplies or equipment,~~

~~(C) the sale or lease of any land or building, or~~

~~(D) a grant, loan or loan guarantee.~~

~~(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.~~

(b) **Prohibition on Contributions.** No *City Contractor who is party to or is seeking a contract that has a total anticipated or actual value of $100,000 or more, or a combination or series of contracts with a value of $100,000 or more from a single City agency, may make any contribution to:* ~~person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District,~~

~~(1) Shall make any contribution to:~~

~~(A)~~ *(1)* An individual holding a City elective office if the contract or contracts must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;

~~(B)~~ *(2)* A candidate for the office held by such individual; or

~~(C)~~ *(3)* A committee controlled by such individual or candidate.

~~(2) Whenever the agreement or contract has a total anticipated or actual value of $50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of $50,000.00 or more in a fiscal year of the City and County~~

~~(3)~~ *(c) **Term of Prohibitions.** The prohibitions set forth in subsection (b) shall apply from the submission of a proposal for a contract until:* ~~At any time from the commencement of negotiations for such contract until:~~

~~(A)~~ *(1)* The termination of negotiations for such contract; or

~~(B)~~ (2) ~~Six~~ 12 months ~~have elapsed~~ from the date the contract is approved.

~~(c)~~ (d) **Prohibition on ~~Receipt of Contribution~~ Soliciting or Accepting Contributions.** No individual holding City elective office, *candidate for such office,* or committee controlled by such an individual shall: ~~solicit or~~

(1) accept any contribution prohibited by subsection (b); *or*

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know to be a City Contractor.

~~at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.~~

~~(d)~~ (e) **Forfeiture of ~~Dontribution~~ Contribution.** In addition to any other penalty, each committee that ~~receives~~ *accepts* a contribution prohibited by subsection ~~(c)~~ *(b)(1)* shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for *the waiver or reduction* of the forfeiture.

~~(e)~~ (f) **Notification.**

(1) **Prospective Parties to Contracts.** *The agency responsible for the initial review of any contract proposal subject to subsection (b) shall inform* ~~Any~~ *any* prospective party to ~~a~~ *the* contract ~~with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District shall inform each person described in Subsection (a)(1)~~ of the prohibition in ~~S~~subsection (b) *and of the duty to notify the Ethics Commission, as described in subsection (f)(2),* by the ~~commencement of negotiations~~ *submission of a proposal* for such contract.

*(2) **Notification of Ethics Commission.** Every prospective party to a contract subject to subsection (b) must notify the Ethics Commission, within 30 days of the submission of a proposal, on a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the contract, and any subcontractor listed as part of the proposal*

~~(2)~~ *(3)* **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits, or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form *or in a format* adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection *(f)(3)* if the Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on which an appointee of the officer serves has filed the form on behalf of the board.

SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS BEFORE A DECISION-MAKING BODY.

*(a) **Definitions.** For purposes of this Section 1.127, the following phrases shall mean:*

"Affiliated entities" means business entities directed and controlled by a majority of the same persons, or majority-owned by the same person.

"Prohibited contribution" is a contribution to (1) a member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

*(b) **Prohibition on Contributions.** No person, or the person's affiliated entities, with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building*

Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors shall make any prohibited contribution at any time from a request or application regarding a land use matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling or any appeals from that decision or ruling have been finally resolved.

(c) ***Prohibition on Soliciting or Accepting Contributions.*** *No member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates shall:*

(1) accept any contribution prohibited by subsection (b); or

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know has a financial interest in land use matter.

(d) ***Exceptions.*** *The prohibitions set forth in subsections (b) and (c) shall not apply if:*

(1) the land use matter concerns only the person's primary residence;

(2) the person with a financial interest in the land use matter is a nonprofit organization with tax exempt status under 26 United States Code Section 501(c)(3), and the land use matter solely concerns the provision of health care services, social welfare services, permanently affordable housing, or other community services funded, in whole or in substantial part, by the City to serve low-income San Francisco residents; or

(e) ***Forfeiture of Prohibited Contributions.*** *In addition to any other penalty, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the*

Ethics Commission for deposit in the General Fund of the City and County; provided, that the Commission may provide for the waiver or reduction of the forfeiture.

(f) Notification.

(1) Prospective Parties to Land Use Matters. *The agency responsible for the initial review of any land use matter shall inform any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, of the prohibition in subsection (b) and of the duty to notify the Ethics Commission, described in subsection (f)(2), upon the submission of a request or application regarding a land use matter.*

(2) Persons with a Financial Interest in a Land Use Matter. *Any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, within 30 days of submitting a request or application, shall file with the Ethics Commission a report including the following information:*

(A) the board, commission, or department considering the land use matter;

(B) the location of the property that is the subject of the land use matter;

(C) if applicable, the file number for the land use matter; and

(D) if applicable, the names of the individuals who serve as the person's chairperson, chief executive officer, chief financial officer, and chief operating officer, or as a member of the person's board of directors.

SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

(a) **Supplemental Preelection Statements** - *General Purpose Committees*. In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, a San Francisco general purpose committee that makes contributions or expenditures totaling $500 or more during the period covered by the preelection statement, other than expenditures for the establishment and administration of that committee, shall file a preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot.

(b) **Time for Filing Supplemental Preelection Statements** - *General Purpose Committees*.

(1) Even-Numbered Years. In even-numbered years, preelection statements required by ~~*this Section*~~ *subsection (a)* shall be filed pursuant to the preelection statement filing schedule established by the Fair Political Practices Commission for county general purpose recipient committees. *In addition to these deadlines, preelection statements shall also be filed, for the period ending six days before the election, no later than four days before the election.*

(2) Odd-Numbered Years. In odd-numbered years, the filing schedule *for preelection statements* is as follows:

~~(1)~~ *(A)* For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election;

~~(2)~~ *(B)* For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election~~.~~*; and*

(C) For the period ending six days before the election, the statement shall be filed no later than four days before the election.

(c) Time for Filing Supplemental Preelection Statements - Ballot Measure Committees and Candidate Committees. In addition to the deadlines established by the Fair Political Practices

Commission, ballot measure committees and candidate committees required to file preelection statements with the Ethics Commission shall file a third preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot, for the period ending six days before the election, no later than four days before the election.

~~*(c)*~~ *(d)* The Ethics Commission may require that these statements be filed electronically.

~~***SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.***~~

~~*(a) **Prohibition.** No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated or implied in the campaign communication.*~~

~~*(b) **Definitions.** Whenever in this Section the following words or phrases are used, they shall mean:*~~

~~*(1) "Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement that refers to one or more clearly identified candidates or ballot measures. The term "campaign advertisement" does not include:*~~

~~*(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;*~~

~~(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or~~

~~(C) material distributed to all members, employees and shareholders of an organization, other than a political party;~~

~~(2) "Internet Advertisement" includes paid internet advertisements such as "banner" and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.~~

~~(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement.~~

~~(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not apply to violations of this Section. Notwithstanding the 60-day waiting period in Section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.~~

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter *1* has occurred may file a complaint with the Ethics Commission, City Attorney, or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any ~~voter~~ *resident*, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter *1*.

(1) No ~~voter~~ *resident* may commence an action under this *S*ubsection *(b)* without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The ~~voter~~ *resident* shall deliver the notice to the City Attorney *and the Ethics Commission* at least 60 days in advance of filing an action. No ~~voter~~ *resident* may commence an action under this *S*ubsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another ~~voter~~ *resident* has filed a civil action against the defendant under this *S*ubsection.

(2) A Court may award reasonable attorney's fees and costs to any ~~voter~~ *resident* who obtains injunctive relief under this *S*ubsection *(b)*. If the Court finds that an action brought by a ~~voter~~ *resident* under this *S*ubsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

(1) **Criminal.** Prosecution for violation of this Chapter must be commenced within four years after the date on which the violation occurred.

(2) **Civil.** No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred.

(3) **Administrative.** No administrative action alleging a violation of this Chapter and brought under Charter Section C3.699-13 shall be commenced more than four years after the date on which the violation occurred. The date on which the Commission forwards a complaint or information in its possession regarding an alleged violation to the District Attorney and City Attorney as required by Charter Section C3.699-13 shall constitute the commencement of the administrative action.

*(A) **Fraudulent Concealment.** If the person alleged to have violated this Chapter engages in the fraudulent concealment of his or her acts or identity, this four-year statute of limitations shall be tolled for the period of concealment. For purposes of this subsection, "fraudulent concealment" means the person knows of material facts related to his or her duties under this Chapter and knowingly conceals them in performing or omitting to perform those duties.*

(4) **Collection of Fines and Penalties.** A civil action brought to collect fines or penalties imposed under this Chapter shall be commenced within four years after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine or penalty is imposed when a court or administrative agency has issued a final decision in an enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter. The Executive Director does not make a final decision regarding the amount of a late fine or penalty imposed under this Chapter until the Executive Director has made a determination to accept or not accept any request to waive a late fine or penalty where such waiver is expressly authorized by statute, ordinance, or regulation.

* * * *

(e) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under

Administrative Code Chapter 28 initiate debarment proceedings against any person in conformance with the procedures set forth in that Chapter.

SEC. 1.170. PENALTIES.

(a) CRIMINAL. Any person who knowingly or willfully violates any provision of this Chapter *1* shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Section*s* 1.114, *1.126, or 1.127* of this Chapter shall be punishable by a fine of not less than $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater.

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter *1* shall be liable in a civil action brought by the ~~*civil prosecutor*~~ *City Attorney, or a resident who has filed suit in compliance with Section 1.168(b),* for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater. *In determining the amount of liability, the court may take into account the seriousness of the violation, the degree of culpability of the defendant, and the ability of the defendant to pay. In an action brought by a resident, if a court enters judgment against the defendant(s), the resident shall receive 50 percent of the amount recovered and the remaining 50 percent shall be deposited into the*

City's General Fund. In an action brought by the City Attorney, the entire amount recovered from the defendant(s) shall be deposited into the City's General Fund.

(c) ADMINISTRATIVE. Any person who ~~*intentionally or negligently*~~ violates any of the provisions of this Chapter *1* shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter *2* the following words or phrases are used, they shall mean:

"Anything of value" shall mean any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the City, contributions as defined herein, or gifts that qualify for gift exceptions established by State or local law.

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent.

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.

~~(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.~~

"Fundraising" shall mean:

(a) requesting that another person make a contribution;

(b) inviting a person to a fundraising event;

(c) supplying names to be used for invitations to a fundraiser;

(d) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;

(e) permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event;

(f) providing the use of one's home or business for a fundraising event;

(g) paying for at least 20% of the costs of a fundraising event;

(h) hiring another person to conduct a fundraising event;

(i) delivering a contribution, other than one's own, by whatever means to a City elective officer, a candidate for City elective office, or a candidate-controlled committee; or

(j) acting as an agent or intermediary in connection with the making of a contribution.

"Immediate family" shall mean spouse, registered domestic partner, and dependent children.

~~(a)~~ "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file *a* statement~~s~~ of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

"Solicit" shall mean personally requesting a contribution from any candidate or committee, either orally or in writing.

"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

(a) ***Prohibitions.*** *In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

(4) No City elective officer or member of a board or commission may, directly or by means of an agent, solicit or otherwise request that a person give anything of value to a third party if:

(A) the person who is the subject of the request has a matter pending before the official, his or her agency, or the official has final approval authority over the matter, or

(B) the person who is the subject of the request had a matter before the official or his or her agency within the last 12 months.

(5) notwithstanding the prohibitions contained in subsection (a)(4), a City elective officer or member of a board or commission may solicit or otherwise request that a person give anything of value to a third party if:

(A) The solicitation is made in a communication to the public.

(B) The solicitation is made at an event where 20 or more persons are in attendance.

(C) The solicitation is made to respond to an emergency, as defined in San Francisco Administrative Code Section 7.1.

(b) ***Exception: public generally.*** *The prohibitions set forth in subsection (a)(1)-(2) shall not apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public and the effect is not unique. For purposes of this subsection (b):*

(1) A significant segment of the public is at least 25% of:

(A) all businesses or non-profit entities within the official's jurisdiction;

(B) all real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) all individuals within the official's jurisdiction.

(2) A unique effect on a public official's financial interest includes a disproportionate effect on:

(A) the development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;

(B) an official's business entity or real property resulting from the proximity of a project that is the subject of a decision;

(C) an official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;

(D) an official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;

(E) a person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or

(F) an official's personal finances or those of his or her immediate family.

SEC. 3.209. RECUSALS.

(a) ***Recusal Procedures.*** *Any member of a City board or commission, including a member of the Board of Supervisors, who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing or acting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

*(b) **Repeated Recusals.** If a member of a City board or commission, including a member of the Board of Supervisors, recuses himself or herself, as required by subsection (a), in any 12-month period from discussing or acting on:*

(1) three or more separate matters; or

(2) 1% or more of the matters pending before the officer's board or commission,

the Commission shall determine whether the official has a significant and continuing conflict of interest. The Commission shall publish its written determination, including any discussion of the official's factual circumstances and applicable law, on its website. Thereafter, if the Commission determines that the official has a significant and continuing conflict of interest, the official shall provide the Commission with written notification of subsequent recusals resulting from the same conflicts of interest identified in the written determination. With respect to such officials, the Commission may recommend to the official's appointing authority that the official divest or otherwise remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting interest, the Commission may recommend to the official's appointing authority that the official should be removed from office under Charter Section 15.105 or by other means.

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a campaign for or against any ballot measure or candidate.*

*(b) **Fundraising Prohibition.** No member of a board or commission may engage in fundraising on behalf of any City elective officer, candidate for such office, or committee controlled by*

such individual. For the purposes of this subsection, "member of a board or commission" shall not include a member of the Board of Supervisors.

Section 3. Effective and Operative Dates. This ordinance shall become effective 30 days after enactment. This ordinance shall become operative on January 1, 2019. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

September 22, 2017

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Dear Commissioners

We write as a broad coalition of nonprofit arts, service, healthcare, and housing organizations and community supporters to express **our deep concern over the present proposal before the San Francisco's Ethics Commission to impose a ban on an essential category of charitable donations** – what the proposal describes as 'behested' payments. In the name of fighting vague allegations of 'corruption' and 'pay to play' politics, this proposal would treat all behested contributions alike. As a result, the ban will eliminate millions of dollars of legitimate fundraising and cut essential programs that have long benefited and strengthened San Francisco communities.

Under existing state law, "behested" contributions are contributions which are encouraged by elected officials for public or charitable purposes. Under state law behested contributions over $5000 must be reported to oversight agencies. The proposal before the Ethics Commission would convert this disclosure requirement into a total ban if the contributor has any contractual relationship with the city. Because many organizations have some form of contract with the city, from the SF Giants to the Opera to Glide Church, banning behested contributions from these organizations (including their executive staff and board members) will significantly narrow the range of eligible donors in the city. Some of the many programs funded by behested contributions over the past few years included: the City's summer jobs program, Free Muni for youth, research on accountability and fairness in law enforcement, parks programs, and the Women's Foundation. We know of no credible allegations of corruption related to any of these contributions.

We support proposals that target corruption and require disclosure of gifts, but the present proposal is misguided and misdirected. Rather than cracking down on bad actors, the proposal imposes a form of collective punishment on our entire sector. As the nationally recognized nonprofit advocacy organization Alliance for Justice warns, the Ethics Commission's proposal would "imped(e) cooperation between charities and government" and creating a "false equivalence" between charitable contributions and campaign contributions.

For all these reasons, we support proposals to expand disclosure requirements but urge the SF Ethics Commission to reject the proposal to ban behested contributions. A ban is an extreme measure which will have a deeply chilling impact on the city's nonprofit sector, causing far more harm than good.

Sincerely,

San Francisco Human Services Network
Debbi Lerman, Administrator

Council of Community Housing Organizations
Peter Cohen and Fernando Marti, Co-Directors

AIDS Legal Referral Panel
Bill Hirsh, Executive Directors

Alcohol Justice
Bruce Lee Levingston, Executive Director/CEO

API Council
Cally Wong, Executive Director

API Cultural Center
Vinay Patel, Executive Director

API Wellness Center
Lance Toma, Executive Director

Asian Neighborhood Design
Erica Rothman Sklar, Executive Director

Bernal Heights Neighborhood Center
Gina Dacus, Executive Director

Causa Justa :: Just Cause
Kate Sorensen, Development Director

Center for Asian American Media
Stephen Gong, Executive Director

Chinatown Community Development Center
Rev. Norman Fong, Executive Director

Coalition on Homelessness
Jennifer Friedenbach, Executive Director

Coleman Advocates
Neva Walker, Executive Director

Community Housing Partnership
Gail Gilman, Executive Director

Community Youth Center
Sarah Ching-Ting, Executive Director

Compass Family Services
Erica Kisch, Executive Director

Community Design Center
Chuck Turner, Executive Director

Conard House
Richard Heasley, Executive Director

Crowded Fire Theater Company
Tiffany Cothran, Managing Director

Delivering Innovation in Supportive Housing (DISH)
Doug Gary and Lauren Hall, Co-Directors

Edgewood Center for Children and Families
Lynn Dolce, CEO

Episcopal Community Services
Ken Reggio, Executive Director

Filipino-American Development Foundation
Angelica Cabande, Organizational Director

Golden Thread Productions
Torange Yeghiazarian, Founding Artistic Director

The Gubbio Project
Laura Slattery, Executive Director

Haight Ashbury Neighborhood Council
Bruce Wolfe, President

Hamilton Families
Tomiquia Moss, CEO

HealthRIGHT 360
Lauren Kahn, Director of Public Affairs and Policy

Homebridge, Inc.
Mark Burns, Executive Director

Homeless Prenatal Program
Martha Ryan, Executive Director

Hospitality House
Joseph T. Wilson, Executive Director

HomeownershipSF
Shannon Way, Executive Director

Housing Rights Committee
Sarah 'Fred' Sherburn, Executive Director

Instituto Familiar de la Raza, Inc.
Dr. Estela R. Garcia, Executive Director

Larkin Street Youth Services
Sherilyn Adams, Executive Director

Lutheran Social Services of Northern California
Nancy Nielsen, Deputy Director

Lavender Youth Recreation and Information Center (LYRIC)
Jodi L. Schwartz, Executive Director

Meals on Wheels
Ashley McCumber, CEO

Mercy Housing California
Doug Shoemaker, Executive Director

Mission Economic Development Agency
Luis Granados, Executive Director

Museum of the African Diaspora
Linda Harrison, Executive Director

New Conservatory Theatre Center
Barbara Hodgen, Executive Director

NEXT Village SF
Jacqueline Jones, Executive Director

NICOS Chinese Health Coalition
Kent Woo, Executive Director

ODC Theater
Brenda Way, Artistic Director / Founder

PODER (People Organizing to Demand Environmental & Economic Rights)
Antonio Diaz, Organizational Director

Positive Resource Center / Baker Places
Brett Andrews, CEO

Progress Foundation
Steve Fields, Executive Director

Root Division
Michelle Mansour, Executive Director

St. Francis Living Room
Greg Moore, Executive Director

San Francisco AIDS Foundation
Courtney Mulhern-Pearson, Director of State and Local Affairs

San Francisco Ballet
Glenn McCoy, Executive Director

San Francisco Bicycle Coalition
Brian Wiedenmeier, Executive Director

San Francisco Community Land Trust
Tyler Macmillan, Organizational Director

San Francisco Housing Development Corporation
David Sobel, Executive Director

San Francisco Information Clearinghouse
Calvin Welch, Board president

San Francisco International Film Festival
Kirsten Strobel, Director of Individual Relations

San Francisco Opera
Matthew Shilvock, General Director

San Francisco Performances
Melanie Smith, President

San Francisco Symphony
Derek Dean, Chief Operating Officer

Seneca Family of Agencies
Leticia Galyean, Executive Director

Senior and Disability Action
Jessica Lehman, Executive Director

Shanti
Eric Y. Sutter, Director of HIV Programs

SOMArts Cultural Center
Maria Jenson, Executive Director

South of Market Community Action Network
Angelica Cabande, Organizational Director

Swords to Plowshares
Leon Winston, Chief Operating Officer

Tenderloin Neighborhood Development Corporation
Don Falk, CEO

Theatre Bay Area
Brad Erickson, Executive Director

Treasure Island Homeless Development Initiative
Sherry Williams, Executive Director

Veterans Equity Center
Luisa Antonio

Yerba Buena Center for the Arts
Jonathan Moscone, Chief of Civic Engagement

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: October 19, 2017

To: San Francisco Ethic Commission

From: Kyle Kundert, Senior Policy Analyst
Pat Ford, Policy Analyst

Re: AGENDA ITEM 6 - Staff Memorandum Summarizing Outstanding Policy Matters Relating to the 2017 San Francisco Anti-Corruption and Accountability Ordinance

Summary: This memorandum outlines the set of outstanding decision points that may need to be resolved by the Commission should it wish to move forward on the proposed 2017 San Francisco Anti-Corruption and Accountability Ordinance with a four-fifths majority. The memorandum explains each outstanding item and offers policy analysis of the options before the commission.

Action Requested: Staff recommends that the Commission discuss each remaining policy matter and provide its policy direction to Staff on how to proceed with any potential revisions to the current draft ordinance.

I. Introduction

At its September 25, 2017, meeting, the Commission heard Staff's presentation outlining a revisions to the Campaign Finance Reform Ordinance ("CRFO") and the Conflict of Interest Code, entitled the 2017 San Francisco Anti-Corruption and Accountability Ordinance (the "Ordinance") and took public comment. The Commission voted in favor of the overall Ordinance by a three-fifths majority. However, to submit to the Board of Supervisors (the "Board") a draft ordinance proposing amendments to the Campaign and Governmental Conduct Code, the Commission must vote in favor of the ordinance by a four-fifths majority.

For the Commission to vote in favor of the Ordinance by a four-fifths vote, certain provisions of the Ordinance may need to be revised. During the Commission's September meeting, the Commission was unable to reach a consensus on certain provisions of the Ordinance. This memorandum outlines the debate regarding those provisions to enable the Commission's discussion at its October 23rd meeting to focus on those outstanding policy questions.

II. Contributions by City Contractors

As currently drafted, the Ordinance would amend Campaign and Governmental Conduct Code Section 1.126, which limits the ability of City contractors (including an entity's directors, primary officers, and large shareholders) to make contributions to City elective officers or candidates. The Ordinance would expand the period of time during which City contractors may not make contributions from six months after the approval of the contract to twelve months after the approval of the contract. The Ordinance would also narrow the class of City contractors who are subject to the rule from all contractors who have a contract valued at $50,000 or more to only those contractors with contracts valued at $100,000 or more. Concern has been raised that there is not sufficient evidence supporting these changes to the existing limits on contributions by City contractors.

Policy Questions

A. *Should the Commission reject extending the term of the City contractor contribution ban from six months following approval of a City contract to twelve months following approval of a City contract?*

With certain qualifications, Staff would not be opposed to this change. As a policy matter Staff believes a twelve-month ban would be an improvement over current law. However, Staff would not oppose deleting the time-period extension, so long as no other changes are made to Section 1.126 to narrow the effectiveness of the City contractor contribution ban.

B. *Should the Commission reject the increasing from $50,000 to $100,000 the threshold amount for contracts that trigger the City contractor contribution ban?*

Staff would support raising the threshold to $100,000. Staff have presented data showing that, if the threshold were changed to $100,000, 78% of all contracts currently captured by the rule would still be captured. Likewise, the top 100 grantees (representing 80% of the grant money currently captured) would still be captured. Currently, there are just over two-hundred grantees captured by the rule, most of which are non-profits. As a policy matter, this change would exempt contracts and grants that present a lesser threat of corruption due to their smaller size, and would focus on those with a potentially greater threat of corruption or the appearance of corruption due to their more significant dollar value.

C. *Should the Commission exempt all unpaid directors of nonprofits from the rule against contributions by City contractors and their directors, officers, and large shareholders?*

Staff would not support this concept. This would change *existing law* that prohibits certain officers and directors of a City contractor from making contributions under the circumstances defined in the law. This change would result in a *narrowing* of that existing provision to exempt individuals who are already subject to the terms of Section 1.126. Such a change has not been contemplated during the discussion of the Ordinance, and, by weakening existing contribution limitations, it would be antithetical to the goals of the Ordinance.

III. Contributions by Parties with a Financial Interest in a Land Use Matter

As currently drafted, the Ordinance would add Section 1.127 to the Campaign and Governmental Conduct Code, which would prohibit parties with a financial interest in a land use matter pending before a City department from making a contribution to the Mayor, the City Attorney, a member of the Board of Supervisors, or a candidate for any of these offices. An exception would allow such persons to make an otherwise prohibited contribution if the person with a financial interest in a land use matter is a 501(c)(3) organization that is wholly or substantially funded by the City and the land use matter concerns the provision of housing, healthcare, or other social welfare services to low-income City residents. Concern has been raised that Section 1.127 is not sufficiently supported by evidence showing that contributions by parties with a financial interest in a land use matter raise the risk or appearance of corruption.

Policy Questions

A. *Should the Commission remove Section 1.127 from the Ordinance?*

Staff would not oppose this change. On the one hand, Staff believes that the legal burden necessary to go forward with this provision has been met. While data may be imperfect, from a policy perspective this provision is warranted due to the volatility surrounding land use decisions in the City and the influence that persons with land use decisions have or appear to have over City decision making. However, from a logistical standpoint, the systems necessary to track these decisions effectively are not currently available. The decentralized nature of the City's discretionary land use processes makes auditing and enforcing this provision logistically challenging. Staff believes compliance and enforcement of the provision will be challenging until a City-wide vendor system is adopted, which is not likely to occur in the near-term. On balance, this provision seems to provide limited benefit, given existence of contribution limits that are already relatively low, while presenting significant enforcement challenges.

IV. Allowing Civil Penalties in Citizen Suits

Current law allows citizens to bring a civil action to stop a violation of Article I, Chapter I of the Campaign and Governmental Conduct Code, also known as the Campaign Finance Reform Ordinance ("CFRO"). As drafted, the Ordinance would amend Campaign and Governmental Conduct Code Section 1.170 to allow private plaintiffs in a civil action to ask the court to impose a civil penalty on the defendant. The plaintiff would also be entitled to collect fifty percent of any civil penalties collected from the defendant. Critics of this approach have expressed concern that providing a financial incentive for private parties to enforce provisions of CFRO will lead to frivolous or politically motivated lawsuits.

Policy Questions

A. *Should the Commission remove the provision allowing private plaintiffs to receive fifty percent of civil penalties collected in a citizen suit?*

Staff would not oppose this change. Though it is largely speculative that allowing private party plaintiffs to receive a portion of civil penalties will lead to frivolous or politically motivated lawsuits, Staff believes that existing law provides a sufficiently robust avenue for citizens to seek enforcement of the terms of CFRO.

Current law already provides a private right of action, but this has not resulted in significant numbers of politically motivated lawsuits. There is no indication that the ability of a private party plaintiff to receive a portion of any penalties collected will increase the occurrence of such suits, since such suits would not be brought primarily for financial gain. Nonetheless, Staff believes that the Ordinance could be revised to eliminate penalties in citizen suits and that this change would not significantly impair the ability of citizens to seek enforcement of CFRO in the courts.

V. Board and Commission Member Fundraising Ban

As drafted, the Ordinance would add Section 3.231 to the Campaign and Governmental Conduct Code to prohibit any board or commission member from raising funds for any City elective officer or candidate for such office. The version of the Ordinance presented at the Commission's August 2017 meeting only prohibited a board or commission member from raising funds for her appointing authority. Following a request from the Commission, the version of the Ordinance presented to the Commission at its September meeting expanded this rule to prohibit fundraising for *any* City elective officer. Concern has been raised that this expansion of the rule is not supported by evidence.

Policy Questions

A. *Should the Commission reduce the scope of the proposed rule so that it only prohibits fundraising by board and commission members for the benefit of their appointing authorities, as opposed to prohibiting them from raising funds for any City elected official?*

Staff would not support this change. Prohibiting government officials from raising funds for other government officials is a well settled matter at the federal level, embodied in the Pendleton and Hatch Acts. This principle has received significant positive judicial treatment, including as recently as 2015.[1] As a policy matter, eliminating any real or perceived link between appointments to city office and an appointee's fundraising prowess would serve two key goals: 1) promoting broad participation in public service, including by individuals who lack the ability to raise significant pollical money, and 2) promoting merit-based governmental decision making. This approach helps de-link political fundraising from the process of selecting qualified individuals to make decisions on the public's behalf.

VI. Prohibition on Solicitations of Persons with Matters Pending Before the Soliciting Official

As drafted, the Ordinance would add Campaign and Governmental Conduct Code Section 3.207(a)(4), which would prohibit City elective officers and members of boards and commissions from requesting a person to give something of value to a third party if that person has a matter pending before the official who is making the request. Exceptions to this rule would allow officials to make an otherwise prohibited request if a) the request is made before a group of twenty or more individuals, b) the request is made via a communication to the public, such as a television, radio, or social media message, or c) the request is made in response to a declared emergency. Critics have argued that this provision will have a negative impact on nonprofit charity organizations.

[1] *Wagner v. Federal Election Commission*, 793 F.3d 1 (D.C. Cir. 2015).

Policy Questions

A. *Should the Commission limit the definition of "anything of value" so that it does not include volunteer services?*

Staff would not be opposed to this change. Such an exception would allow an official to make an otherwise prohibited behest if she only asks the person to perform volunteer work. The intent of Section 3.207(a)(4) is not to limit the volunteer services of individuals. There is a lessened risk of corruption when an official asks someone with business before her to personally do volunteer work (as opposed to make a donation).

B. *Should the Commission add an exception for any behest that is made through a public entity during a public-private partnership?*

Staff would support this change. Requests that are made formally through public bodies, such as the Committee on Information Technology (COIT), will be subject to open meeting laws. Thus, such requests will be made in the open, similar to requests that fall under the existing exemptions to 3.207(a)(4) for public gatherings and mass communications.

C. *Should the Commission reduce the timeframe of the rule from twelve months after the person had a matter pending before the official to six months after the matter was pending?*

Staff would not be opposed to this change. As a policy matter Staff believes a twelve-month time window would create a more robust restriction. However, Staff would not oppose changing the window to six months after the matter was pending, so long as no other changes are made to 3.207(a)(4) to narrow the effectiveness of the provision.

D. *Should the Commission add an exemption that allows officials to ask a person with business before them to make a behested payment, as long as the payment goes to a 501(c)(3) organization that provides "direct services."*

Staff would not support this change. The proposed exemption would defeat the anti-corruption purpose of the rule, since the *recipient* of the behested payment is largely irrelevant. Rather, it is the relationship between the *official asking* and the *person making* the behested payment that can result in corruption or the appearance of corruption. Also, it would be difficult or impossible to effectively categorize groups that provide "direct services," making Section 3.207(a)(4) unworkable. Staff believes removing 3.207(a)(4) in its entirety would be better than passing it with this exemption.

E. *Should the Commission limit the definition of "anything of value" so that it only includes cash payments?*

Staff would not support this change. Such an exception would allow an official to make an otherwise prohibited behest, as long as she only asked the person to give goods or services. It would likely result in cash payments being redirected into "in-kind behested payments," such as the donation of computers, food and drinks, or other goods. In-kind behested payments must be reported on the FPPC Form 803, indicating that the FPPC considers behested goods and services to be equivalent to behested cash

payments. Excluding in-kind behested payments from 3.207(a)(4) still allows for the corrupt conduct that 3.207(a)(4) aims to prohibit.

F. Should the Commission remove Section 3.207(a)(4) from the Ordinance?

Staff would not support this change. Section 3.207(a)(4) has already been significantly narrowed and, as now proposed, focuses on conduct where the strongest factors or appearance of pay-to-play can arise. It exempts much of the normal fundraising activities expressed as concerns by nonprofit organizations. Also, charity groups do not currently appear in large numbers on current behested payment disclosure reports. The exemptions currently provided and the small amount of reported behested payments that have gone to charity groups both indicate a modest impact of Section 3.207(a)(4) on charities. On balance, Staff believes the countervailing interest in prohibiting conduct that strongly indicates pay-to-play outweighs any negative impact of the proposed rule.

G. Should the Commission remove Section 3.207(a)(4) from the Ordinance and replace it with a new section to the Ordinance that creates a stronger set of disclosure rules for behested payments?

Overall, Staff would not support this change. However, Staff would support this change if the Commission is unable to form a four-fifths majority on the prohibition set forth in 3.207(a)(4). Rather than changing 3.207(a)(4) in such a way that deprives it of having any significant positive effect, as Staff believes changes D-F produce, Staff would recommend replacing 3.207(a)(4) with a stepped-up regime of disclosure for behested payments. This disclosure could cover payments, including in-kind payments, made at the behest of any City elective officer or board or commission member and would likely have a lower threshold than the $5,000 threshold set by state law.

VII. Proposed Procedure

If the Commission is able to resolve the policy matters outlined in Sections II—VI of this memorandum through a four-fifths majority, Staff would prepare a revised version of the Ordinance reflecting its policy direction and present to the Commission at the Commission's November meeting.

If the Commission decides to pursue a strengthened disclosure regime for behested payments (as described in Subsection VI.G above), Staff would plan to conduct meetings with interested persons to discuss the contents of such new rules. While that would mean draft language would not return to the Commission until its December meeting, enlisting public comment in developing behested payment disclosure framework will be essential for ensuring it is strong and effective.

VIII. Timing Considerations

The Commission has expressed an interest in the Board of Supervisors reviewing and potentially voting on a final version of the any Ordinance proposed by the Commission. However, Commissioners have also stated an interest in the Ordinance going to the voters at the June 2018 election should the Board not pass the legislation. The Commission should be aware that a resolution submitting the Ordinance to the Elections Commission would be due no later than March 2, 2018. This would likely mean that the Commission, if it chooses to put the Ordinance on the ballot, would have to vote to approve the ordinance for submittal to the Elections Commission by the January or, at the very latest, the February Commission meeting.

FILE NO. ORDINANCE NO.

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) establish local behested payment reporting requirements; 5) require additional disclosures for campaign contributions from business entities to political committees; 6) require disclosure of bundled campaign contributions; 7) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 8) prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, City Attorney, candidates for City Attorney, and their controlled committees, from any person with pending or recently resolved land use matters; 9) require committees to file a third pre-election statement prior to an election; 10) remove the prohibition against distribution of campaign advertisements containing false endorsements; 11) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; and 14) specify recusal procedures for members of boards and commissions.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font.*
Deletions to Codes are in ~~*strikethrough italics Times New Roman font.*~~
Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.168, 1.170, adding Sections 1.114.5, 1.123, 1.124, 1.125, 1.127, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter I the following words or phrases are used, they shall mean:

* * * *

"Business entity" shall mean a limited liability company (LLC), corporation, limited partnership, or limited liability partnership.

* * * *

"Developer" shall mean the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department (or other lead agency) under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for a project. For any project sponsor that is an entity, "developer" shall include all of its constituent individuals or entities that have decision-making authority regarding any of the entity's major decisions or actions. By way of example and without limitation, if the project sponsor is a limited liability company, each of its members is considered a developer for purposes of the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its general partners is considered a developer for purposes of the requirements of this Chapter. If the owner or agent that signs and submits the Environmental Evaluation Application will not be responsible for obtaining the entitlements or developing the project, then for purposes of the requirements of this Chapter 1 the developer shall be instead the individual or entity that is responsible for obtaining the entitlements for the project.

* * * *

"Financial interest" shall mean (a) an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter; (b) holding the position of director or principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors, in an entity with at least 10% ownership interest in that project or property; or (c) being the developer of that project or property.

* * * *

"Land use matter" shall mean (a) any request to a City elective officer for a Planning Code or Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary determination at a public hearing before a board or commission under the San Francisco Building Code, the Planning Code, or the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). "Land use matter" shall not include discretionary review hearings before the Planning Commission.

* * * *

"Prohibited source contribution" shall mean a contribution made (a) in violation of Section 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from contributing under Section 1.126, (d) from a person prohibited from contributing under Section 1.127, or (e) from a lobbyist prohibited from contributing under Section 2.115(e).

* * * *

"Resident" shall mean a resident of the City and County of San Francisco.

"Solicit" shall mean personally request a contribution to any candidate or committee, either orally or in writing.

* * * *

SEC. 1.114. CONTRIBUTION*S* – LIMITS *AND PROHIBITIONS*.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) ~~*LIMITS*~~ *PROHIBITION* ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection *(b)* shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate or committee to circumvent the limits established by subsections (a) and (b).

(d) PROHIBITION ON CONTRIBUTIONS FOR OFFICIAL ACTION. No candidate may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

~~(c)~~ *(e)* AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section *1.114* and Section 1.120, the contributions of an entity whose contributions are

directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section 1.114, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50% ~~percent~~.

~~(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.~~

~~(e)~~ (f) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section 1.114 or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the permitted amount ~~permitted by this~~

~~Section~~ to the City and County of San Francisco ~~and by~~ delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County, provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

~~(f)~~ *(g)* RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited, and in addition # is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section *1.114*, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act ~~California Government Code Section 81000, et seq~~.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business; and a signed attestation from the contributor that the contribution does not constitute a prohibited source contribution.

(1) A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(2) If a committee that collects the information required under this subsection (a) and collects a signed attestation, or its electronic equivalent, that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single calendar year, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission disclosing the contributions.

(c) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution may be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, or in the name of another person or combination of persons.

(2) No person may make a contribution to a candidate or committee in his, her, or its name when using any payment received from another person on the condition that it be contributed to a specific candidate or committee.

(d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section 1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.123. REPORTING OF BEHESTED PAYMENTS. *In addition to the disclosure requirements imposed by the California Political Reform Act, City elective officers required to disclose behested payments of $5,000 or more from a single source shall file their disclosure statements with the Ethics Commission within 30 days of the date on which the payment(s) total $5,000 or more.*

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

*(a) **Additional Disclosures.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that, in aggregate, total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

*(a) **Definition.** For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting.

"Campaign administrative activity" shall mean administrative functions performed by paid or volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee's campaign statements, or such campaign consultant's paid employees.

*(b) **Additional Disclosure Requirements.** Any committee controlled by a City elective officer or candidate for City elective office that receives contributions totaling $5,000 or more that have been bundled by a single individual shall disclose the following information:*

(1) the name, occupation, employer, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the individual who bundled the contributions is a member of a City board or commission, the name of the board or commission on which that person serves, and the names of any City officers who appointed or nominated that person to the board or commission; and

(4) whether, during the 12 months prior to the date of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more, the person who bundled the contributions attempted to influence the City elective officer who controls the committee in any legislative or administrative action and if so, the legislative or administrative action that the contributor sought to influence and the outcome sought.

*(c) **Filing Requirements.** Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission. Committees shall be required to provide this information following the receipt of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more.*

*(d) **Website Posting.** The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.126. CONTRIBUTION ~~*LIMITS*~~ *PROHIBITION* – CONTRACTORS DOING BUSINESS WITH THE CITY.

(a) **Definitions**. For purposes of this Section *1.126*, the following words and phrases shall mean:

"Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

"City Contractor" means any person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District, including any party or prospective party to a contract, as well as any member of that party's board of directors or any of that party's principal officers, including its chairperson, chief executive officer, chief financial officer, chief

operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the party's bid or contract.

"Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

(1) the rendition of personal services,

(2) the furnishing of any material, supplies or equipment,

(3) the sale or lease of any land or building,

(4) a grant, loan, or loan guarantee, or

(5) a development agreement.

"Contract" shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

~~*(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.*~~

~~*(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:*~~

~~(A) the rendition of personal services;~~

~~(B) the furnishing of any material, supplies or equipment;~~

~~(C) the sale or lease of any land or building; or~~

~~(D) a grant, loan or loan guarantee.~~

~~(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.~~

(b) **Prohibition on Contributions.** No *City Contractor who is party to or is seeking a contract that has a total anticipated or actual value of $100,000 or more, or a combination or series of contracts with a value of $100,000 or more from a single City agency, may make any contribution to: person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District,*

~~(1) Shall make any contribution to:~~

~~(A)~~ *(1)* An individual holding a City elective office if the contract or contracts must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;

~~(B)~~ *(2)* A candidate for the office held by such individual; or

~~(C)~~ *(3)* A committee controlled by such individual or candidate.

~~(2) Whenever the agreement or contract has a total anticipated or actual value of $50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of $50,000.00 or more in a fiscal year of the City and County~~

~~(3)~~ *(c) **Term of Prohibitions.** The prohibitions set forth in subsection (b) shall apply from the submission of a proposal for a contract until ~~At any time from the commencement of negotiations for such contract until:~~*

~~(A)~~ *(1)* The termination of negotiations for such contract; or

~~(B)~~ *(2)* ~~Six~~ *12* months ~~have elapsed~~ from the date the contract is approved.

~~(c)~~ *(d)* **Prohibition on** ~~**Receipt of Contribution**~~ ***Soliciting or Accepting Contributions.*** No individual holding City elective office, *candidate for such office,* or committee controlled by such an individual shall: ~~solicit or~~

(1) accept any contribution prohibited by subsection (b); *or*

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know to be a City Contractor.

~~at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.~~

~~(d)~~ *(e)* **Forfeiture of** ~~**Contribution**~~ ***Contribution.*** In addition to any other penalty, each committee that ~~receives~~ *accepts* a contribution prohibited by subsection ~~(c)~~ *(b)(1)* shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County, provided that the Commission may provide for *the waiver or reduction* of the forfeiture.

~~(e)~~ *(f)* **Notification.**

(1) **Prospective Parties to Contracts.** *The agency responsible for the initial review of any contract proposal subject to subsection (b) shall inform* ~~Any~~ *any* prospective party to *a the* contract ~~with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District shall inform each person described in Subsection (a)(1)~~ of the prohibition in ~~S~~subsection (b) *and of the duty to notify the Ethics Commission, as described in subsection (f)(2),* by the ~~commencement of negotiations~~ *submission of a proposal* for such contract.

*(2) **Notification of Ethics Commission.** Every prospective party to a contract subject to subsection (b) must notify the Ethics Commission, within 30 days of the submission of a proposal, on a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the contract, and any subcontractor listed as part of the proposal.*

~~(2)~~ *(3)* **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits, or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form *or in a format* adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection *(f)(3)* if the Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on which an appointee of the officer serves has filed the form on behalf of the board.

SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS BEFORE A DECISION-MAKING BODY.

*(a) **Definitions.** For purposes of this Section 1.127, the following phrases shall mean:*

"Affiliated entities" means business entities directed and controlled by a majority of the same persons, or majority-owned by the same person.

"Prohibited contribution" is a contribution to (1) a member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

*(b) **Prohibition on Contributions.** No person, or the person's affiliated entities, with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building*

Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors shall make any prohibited contribution at any time from a request or application regarding a land use matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling or any appeals from that decision or ruling have been finally resolved.

*(c) **Prohibition on Soliciting or Accepting Contributions.** No member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates shall:*

(1) accept any contribution prohibited by subsection (b); or

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know has a financial interest in land use matter.

*(d) **Exceptions.** The prohibitions set forth in subsections (b) and (c) shall not apply if:*

(1) the land use matter concerns only the person's primary residence;

(2) the person with a financial interest in the land use matter is a nonprofit organization with tax exempt status under 26 United States Code Section 501(c)(3), and the land use matter solely concerns the provision of health care services, social welfare services, permanently affordable housing, or other community services funded, in whole or in substantial part, by the City to serve low-income San Francisco residents; or

*(e) **Forfeiture of Prohibited Contributions.** In addition to any other penalty, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the*

Ethics Commission for deposit in the General Fund of the City and County; provided, that the Commission may provide for the waiver or reduction of the forfeiture.

*(f) **Notification.***

*(1) **Prospective Parties to Land Use Matters.** The agency responsible for the initial review of any land use matter shall inform any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, of the prohibition in subsection (b) and of the duty to notify the Ethics Commission, described in subsection (f)(2), upon the submission of a request or application regarding a land use matter.*

*(2) **Persons with a Financial Interest in a Land Use Matter.** Any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, within 30 days of submitting a request or application, shall file with the Ethics Commission a report including the following information:*

(A) the board, commission, or department considering the land use matter;

(B) the location of the property that is the subject of the land use matter;

(C) if applicable, the file number for the land use matter; and

(D) if applicable, the names of the individuals who serve as the person's chairperson, chief executive officer, chief financial officer, and chief operating officer, or as a member of the person's board of directors.

SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

(a) **Supplemental Preelection Statements** - *General Purpose Committees.* In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, a San Francisco general purpose committee that makes contributions or expenditures totaling $500 or more during the period covered by the preelection statement, other than expenditures for the establishment and administration of that committee, shall file a preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot.

(b) **Time for Filing Supplemental Preelection Statements** - *General Purpose Committees.*

(1) Even-Numbered Years. In even-numbered years, preelection statements required by ~~*this Section*~~ *subsection (a)* shall be filed pursuant to the preelection statement filing schedule established by the Fair Political Practices Commission for county general purpose recipient committees. *In addition to these deadlines, preelection statements shall also be filed for the period ending six days before the election, no later than four days before the election.*

(2) Odd-Numbered Years. In odd-numbered years, the filing schedule *for preelection statements* is as follows:

~~(1)~~ *(A)* For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election;

~~(2)~~ *(B)* For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election; *and*

(C) For the period ending six days before the election, the statement shall be filed no later than four days before the election.

(c) Time for Filing Supplemental Preelection Statements - Ballot Measure Committees and Candidate Committees. In addition to the deadlines established by the Fair Political Practices

Commission. Ballot measure committees and candidate committees required to file preelection statements with the Ethics Commission shall file a third preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot, for the period ending six days before the election, no later than four days before the election.

~~*(c)*~~ *(d)* The Ethics Commission may require that these statements be filed electronically.

~~***SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.***~~

~~*(a). **Prohibition.** No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated or implied in the campaign communication.*~~

~~*(b). **Definitions.** Whenever in this Section the following words or phrases are used, they shall mean:*~~

~~*(1) "Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement that refers to one or more clearly identified candidates or ballot measures. The term "campaign advertisement" does not include:*~~

~~*(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;*~~

~~(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or~~

~~(C) material distributed to all members, employees and shareholders of an organization, other than a political party.~~

~~(2) "Internet Advertisement" includes paid internet advertisements such as "banner" and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.~~

~~(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement.~~

~~(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not apply to violations of this Section. Notwithstanding the 60 day waiting period in Section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.~~

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter 1 has occurred may file a complaint with the Ethics Commission, City Attorney, or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any ~~voter~~ *resident*, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter *1*.

(1) No ~~voter~~ *resident* may commence an action under this *S*subsection *(b)* without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The ~~voter~~ *resident* shall deliver the notice to the City Attorney *and the Ethics Commission* at least 60 days in advance of filing an action. No ~~voter~~ *resident* may commence an action under this *S*subsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another ~~voter~~ *resident* has filed a civil action against the defendant under this *S*subsection.

(2) A Court may award reasonable attorney's fees and costs to any ~~voter~~ *resident* who obtains injunctive relief under this *S*subsection *(b)*. If the Court finds that an action brought by a ~~voter~~ *resident* under this *S*subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

(1) **Criminal.** Prosecution for violation of this Chapter must be commenced within four years after the date on which the violation occurred.

(2) **Civil.** No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred.

(3) **Administrative.** No administrative action alleging a violation of this Chapter and brought under Charter Section C3.699-13 shall be commenced more than four years after the date on which the violation occurred. The date on which the Commission forwards a complaint or information in its possession regarding an alleged violation to the District Attorney and City Attorney as required by Charter Section C3.699-13 shall constitute the commencement of the administrative action.

*(A) **Fraudulent Concealment.** If the person alleged to have violated this Chapter engages in the fraudulent concealment of his or her acts or identity, this four-year statute of limitations shall be tolled for the period of concealment. For purposes of this subsection, "fraudulent concealment" means the person knows of material facts related to his or her duties under this Chapter and knowingly conceals them in performing or omitting to perform those duties.*

(4) **Collection of Fines and Penalties.** A civil action brought to collect fines or penalties imposed under this Chapter shall be commenced within four years after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine or penalty is imposed when a court or administrative agency has issued a final decision in an enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter. The Executive Director does not make a final decision regarding the amount of a late fine or penalty imposed under this Chapter until the Executive Director has made a determination to accept or not accept any request to waive a late fine or penalty where such waiver is expressly authorized by statute, ordinance, or regulation.

* * * *

(e) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under

Administrative Code Chapter 28 initiate debarment proceedings against any person in conformance with the procedures set forth in that Chapter.

SEC. 1.170. PENALTIES.

(a) CRIMINAL. Any person who knowingly or willfully violates any provision of this Chapter *1* shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Sections 1.114, *1.126, or 1.127* of this Chapter shall be punishable by a fine of not less than $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Sections 1.114, *1.126, and 1.127* of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.~~, whichever is greater.

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter *1* shall be liable in a civil action brought by the ~~*civil prosecutor.*~~ *City Attorney, or a resident who has filed suit in compliance with Section 1.168(b),* for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Sections 1.114, *1.126, and 1.127* or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.~~, whichever is greater. *In determining the amount of liability, the court may take into account the seriousness of the violation, the degree of culpability of the defendant, and the ability of the defendant to pay. In an action brought by a resident, if a court enters judgment against the defendant(s), the resident shall receive 50 percent of the amount recovered and the remaining 50 percent shall be deposited into the*

City's General Fund. In an action brought by the City Attorney, the entire amount recovered from the defendant(s) shall be deposited into the City's General Fund.

(c) ADMINISTRATIVE. Any person who ~~*intentionally or negligently*~~ violates any of the provisions of this Chapter *1* shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter 2 the following words or phrases are used, they shall mean:

"Anything of value" shall mean any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the City, contributions as defined herein, or gifts that qualify for gift exceptions established by State or local law.

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent.

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.

~~(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.~~

"Fundraising" shall mean:

(a) requesting that another person make a contribution;

(b) inviting a person to a fundraising event;

(c) supplying names to be used for invitations to a fundraiser;

(d) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;

(e) permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event;

(f) providing the use of one's home or business for a fundraising event;

(g) paying for at least 20% of the costs of a fundraising event;

(h) hiring another person to conduct a fundraising event;

(i) delivering a contribution, other than one's own, by whatever means to a City elective officer, a candidate for City elective office, or a candidate-controlled committee; or

(j) acting as an agent or intermediary in connection with the making of a contribution.

"Immediate family" shall mean spouse, registered domestic partner, and dependent children.

~~(a)~~ "Officer" shall mean any person holding City elective office, any member of a board or commission required by Article III, Chapter 1 of this Code to file a statement~~s~~ of economic interests, any person appointed as the chief executive officer under any such board or commission, the head of each City department, the Controller, and the City Administrator.

"Solicit" shall mean personally requesting a contribution from any candidate or committee, either orally or in writing.

"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Prohibitions.** In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

(4) No City elective officer or member of a board or commission may, directly or by means of an agent, solicit or otherwise request that a person give anything of value to a third party if:

(A) the person who is the subject of the request has a matter pending before the official, his or her agency, or the official has final approval authority over the matter; or

(B) the person who is the subject of the request had a matter before the official or his or her agency within the last 12 months.

(5) notwithstanding the prohibitions contained in subsection (a)(4), a City elective officer or member of a board or commission may solicit or otherwise request that a person give anything of value to a third party if:

(A) The solicitation is made in a communication to the public.

(B) The solicitation is made at an event where 20 or more persons are in attendance.

(C) The solicitation is made to respond to an emergency, as defined in San Francisco Administrative Code Section 7.1.

*(b) **Exception: public generally.** The prohibition set forth in subsection (a)(1) shall not apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public and the effect is not unique. For purposes of this subsection (b):*

(1) A significant segment of the public is at least 25% of:

(A) all businesses or non-profit entities within the official's jurisdiction;

(B) all real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) all individuals within the official's jurisdiction.

(2) A unique effect on a public official's financial interest includes a disproportionate effect on:

(A) the development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;

(B) an official's business entity or real property resulting from the proximity of a project that is the subject of a decision;

(C) an official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;

(D) an official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;

(E) a person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or

(F) an official's personal finances or those of his or her immediate family.

SEC. 3.209. RECUSALS.

*(a) **Recusal Procedures.** Any member of a City board or commission, including a member of the Board of Supervisors, who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing or acting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

*(b) **Repeated Recusals.** If a member of a City board or commission, including a member of the Board of Supervisors, recuses himself or herself, as required by subsection (a), in any 12-month period from discussing or acting on:*

(1) three or more separate matters; or

(2) 1% or more of the matters pending before the officer's board or commission,

the Commission shall determine whether the official has a significant and continuing conflict of interest. The Commission shall publish its written determination, including any discussion of the official's factual circumstances and applicable law, on its website. Thereafter, if the Commission determines that the official has a significant and continuing conflict of interest, the official shall provide the Commission with written notification of subsequent recusals resulting from the same conflicts of interest identified in the written determination. With respect to such officials, the Commission may recommend to the official's appointing authority that the official divest or otherwise remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting interest, the Commission may recommend to the official's appointing authority that the official should be removed from office under Charter Section 15.105 or by other means.

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a campaign for or against any ballot measure or candidate.*

*(b) **Fundraising Prohibition.** No member of a board or commission may engage in fundraising on behalf of any City elective officer, candidate for such office, or committee controlled by*

such individual. For the purposes of this subsection, "member of a board or commission" shall not include a member of the Board of Supervisors.

Section 3. Effective and Operative Dates. This ordinance shall become effective 30 days after enactment. This ordinance shall become operative on January 1, 2019. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: November 20, 2017

To: San Francisco Ethic Commission

From: Pat Ford, Policy Analyst
Kyle Kundert, Senior Policy Analyst

Re: **AGENDA ITEM 7 - Staff Memorandum Introducing Revised Version of the 2017 San Francisco Anti-Corruption and Accountability Ordinance**

Summary: This memorandum introduces a revised version of the proposed 2017 San Francisco Anti-Corruption and Accountability Ordinance with a four-fifths majority. The memorandum explains how the Ordinance has been changed since the Commission's October meeting.

Action Requested: Staff recommends that the Commission discuss any remaining policy matters and provide its policy direction to Staff on how it would like to proceed with the current draft ordinance.

I. Introduction

At its October 23, 2017 meeting, the Commission heard Staff's presentation outlining the remaining policy decisions to be made regarding the 2017 San Francisco Anti-Corruption and Accountability Ordinance (the "Ordinance"), which would amend the Campaign Finance Reform Ordinance ("CRFO") and the Conflict of Interest Code. Commissioner Chiu brought a motion with a list of specific answers to each policy question (the "Motion"), and the Commission took public comment on the Motion. The Commission voted in favor of the Motion by a four-fifths majority.

Staff has revised the Ordinance in response to the terms of the Motion. Staff held an interested persons meeting to discuss the terms of a new set of rules requiring the disclosure of behested payments. Staff believes that the current draft Ordinance, attached to this memorandum, is fully responsive to the terms of the Motion. This memorandum outlines the changes that were made to create the current version of the Ordinance.

II. Contributions by City Contractors – Stronger Notification Provision

The Motion called for the creation of a stronger notification provision in Section 1.126, a code section that prohibits contributions by City contractors to an elective officer who approved the contractor's City contract. The Commission expressed that, in order to avoid unwitting

violations, all individuals serving an entity that qualifies as a City contractor must receive adequate notice of the prohibitions contained in Section 1.126. To achieve this goal, Staff revised the notification provisions in subsection 1.126(f).

Staff retained the requirement contained in the October draft of the Ordinance requiring any City department that accepts proposals for City contracts to notify any person submitting a proposal that the person may be subject to 1.126. Additionally, Staff added a requirement that for proposals valued at $100,000 or more, the department must notify the Commission that the department has received the bid. This will allow the Commission to monitor whether departments are notifying bidders about 1.126 and to ensure compliance with 1.126 by bidders. Staff also created a new requirement that when a City department selects a bid and awards the bidder a City contract, the department must notify the contractor that the prohibitions in 1.126 will now apply to the contractor for one year. Staff retained the requirement that elective officers must notify the Commission any time they approve a contract.

Staff added a requirement that an entity that submits a proposal for a City contractor must notify each of its directors, officers, and 10% shareholders that such individuals are subject to 1.126. This will help ensure that people affiliated with the biding entity will be aware that 1.126 limits their ability to make contributions.

III. Ability of Plaintiffs in Citizen Suits to Recover Fifty Percent of Civil Penalties Collected - Removed

The October version of the Ordinance contained a provision that allowed for private citizens who bring a civil action to enforce against a violation of CFRO to ask the court to impose civil penalties and, additionally, to receive fifty percent of any penalties recovered from the defendant. The Motion called for the removal of this provision in Section 1.170. Staff has removed this provision, so, under the current draft, private citizens bringing a civil action under CFRO will not be able to seek civil penalties.

IV. Board and Commission Member Fundraising Ban – Narrowed to Appointing Authority Only

The October draft of the Ordinance would have prohibited any board or commission member from raising funds for any City elective officer or candidate for such office. The Motion called for narrowing this prohibition such that it only prohibits a board or commission member from raising funds for her appointing authority. Staff changed Section 2.231 to carry this out.

V. Prohibition on Solicitations of Persons with Matters Pending Before the Soliciting Official

The October draft of the Ordinance would have added Campaign and Governmental Conduct Code Section 3.207(a)(4), which would have prohibited City elective officers and members of boards and commissions from requesting a person to give something of value to a third party if that person has a matter pending before the official who is making the request. Exceptions to this rule would have allowed officials to make an otherwise prohibited request if a) the request was made before a group of twenty or more individuals, b) the request was made via a communication to the public, such as a television, radio, or social media message, or c) the request was made in response to a declared emergency.

The Motion called for the removal of Section 3.207(a)(4) and for the creation, instead, of local disclosure rules for behested payments that goes beyond what is required under state law. Officials must already

disclose certain behested payments under California law, however this disclosure requirement is limited to behested payments of $5,000 or more and only applies to payments made at the behest of elected officials, not board or commission members.

In response to the Motion, Staff have deleted Section 3.207(a)(4) from the Ordinance. Staff drafted a set of local behested payment reporting rules and help an interested person meeting to discuss these rules with members of the regulated community.

A. Disclosures by Officials

The current draft of the ordinance requires officials, including elective officers and members of boards and commissions, to disclose payments made at their behest by a person who is either 1) a party or participant to a proceeding before the official, or 2) actively supports or opposes a decision by the official or a body on which the official sits. This reporting requirement would apply when the total amount of payments made by such an "interested party" at the official's behest equals or exceeds $1,000.

Officials will not need to file a disclosure if a payment is made in response to a "public appeal." This term refers to requests made through mass mailings, broadcast media, speeches at public events, public social media communications, and other communications that are made to the general public.

If an official is required to disclose a behested payment, the official would need to disclose certain information about the payor, the payee, and the payment (the same as what is required under behested payment reporting under California law). These disclosures seek to identify basic information about the payment and the parties thereto.

Additionally, the official would need to disclose whether the recipient of the behested payment(s) is an organization with which the official, his relative, or his staff member is affiliated. Also, the official would need to disclose whether the recipient of the behested payment(s) has distributed communications in the last six months that feature the official. Both of these disclosures seek to identify whether the recipient of the behested payment is personally connected to the official or provides the official with publicity.

B. Disclosures by Donors

If a person makes a behested payment that triggers reporting on the part of the official (discussed in Part V.B above), this donor will also have to file a disclosure. The donor must disclose what proceeding before the official the person is involved in, as well as what decisions by the official the person is actively supporting or opposing. The donor must also disclose what outcomes he is seeking in the proceeding or decision, as well as any contacts he made with the official regarding the proceeding or decision. These disclosures seek to identify how a person who makes a behested payment may be seeking to influence the behesting official's decision-making. This aspect of behested payments (the potential for influence over officials) is one of the major reasons for requiring disclosure of behested payments.

C. Disclosures by Major Behested Payment Recipients.

Some organizations receive substantial amounts of behested payments that are made at the behest of one official. The current draft of the Ordinance would require an organization that receives $100,000 or

more in payments in a single year made at the behest of a single official to notify the Commission within thirty days of reaching the $100,000 threshold.[1] One year after reaching the $100,000 threshold, the organization must file a report disclosing how the behested payments were spent. This disclosure seeks to monitor how an organization that receives exceptional amounts of behested payments uses such funds. In particular, it is important to know whether such organizations use the funds in a way that benefits the behesting official. Also, organizations that receive this level of behested payments usually do so for the stated purpose of funding a particular event or program. It is important to know whether the organization did in fact use the behested funds to satisfy its stated funding need.

Additionally, major behested payment recipients would need to disclose whether the organization has actively supported or opposed any decisions by the behesting official in the last year. This disclosure seeks to identify whether such organizations attempt to influence the decision-making of the behesting official, with whom the organization presumably has a close tie.

[1] A review of behested payment reports (Form 803) filed with the Commission during 2015, 2016, and 2017 indicates that only five organizations received $100,000 of payments made at the behest of a single official in one year.

FILE NO. ORDINANCE NO.

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, City Attorney, candidates for City Attorney, and their controlled committees, from any person with pending or recently resolved land use matters; 8) require committees to file a third pre-election statement prior to an election; 9) remove the prohibition against distribution of campaign advertisements containing false endorsements; 10) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 11) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 12) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 13) specify recusal procedures for members of boards and commissions; and 14) establish local behested payment reporting requirements for donors and City officers.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.168, 1.170, adding Sections 1.114.5, 1.124, 1.125, 1.127, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter *1* the following words or phrases are used, they shall mean:

* * * *

"Business entity" shall mean a limited liability company (LLC), corporation, limited partnership, or limited liability partnership.

* * * *

"Developer" shall mean the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department (or other lead agency) under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for a project. For any project sponsor that is an entity, "developer" shall include all of its constituent individuals or entities that have decision-making authority regarding any of the entity's major decisions or actions. By way of example and without limitation, if the project sponsor is a limited liability company, each of its members is considered a developer for purposes of the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its general partners is considered a developer for purposes of the requirements of this Chapter. If the owner or agent that signs and submits the Environmental Evaluation Application will not be responsible for obtaining the entitlements or developing the project, then for purposes of the requirements of this Chapter 1 the developer shall be instead the individual or entity that is responsible for obtaining the entitlements for the project.

* * * *

"Financial interest" shall mean (a) an ownership interest of at least 10% or $1,000,000 in the project or property that is the subject of the land use matter; (b) holding the position of director or principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors, in an entity with at least 10% ownership interest in that project or property; or (c) being the developer of that project or property.

* * * *

"Land use matter" shall mean (a) any request to a City elective officer for a Planning Code or Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary determination at a public hearing before a board or commission under the San Francisco Building Code, the Planning Code, or the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). "Land use matter" shall not include discretionary review hearings before the Planning Commission.

* * * *

"Prohibited source contribution" shall mean a contribution made (a) in violation of Section 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from contributing under Section 1.126, (d) from a person prohibited from contributing under Section 1.127, or (e) from a lobbyist prohibited from contributing under Section 2.115(e).

* * * *

"Resident" shall mean a resident of the City and County of San Francisco.

"Solicit" shall mean personally request a contribution for any candidate or committee, either orally or in writing.

* * * *

SEC. 1.114. CONTRIBUTIONS - LIMITS *AND PROHIBITIONS*.

(a) LIMITS ON CONTRIBUTIONS TO CANDIDATES. No person other than a candidate shall make, and no campaign treasurer for a candidate committee shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate committee in an election to exceed $500.

(b) ~~*LIMITS*~~ *PROHIBITION* ON CONTRIBUTIONS FROM CORPORATIONS. No corporation organized pursuant to the laws of the State of California, the United States, or any other state, territory, or foreign country, whether for profit or not, shall make a contribution to a candidate committee, provided that nothing in this subsection *(b)* shall prohibit such a corporation from establishing, administering, and soliciting contributions to a separate segregated fund to be utilized for political purposes by the corporation, provided that the separate segregated fund complies with the requirements of Federal law including Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to those Sections.

(c) EARMARKING. No person may make a contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate or committee to circumvent the limits established by subsections (a) and (b).

(d) PROHIBITION ON CONTRIBUTIONS FOR OFFICIAL ACTION. No candidate may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

~~*(c)*~~ *(e)* AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

(1) General Rule. For purposes of the contribution limits imposed by this Section *1.114* and Section 1.120, the contributions of an entity whose contributions are

directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual.

(2) Multiple Entity Contributions Controlled by the Same Persons. If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

(3) Majority-Owned Entities. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decisions to make contributions.

(4) Definition. For purposes of this Section *1.114*, the term "entity" means any person other than an individual and "majority-owned" means a direct or indirect ownership of more than 50*%* ~~*percent*~~.

~~*(d) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; and the name of the contributor's employer or, if the contributor is self employed, the name of the contributor's business. A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.*~~

~~(e)~~ *(f)* FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which exceeds the limits imposed by this Section *1.114* or which does not comply with the requirements of this Section shall pay promptly the amount received or deposited in excess of the *permitted* amount ~~*permitted by this*~~

~~Section~~ to the City and County of San Francisco ~~and~~ by deliver*ing* the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

~~(f)~~ *(g)* RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or committee making expenditures to support or oppose a candidate shall not be considered received if it is not cashed, negotiated, or deposited, and in addition ~~it~~ is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported, except that a contribution to a candidate committee or committee making expenditures to support or oppose a candidate made before an election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election shall not be considered to be deemed received if it is not cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt. For all committees not addressed by this Section *1.114*, the determination of when contributions are considered to be received shall be made in accordance with the California Political Reform Act~~, California Government Code Section 81000, et seq~~.

SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.

(a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions received from a contributor is $100 or more, the committee shall not deposit any contribution that causes the total amount contributed by a person to equal or exceed $100 unless the committee has the following information: the contributor's full name; the contributor's street address; the contributor's occupation; the name of the contributor's employer or, if the contributor is self-employed, the name of the contributor's business; and a signed attestation from the contributor that the contribution does not constitute a prohibited source contribution.

(1) A committee will be deemed not to have had the required contributor information at the time the contribution was deposited if the required contributor information is not reported on the first campaign statement on which the contribution is required to be reported.

(2) If a committee that collects the information required under this subsection (a) and collects a signed attestation, or its electronic equivalent, that the contributor has not made a prohibited source contribution, there shall be a rebuttable presumption that the committee has not accepted a prohibited source contribution.

(b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

(1) In addition to the requirements in subsection (a), any person making contributions that total $5,000 or more in a single calendar year, to a ballot measure committee or committee making independent expenditures at the behest of a City elective officer must disclose the name of the City elective officer who requested the contribution.

(2) Committees receiving contributions subject to subsection (b)(1) must report the names of the City elective officers who requested those contributions at the same time that the committees are required to file campaign statements with the Ethics Commission disclosing the contributions.

(c) ASSUMED NAME CONTRIBUTIONS.

(1) No contribution may be made, directly or indirectly, by any person or combination of persons, in a name other than the name by which they are identified for legal purposes, or in the name of another person or combination of persons.

(2) No person may make a contribution to a candidate or committee in his, her, or its name when using any payment received from another person on the condition that it be contributed to a specific candidate or committee.

(d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each committee that receives a contribution which does not comply with the requirements of this Section 1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS MADE BY BUSINESS ENTITIES.

*(a) **Additional Disclosures.** In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter 1, any committee required to file campaign statements with the Ethics Commission must disclose the following information for contribution(s) that, in aggregate, total $10,000 or more that it receives in a single election cycle from a single business entity:*

(1) the business entity's principal officers, including, but not limited to, the Chairperson of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and

(2) whether the business entity has received funds through a contract or grant from any City agency within the last 24 months for a project within the jurisdiction of the City and County of San Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or grant.

*(b) **Filing Requirements.** Committees shall provide this information for contributions received from business entities at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission.*

SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED CONTRIBUTIONS.

(a) ***Definition.*** *For purposes of this Section 1.125, the following words and phrases shall mean:*

"Bundle" shall mean delivering or transmitting contributions, other than one's own or one's spouse's, except for campaign administrative activities and any actions by the candidate that a candidate committee is supporting.

"Campaign administrative activity" shall mean administrative functions performed by paid or volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee's campaign statements, or such campaign consultant's paid employees.

(b) ***Additional Disclosure Requirements.*** *Any committee controlled by a City elective officer or candidate for City elective office that receives contributions totaling $5,000 or more that have been bundled by a single individual shall disclose the following information:*

(1) the name, occupation, employer, and mailing address of the person who bundled the contributions;

(2) a list of the contributions bundled by that person (including the name of the contributor and the date the contribution was made);

(3) if the individual who bundled the contributions is a member of a City board or commission, the name of the board or commission on which that person serves, and the names of any City officers who appointed or nominated that person to the board or commission; and

(4) whether, during the 12 months prior to the date of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more, the person who bundled the contributions attempted to influence the City elective officer who controls the committee in any legislative or administrative action and if so, the legislative or administrative action that the contributor sought to influence and the outcome sought.

*(c) **Filing Requirements.** Committees shall provide the information for bundled contributions required by subsection (b) at the same time that they are required to file semiannual or preelection campaign statements with the Ethics Commission. Committees shall be required to provide this information following the receipt of the final contribution that makes the cumulative amount of contributions bundled by a single individual total $5,000 or more.*

*(d) **Website Posting.** The Ethics Commission shall make all information that is submitted in accordance with subsection (b) publicly available through its website.*

SEC. 1.126. CONTRIBUTION ~~*LIMITS*~~ *PROHIBITION* – CONTRACTORS DOING BUSINESS WITH THE CITY.

(a) **Definitions.** For purposes of this Section *1.126*, the following words and phrases shall mean:

"Affiliate" means any member of an entity's board of directors or any of that entity's principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the entity, and any subcontractor listed in the entity's bid or contract.

"Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.

"City Contractor" means any person who contracts with, or is seeking a contract with, any department of the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District, when the total anticipated or actual value of the contract(s) that the person is party to or seeks to become party to with any such entity within a fiscal year equals or exceeds $100,000.

"Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

(1) the rendition of personal services,

(2) the furnishing of any material, supplies or equipment,

(3) the sale or lease of any land or building,

(4) a grant, loan, or loan guarantee, or

(5) a development agreement.

"Contract" shall not mean a collective bargaining agreement or memorandum of understanding between the City and a labor union representing City employees regarding the terms and conditions of those employees' City employment.

~~*(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.*~~

~~*(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:*~~

~~*(A) the rendition of personal services,*~~

~~*(B) the furnishing of any material, supplies or equipment,*~~

~~(C) the sale or lease of any land or building, or~~

~~(D) a grant, loan or loan guarantee.~~

~~(3) "Board on which an individual serves" means the board to which the officer was elected and any other board on which the elected officer serves.~~

(b) **Prohibition on Contributions.** No *City Contractor or affiliate of a City Contractor may make any contribution to:* ~~*person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District,*~~

~~(1) Shall make any contribution to:~~

~~(A)~~ *(1)* An individual holding a City elective office if the contract or contracts must be approved by such individual, the board on which that individual serves, or a state agency on whose board an appointee of that individual serves;

~~(B)~~ *(2)* A candidate for the office held by such individual; or

~~(C)~~ *(3)* A committee controlled by such individual or candidate.

~~(2) Whenever the agreement or contract has a total anticipated or actual value of $50,000.00 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of $50,000.00 or more in a fiscal year of the City and County~~

~~(3)~~ *(c)* ***Term of Prohibitions.*** *The prohibitions set forth in subsection (b) shall apply from the submission of a proposal for a contract until:* ~~*At any time from the commencement of negotiations for such contract until.:*~~

~~(A)~~ *(1)* The termination of negotiations for such contract; or

~~(B)~~ *(2)* ~~Six~~ *12* months ~~*have elapsed*~~ from the date the contract is approved.

~~(c)~~ *(d)* **Prohibition on ~~*Receipt of Contribution*~~ *Soliciting or Accepting Contributions.*** No individual holding City elective office, *candidate for such office,* or committee controlled by such an individual shall: ~~*solicit or*~~

(1) accept any contribution prohibited by subsection (b); or

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know to be a City Contractor.

~~at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.~~

~~(d)~~ (e) **Forfeiture of ~~Dontribution~~ Contribution.** In addition to any other penalty, each committee that ~~receives~~ accepts a contribution prohibited by subsection ~~(c)~~ (b) shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for the waiver or reduction of the forfeiture.

~~(e)~~ (f) **Notification.**

(1) ~~**Prospective Parties to Contracts**~~ **Notification by City Agencies.**

(A) **Prospective Parties to Contracts.** The City agency seeking to enter into a contract subject to subsection (b) shall inform any ~~Any~~ prospective party to a contract ~~with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District shall inform each person described in Subsection (a)(1)~~ of the prohibition in ~~S~~subsection (b) and of the duty to notify the Ethics Commission, as described in subsection (f)(2), ~~by the commencement of negotiations~~ by the submission of a proposal for such contract.

(B) **Parties to Executed Contracts.** After the final execution of a contract by a City agency and any required approvals of a City elective officer, the agency that has entered into a contract subject to subsection (b) shall inform any parties to the contract of the prohibition in subsection (b) and the term of such prohibition established by subsection (c).

*(2) **Notification of Ethics Commission**. The City agency seeking to enter into a contract subject to subsection (b) shall notify the Ethics Commission, within 30 days of the submission of a proposal, on a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the contract, and any subcontractor listed as part of the proposal*

*(3) **Notification by Prospective Parties to Contracts.** Any prospective party to a contract subject to subsection (b) shall, by the submission of a proposal for such contract, inform any member of that party's board of directors and any of that party's principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the party's bid or contract of the prohibition in subsection (b).*

~~(2)~~ *(4) **Notification by*** **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits, or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form *or in a format* adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection *(f)(4)* if the Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on which an appointee of the officer serves has filed the form on behalf of the board.

SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS BEFORE A DECISION-MAKING BODY.

*(a) **Definitions.** For purposes of this Section 1.127, the following phrases shall mean:*

"Affiliated entities" means business entities directed and controlled by a majority of the same persons, or majority-owned by the same person.

"Prohibited contribution" is a contribution to (1) a member of the Board of Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

(b) ***Prohibition on Contributions.*** *No person, or the person's affiliated entities, with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors shall make any prohibited contribution at any time from a request or application regarding a land use matter until 12 months have elapsed from the date that the board or commission renders a final decision or ruling or any appeals from that decision or ruling have been finally resolved.*

(c) ***Prohibition on Soliciting or Accepting Contributions.*** *No member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates shall:*

(1) accept any contribution prohibited by subsection (b); or

(2) solicit any contribution prohibited by subsection (b) from a person who the individual knows or has reason to know has a financial interest in land use matter.

(d) ***Exceptions.*** *The prohibitions set forth in subsections (b) and (c) shall not apply if:*

(1) the land use matter concerns only the person's primary residence;

(2) the person with a financial interest in the land use matter is a nonprofit organization with tax exempt status under 26 United States Code Section 501(c)(3), and the land use matter solely concerns the provision of health care services, social welfare services, permanently affordable housing,

or other community services funded, in whole or in substantial part, by the City to serve low-income San Francisco residents; or

*(e) **Forfeiture of Prohibited Contributions.** In addition to any other penalty, each member of the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the amount received or deposited to the City and County of San Francisco by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided, that the Commission may provide for the waiver or reduction of the forfeiture.*

*(f) **Notification.***

*(1) **Prospective Parties to Land Use Matters.** The agency responsible for the initial review of any land use matter shall inform any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, of the prohibition in subsection (b) and of the duty to notify the Ethics Commission, described in subsection (f)(2), upon the submission of a request or application regarding a land use matter.*

*(2) **Persons with a Financial Interest in a Land Use Matter.** Any person with a financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission, Port Commission, or the Treasure Island Development Authority Board of Directors, within 30 days of submitting a request or application, shall file with the Ethics Commission a report including the following information:*

(A) the board, commission, or department considering the land use matter;

(B) the location of the property that is the subject of the land use matter;

(C) if applicable, the file number for the land use matter; and

(D) if applicable, the names of the individuals who serve as the person's chairperson, chief executive officer, chief financial officer, and chief operating officer, or as a member of the person's board of directors.

SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.

(a) **Supplemental Preelection Statements** *- General Purpose Committees*. In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter *1*, a San Francisco general purpose committee that makes contributions or expenditures totaling $500 or more during the period covered by the preelection statement, other than expenditures for the establishment and administration of that committee, shall file a preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot.

(b) **Time for Filing Supplemental Preelection Statements** *- General Purpose Committees*.

(1) Even-Numbered Years. In even-numbered years, preelection statements required by ~~*this Section*~~ *subsection (a)* shall be filed pursuant to the preelection statement filing schedule established by the Fair Political Practices Commission for county general purpose recipient committees. *In addition to these deadlines, preelection statements shall also be filed, for the period ending six days before the election, no later than four days before the election.*

(2) Odd-Numbered Years. In odd-numbered years, the filing schedule *for preelection statements* is as follows:

~~*(1)*~~ *(A)* For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election;

~~(2)~~ *(B)* For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election~~.~~*; and*

(C) For the period ending six days before the election, the statement shall be filed no later than four days before the election.

*(c) **Time for Filing Supplemental Preelection Statements - Ballot Measure Committees and Candidate Committees.** In addition to the deadlines established by the Fair Political Practices Commission, ballot measure committees and candidate committees required to file preelection statements with the Ethics Commission shall file a third preelection statement before any election held in the City and County of San Francisco at which a candidate for City elective office or City measure is on the ballot, for the period ending six days before the election, no later than four days before the election.*

~~(c)~~ *(d)* The Ethics Commission may require that these statements be filed electronically.

~~***SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.***~~

~~*(a) **Prohibition.** No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated or implied in the campaign communication.*~~

~~*(b) **Definitions.** Whenever in this Section the following words or phrases are used, they shall mean:*~~

~~*(1) "Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement that refers to one or more clearly identified candidates or ballot measures. The term "campaign advertisement" does not include:*~~

~~*(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;*~~

~~*(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or*~~

~~*(C) material distributed to all members, employees and shareholders of an organization, other than a political party;*~~

~~*(2) "Internet Advertisement" includes paid internet advertisements such as "banner" and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.*~~

~~*(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement.*~~

~~*(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not apply to violations of this Section. Notwithstanding the 60 day waiting period in Section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.*~~

SEC. 1.168. ENFORCEMENT; ADVICE.

(a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a violation of this Chapter *1* has occurred may file a complaint with the Ethics Commission, City Attorney, or District Attorney. The Ethics Commission shall investigate such complaints pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney and District Attorney shall investigate, and shall have such investigative powers as are necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any ~~voter~~ *resident*, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter *1*.

(1) No ~~voter~~ *resident* may commence an action under this *S*ubsection *(b)* without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The ~~voter~~ *resident* shall deliver the notice to the City Attorney *and the Ethics Commission* at least 60 days in advance of filing an action. No ~~voter~~ *resident* may commence an action under this *S*ubsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another ~~voter~~ *resident* has filed a civil action against the defendant under this *S*ubsection.

(2) A Court may award reasonable attorney's fees and costs to any ~~voter~~ *resident* who obtains injunctive relief under this *S*ubsection *(b)*. If the Court finds that an action brought by a ~~voter~~ *resident* under this *S*ubsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

(1) **Criminal.** Prosecution for violation of this Chapter must be commenced within four years after the date on which the violation occurred.

(2) **Civil.** No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred.

(3) **Administrative.** No administrative action alleging a violation of this Chapter and brought under Charter Section C3.699-13 shall be commenced more than four years after the date on which the violation occurred. The date on which the Commission forwards a complaint or information in its possession regarding an alleged violation to the District Attorney and City Attorney as required by Charter Section C3.699-13 shall constitute the commencement of the administrative action.

*(A) **Fraudulent Concealment.** If the person alleged to have violated this Chapter engages in the fraudulent concealment of his or her acts or identity, this four-year statute of limitations shall be tolled for the period of concealment. For purposes of this subsection, "fraudulent concealment" means the person knows of material facts related to his or her duties under this Chapter and knowingly conceals them in performing or omitting to perform those duties.*

(4) **Collection of Fines and Penalties.** A civil action brought to collect fines or penalties imposed under this Chapter shall be commenced within four years after the date on which the monetary penalty or fine was imposed. For purposes of this Section, a fine or penalty is imposed when a court or administrative agency has issued a final decision in an enforcement action imposing a fine or penalty for a violation of this Chapter or the Executive Director has made a final decision regarding the amount of a late fine or penalty imposed under this Chapter. The Executive Director does not make a final decision regarding the amount of a late fine or penalty imposed under this Chapter until the Executive Director has

made a determination to accept or not accept any request to waive a late fine or penalty where such waiver is expressly authorized by statute, ordinance, or regulation.

* * * *

(e) DEBARMENT.

The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among all parties, recommend that a Charging Official authorized to issue Orders of Debarment under Administrative Code Chapter 28 initiate debarment proceedings against any person in conformance with the procedures set forth in that Chapter.

SEC. 1.170. PENALTIES.

(a) CRIMINAL. Any person who knowingly or willfully violates any provision of this Chapter *1* shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Section*s* 1.114, *1.126, or 1.127* of this Chapter shall be punishable by a fine of not less than $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater.

(b) CIVIL. Any person who intentionally or negligently violates any of the provisions of this Chapter *1* shall be liable in a civil action brought by the ~~*civil prosecutor*~~ *City Attorney* for an amount up to $5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section*s* 1.114, *1.126, and 1.127* or

three times the amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140~~.5~~, whichever is greater. *In determining the amount of liability, the court may take into account the seriousness of the violation, the degree of culpability of the defendant, and the ability of the defendant to pay.*

(c) ADMINISTRATIVE. Any person who ~~*intentionally or negligently*~~ violates any of the provisions of this Chapter *1* shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

* * * *

Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter *2* the following words or phrases are used, they shall mean:

"Anything of value" shall mean any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the City, contributions as defined herein, or gifts that qualify for gift exceptions established by State or local law.

"Associated," when used in reference to an organization, shall mean any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which an individual or a member of his or her immediate family is an authorized representative or agent.

"City elective officer" shall mean a person who holds the office of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, et seq.

"Fundraising" shall mean:

(a) requesting that another person make a contribution;

(b) inviting a person to a fundraising event;

(c) supplying names to be used for invitations to a fundraiser;

(d) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event;

(e) permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event;

(f) providing the use of one's home or business for a fundraising event;

(g) paying for at least 20% of the costs of a fundraising event;

(h) hiring another person to conduct a fundraising event;

(i) delivering a contribution, other than one's own, by whatever means to a City elective officer, a candidate for City elective office, or a candidate-controlled committee; or

(j) acting as an agent or intermediary in connection with the making of a contribution.

"Immediate family" shall mean spouse, registered domestic partner, and dependent children.

~~(a)~~ "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file *a* statement~~s~~ of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

~~*(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.*~~

"Solicit" shall mean personally requesting a contribution for any candidate or committee, either orally or in writing.

"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.

SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

(a) ***Prohibitions.*** *In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and members of boards and commissions:*

(1) No City elective officer or member of a board or commission may use his or her public position or office to seek or obtain anything of value for the private or professional benefit of himself or herself, his or her immediate family, or for an organization with which he or she is associated.

(2) No City elective officer or member of a board or commission may, directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a contribution.

(3) No person may offer or give to an officer, directly or indirectly, and no City elective officer or member of a board or commission may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the officer's vote, official actions, or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a board or commission from engaging in outside employment.

*(b) **Exception: public generally.** The prohibition set forth in subsection (a)(1) shall not apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public and the effect is not unique. For purposes of this subsection (b):*

(1) A significant segment of the public is at least 25% of:

(A) all businesses or non-profit entities within the official's jurisdiction;

(B) all real property, commercial real property, or residential real property within the official's jurisdiction; or

(C) all individuals within the official's jurisdiction.

(2) A unique effect on a public official's financial interest includes a disproportionate effect on:

(A) the development potential or use of the official's real property or on the income producing potential of the official's real property or business entity;

(B) an official's business entity or real property resulting from the proximity of a project that is the subject of a decision;

(C) an official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;

(D) an official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;

(E) a person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; or

(F) an official's personal finances or those of his or her immediate family.

SEC. 3.209. RECUSALS.

*(a) **Recusal Procedures.** Any member of a City board or commission, including a member of the Board of Supervisors, who has a conflict of interest under Sections 3.206 or 3.207, or who must recuse himself or herself from a proceeding under California Government Code Section 84308, shall, in the public meeting of the board or commission, upon identifying a conflict of interest immediately prior to the consideration of the matter, do all of the following:*

(1) publicly identify the circumstances that give rise to the conflict of interest in detail sufficient to be understood by the public, provided that disclosure of the exact street address of a residence is not required;

(2) recuse himself or herself from discussing or acting on the matter; and

(3) leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on and remains on the consent calendar.

*(b) **Repeated Recusals.** If a member of a City board or commission, including a member of the Board of Supervisors, recuses himself or herself, as required by subsection (a), in any 12-month period from discussing or acting on:*

(1) three or more separate matters; or

(2) 1% or more of the matters pending before the officer's board or commission,

the Commission shall determine whether the official has a significant and continuing conflict of interest. The Commission shall publish its written determination, including any discussion of the official's factual circumstances and applicable law, on its website. Thereafter, if the Commission determines that the official has a significant and continuing conflict of interest, the official shall provide the Commission with written notification of subsequent recusals resulting from the same conflicts of interest identified in the written determination. With respect to such officials, the Commission may recommend to the official's appointing authority that the official divest or otherwise remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting

interest, the Commission may recommend to the official's appointing authority that the official should be removed from office under Charter Section 15.105 or by other means.

SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.

*(a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or commission shall solicit uncompensated volunteer services from any subordinate employee for a campaign for or against any ballot measure or candidate.*

*(b) **Fundraising for Appointing Authorities.** No member of a board or commission may engage in fundraising on behalf of (1) the officer's appointing authority, if the appointing authority is a City elective officer; (2) any candidate for the office held by the officer's appointing authority; or (3) any committee controlled by the officer's appointing authority. For the purposes of this subsection, "member of a board or commission" shall not include a member of the Board of Supervisors.*

Section 3. Section 1. The Campaign and Governmental Conduct Code, Article III, Chapter 6, is hereby amended by revising Sections 3.600, 3.610, 3.620, and by adding Sections 3.630, 3.640, 3.650, to read as follows:

CHAPTER 6: BEHESTED PAYMENT REPORTING ~~*FOR COMMISSIONERS*~~

SEC. 3.600. DEFINITIONS.

Whenever in this Chapter 6 the following words or phrases are used, they shall have the following meanings:

"Actively support or oppose" shall mean contact, testify in person before, or otherwise act to influence an official or employees of a board or commission (including the Board of Supervisors), including use of an agent to do any such act.

"Agent" shall be defined as set forth in Title 2, Section 18438.3 of California Code of Regulations, as amended from time to time.

"At the behest of" shall mean under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.

~~*"Auctioneer" shall mean any person who is engaged in the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.*~~

"Behested payment" shall mean a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.

~~*"Behested Payment Report" shall mean the Fair Political Practices Commission Form 803, or any other successor form, required by the Fair Political Practices Commission to fulfill the disclosure requirements imposed by California Government Code Section 82015(b)(2)(B)(iii), as amended from time to time.*~~

~~*"Charitable Contribution" shall mean any monetary or non-monetary contribution to a government agency, a bona fide public or private educational institution as defined in Section 203 of the California Revenue and Taxation Code, or an organization that is exempt from taxation under either Section 501(c) or Section 527 of the United States Internal Revenue Code.*~~

~~*"Commissioner" shall mean any member of a board or commission listed in Campaign and Governmental Conduct Code Section 3.1-103(a)(1); provided, however, that "Commissioner" shall not include any member of the Board of Supervisors.*~~

"Contact" shall be defined as set forth in Section 2.106 of this Code.

"Interested party" shall mean (i) any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before an officer or any board or commission (including the Board of Supervisors)

on which the officer sits, or (ii) any person who actively supports or opposes a governmental decision by an officer or any board or commission (including the Board of Supervisors) on which the officer sits.

"License, permit, or other entitlement for use" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.

"Officer" shall mean the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public Defender, a Member of the Board of Supervisors, or any member of a board or commission who is required to file a Statement of Economic Interests, including all persons holding positions listed in Section 3.1-103(a)(1) of this Code.

"Payment" shall mean a monetary payment or the delivery of goods or services.

"Participant" shall be defined as set forth in California Government Code Section 84308 and Title 2, Section 18438.4 of California Code of Regulations, as amended from time to time.

"Party" shall be defined as set forth in California Government Code Section 84308, as amended from time to time.

"Public appeal" shall mean a request for a payment when such request is made by means of television, radio, billboard, a public message on an online platform, the distribution of 500 or more identical pieces of printed material, or a speech to a group of 50 or more individuals.

"Relative" shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and includes any similar step relationship or relationship created by adoption.

SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.

(a) **FILING REQUIREMENT.** ~~*If a Commissioner directly or indirectly requests or solicits any Charitable Contribution(s), or series of Charitable Contributions, from any party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before the Commissioner's board or commission, the*~~

~~Commissioner shall file a Behested Payment Report with the Ethics Commission in the following circumstances:~~ *If an officer directly or indirectly requests or solicits any behested payment(s) from an interested party, the officer shall file the behested payment report described in subsection (b) with the Ethics Commission in the following circumstances:*

(1) ~~if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more while the proceeding is pending, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total $1,000 or more;~~ *if the interested party makes any behested payment(s) totaling $1,000 or more during the pendency of the proceeding involving the interested party or a decision that the interested party is actively supporting or opposing, the officer shall file a behested payment report within 30 days of the date on which the behested payment was made, or if there has been a series of behested payments, within 30 days of the date on which the behested payment(s) total $1,000 or more;*

(2) ~~if the party, participant or agent makes any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more during the three months following the date a final decision is rendered in the proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date on which the Charitable Contribution was made, or if there has been a series of Charitable Contributions, within 30 days of the date on which a Charitable Contribution causes the total amount of the contributions to total $1,000 or more; and~~ *if the interested party makes any behested payment(s) totaling $1,000 or more during the six months following the date on which a final decision is rendered in the proceeding involving the interested party or a decision that the interested party is actively supporting or opposing, the officer shall file a behested payment report within 30 days of the date on which the behested payment was made, or if there has been a series of behested payments, within 30 days of the date on which the behested payment(s) total $1,000 or more; and*

(3) ~~*if the party, participant or agent made any Charitable Contribution, or series of Charitable Contributions, totaling $1,000 or more in the 12 months prior to the commencement of a proceeding, the Commissioner shall file a Behested Payment Report within 30 days of the date the Commissioner knew or should have known that the source of the Charitable Contribution(s) became a party, participant or agent in a proceeding before the Commissioner's board or commission.*~~ *if the interested party made any behested payment(s) totaling $1,000 or more in the 12 months prior to the commencement of a proceeding involving the interested party or a decision that the interested party actively supports or opposes, the officer shall file a behested payment report within 30 days of the date the officer knew or should have known that the source of the behested payment(s) became an interested party.*

(b) ***BEHESTED PAYMENT REPORT.*** *The behested payment report shall include the following:*

(1) name of payor;

(2) address of payor;

(3) amount of the payment(s);

(4) date(s) the payment(s) were made,

(5) the name and address of the payee(s),

(6) a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment(s) were made;

(7) if the officer or the officer's relative, staff member, or paid campaign staff, is an officer, executive, member of the board of directors, staff member or authorized agent for the recipient of the behested payment(s), such individual's name, relation to the officer, and position held with the payee;

(8) if the payee has created or distributed 200 or more substantially similar communications featuring the officer within the six months prior to the deadline for filing the behested

payment report, a brief description of such communication(s), the purpose of the communication(s), the number of communication(s) distributed, and a copy of the communication(s); and

(9) if in the six months following the deadline for filing the behested payment report, the payee has created or distributed 200 or more substantially similar communications featuring the officer, the officer shall file an amended payment report that discloses a brief description of such communication(s), the purpose of the communication(s), the number of communication(s) distributed, and a copy of the communication(s).

*(c) **AMENDMENTS.** If any of the information previously disclosed on a behested payment report changes during the pendency of the proceeding involving the interested party or a decision that the interested party actively supports or opposes, or within six months of the final decision in such proceeding, the officer shall file an amended behested payment report.*

*(d) **PUBLIC APPEALS.** Notwithstanding subsection (a), no officer shall be required to report any behested payment that is made solely in response to a public appeal.*

*(e) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a public appeal, that any person make a behested payment, the official or his agent must notify that person that if the person makes any behested payment in response to the solicitation or request, the person may be subject to the disclosure and notice requirements in Section 3.620.*

~~*(b)* (f)~~ **WEBSITE POSTING.** The Ethics Commission shall make available through its website all ~~*B*~~*b*ehested ~~*P*~~*p*ayment ~~*R*~~*r*eports it receives from ~~*Commissioners*~~ *officers*.

~~*(c) **PENALTIES.** A Commissioner who fails to comply with this Section 3.610 is subject to the administrative process and penalties set forth in Section 3.242(d).*~~

~~*(d) **EXCEPTION.** A Commissioner has no obligation to file Behested Payment Reports, as required by subsection (a), if the Commissioner solicited Charitable Contributions by acting as an auctioneer at a fundraising event for a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code.*~~

SEC. 3.620. FILING BY DONORS.

(a) ***REPORT.*** *Any interested party who makes a behested payment, or series of behested payments in a calendar year, of $1,000 or more must disclose, within 30 days following the date on which the payment(s) totals $1,000 or more:*

(1) the proceeding the interested party is or was involved in;

(2) the decisions the interested party actively supports or opposes;

(3) the outcome(s) the interested party is or was seeking in such proceedings or decisions; and

(4) any contact(s) the interested party made in relation to such proceedings or decisions.

(b) ***NOTICE.*** *Any person who makes a behested payment must notify the recipient that the payment is a behested payment, at the time the payment is made.*

SEC. 3.630. FILING BY RECIPIENTS OF MAJOR BEHESTED PAYMENTS.

(a) ***MAJOR BEHESTED PAYMENT REPORT.*** *Any person who receives a behested payment, or a series of behested payments, received during a calendar year, totaling $100,000 or more that was made at the behest of any officer must do the following:*

(1) within 30 days following the date on which the payment(s) total $100,000 or more, notify the Ethics Commission that the person has received such payment(s) and specify the date on which the payment(s) equaled or exceeded $100,000;

(2) within 13 months following the date on which the payment(s) or payments total $100,000 or more, but at least 12 months following the date on which the payment(s) total $100,000 or more, disclose:

(i) all payments made by the person that were funded in whole or in part by the behested payment(s) made at the behest of the officer; and

(ii) if the person has actively supported or opposed any City decision(s) involving the officer in the 12 months following the date on which the payment(s) were made:

(A) the proceeding the person is or was involved in;

(B) the decision(s) the person actively supported or opposed;

(C) the outcome(s) the person is or was seeking in such proceedings or decisions; and

(D) any contact(s) the person made in relation to such proceedings or decisions.

*(b) **EXCEPTION.** Subsection (a) does not apply if the entity receiving the behested payment is a City department.*

*(c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the notice, as required under Section 3.620, that a particular payment is a behested payment, the recipient will not be subject to penalties under Section 3.650, as regards that particular payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances that the recipient knew or should have known that the payment was made at the behest of an officer.*

SEC. ~~3.620~~ *3.640*. REGULATIONS.

(a) The Ethics Commission may adopt rules, regulations, and guidelines for the implementation of this Chapter 6.

(b) The Ethics Commission may, by regulation, require *persons* ~~*Commissioners*~~ to electronically submit any ~~*substantially the same*~~ information ~~*as*~~ required ~~*by the Behested Payment Report*~~ to fulfill their obligations under ~~*Section 3.610*~~ *this Chapter 6*.

SEC. 3.650. PENALTIES.

Any party who fails to comply with any provision of this Chapter 6 is subject to the administrative process and penalties set forth in Section 3.242(d) of this Code.

Section 4. Effective and Operative Dates. This ordinance shall become effective 30 days after enactment. This ordinance shall become operative on January 1, 2019. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

By: _____
ANDREW SHEN
Deputy City Attorney

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To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: Working Group for SF Charities
Date: November 17, 2017
Re: Behested payments disclosure reporting

The Working Group for SF Charities is comprised of community-based organizations and coalitions, including the San Francisco Human Services Network, Council of Community Housing Organizations and other nonprofits seeking to advance policies that support principled and productive partnerships between charities, city government, and the private sector. We respectfully submit these comments on the November 3 "Draft Language for Amended Behested Payments Disclosure Reporting."

A) General principles and potential impacts

First, the members of our nonprofit community are thankful to the Ethics Commission and staff for replacing the previous proposal for a ban on behested donations with a focus on disclosure requirements. We believe that strong disclosure and transparency is the better path to exposing real corruption, while mitigating potential harm to the City's ability to create public-private partnerships and to charitable organizations' ability to identify funding sources for vital community services.

However, we are deeply concerned that this new draft ordinance goes far beyond the envisioned disclosure regime related to potential conflicts of interest with behested donations, which was the stated objective, and thus creates a new set of consequences for the City, nonprofit service and arts organizations, and residents that rely on those programs.

Currently, the available records on behested donations arise from the State requirements that elected officials disclose solicitations at the $5,000 level. However, beginning in January 2018, members of City boards and Commissions will become subject to a new disclosure Ordinance carried by Supervisor Aaron Peskin and approved by the Board of Supervisors in January 2017. **This new law will require appointed public officials to report behested donations of $1,000 or more where the donor is involved in proceedings before that official's board or Commission.**

In June and July of 2016, the Ethics Commission held hearings on Sup. Peskin's proposed legislation. In developing its recommendations around this legislation, Ethics staff urged the Commission to balance three key principles – an approach that the Commission supported unanimously. We believe that the current disclosure proposal is inconsistent with those worthy goals[1].

[1] https://sfethics.org/wp-content/uploads/2016/07/item-5-memo-attachments-commissioner-behested-donations-reporting-final.pdf, p.7.

Principle 1: To promote and uphold the desirability and value of volunteering in service to the public.

The new proposal imposes a sweeping new obligation on volunteer members of commissions and fails to consider the practical challenges that such a new obligation will have on commissioners who are also active in fundraising or volunteer recruitment for arts, human services, and social justice organizations. It was stated at the recent IP meeting that the purpose of the legislation is to "expose the relationship between politicians and money." However, this assertion is precisely the problem with the disclosure requirement. Not only does it falsely assume that most commissioners are existing or nascent politicians but it also imbues every reported contribution that a commissioner solicits with a taint of politics.

The result will make the already difficult task of charitable fundraising even more challenging – particularly for controversial initiatives and marginalized communities where public disclosure can result in reprisals and harassment. In short, the proposal imposes a new burden on volunteer commissioners without providing them with the staff or support to comply and with potentially severe impacts on their ability to continue their charitable work completely unrelated to their service as commissioners.

Principle 2: To provide meaningful transparency with a clear nexus to that government service.

A key distinction between the recent legislation introduced by Supervisor Peskin and the present proposal is there no required nexus between a contribution that must be reported and some government action. The donor may never have a matter before the commissioner and yet must report their contribution. We do not see the purpose or meaning to such a requirement.

Principle 3: To ensure a sufficient operational foundation to enable the law's effectiveness in practice.

As noted above, the proposal imposes a significant and unresourced compliance burden on volunteer commissioners. Outside of the Ethics Commission, most commissioners are not lawyers. Unlike elected officials, few if any have staff to support their individual work as commissioners and probably fewer have compliance attorneys. Yet there is no proposal to provide any support for commissioners to fulfill the obligations imposed upon them by this proposal.

In supporting the application of Peskin's legislation only to behesting with a government nexus, the Commission also sought to ensure that the disclosure law would be enforceable, and took into account its own capacity to add broad new responsibilities. These concerns led the Ethics Commission to recommend that Commissioners report behested charitable donations only where there is a nexus to the governmental duties of those volunteer officials, and to delay the effective date until January 1, 2018 due to the lack of funding for compliance.

Finally, to the above principles, we suggest one additional goal that is an appropriate measure of all good public policy:

Principle 4: The policy should seek to ensure that the benefits to the public outweigh the harms and burdens it will impose.

In the absence of an analysis of the proposal, we do not understand the public benefit of requiring the disclosure of relatively small contributions to charities and public programs given the likely burden it will impose. As noted above, the disclosure requirements will certainly result in a decline in contributions to charities – contributions without even an arguable association with any matters before a governmental agency. The proposal also imposes additional compliance costs on donors and charitable organizations. For individuals and organizations without compliance counsel or staff, such costs will likely be considerable relative to the size of the contributions. As noted below, we understand the logic for the existing behesting reporting requirements at the $5000 level for elected officials who are provided with staff or at the $100,000 level in the proposed Section 3.613. The arguments presented at previous hearings and meetings regarding large corporate behests may justify additional scrutiny. But that logic does not translate to smaller contributions. Nor is there any existing pro bono program to assist small donors or nonprofit organizations with the additional burden of complying with the proposed new laws.

The Peskin legislation, supported by the Ethics Commission, is about to take effect in less than two months, and already, the Commission is considering a dramatic expansion of the behested donations disclosure regime that appears to reject the cautioned principles the Commission supported 16 months ago. Ethics staff now proposes legislation that would apply to <u>all</u> behested donations of $1000 or more, for any vague "matter pending" before that public body. Staff also suggests a complicated – and in places, inappropriate and overly onerous – set of disclosures by not only public officials, but also by donors and recipients. Moreover, staff is now proposing that charitable organizations as recipients be required to report <u>all</u> behested donations whether or not the donor had any decision or other matter before the official who made the behest. This proposed requirement on recipients of donations casts a net far beyond the original intent to bring transparency to potential conflicts of interest around the donor/official relationship.

We therefore urge the Commission to refrain from imposing additional requirements on either elected officials or members of City boards and Commissioners that go beyond the Peskin legislation that will take effect in January 2018. We also express concern about specific expanded disclosure requirements for donors and recipients.

B) Specific provisions

- Maintain the language in the Peskin legislation that limits the disclosure requirement to charitable fundraising with a nexus to a proceeding before that public official, rather than all behests. The requirement should not apply where the official's fundraising is completely unrelated to a matter before the public body on which they serve. This more precise and tailored requirement is consistent with the legislation's stated purpose to address quid pro quo.
    - This revision to the staff's draft proposal will minimize the potential impacts on charitable giving and volunteerism.
    - Without this more tailored language, nonprofit representatives (staff and Boards of Directors) who donate their expertise by volunteering on City Commissions would not be able to maintain the donor privacy required by their organizations as part of their fundraising responsibilities. They would have to choose between their organization and their public service role.

- Maintain the language in the Peskin legislation that limits the disclosure requirement to proceedings where that nexus is defined by a clear financial stake.
    - The staff's proposed language, which applies to any "matter pending" before that official, is vague and overly broad. One could construe this provision to apply when a member of the public has any general concern with a proposed law or administrative rule.

- For smaller contributions below $100,000, impose reporting requirements on public officials, not donors or recipients.
    - Requiring donors to report will have a chilling impact on charitable giving by creating a disincentive for donations. Instead, public officials should report whether they are aware of any pending matters involving the donor. State law already requires disclosure by public officials for behested donations of $5,000 and greater.
    - The requirement that recipients disclose any relationship with the public official is unrealistic. Only the public official is in the position to know whether any such relationship exists, while large organizations will not be aware of such information for all of their staff, directors, etc. Any such reporting requirement should therefore fall on the public official.
    - The requirement that recipients disclose events or literature featuring the public official implies some nexus or conflict of interest with the recipient. Publicly thanking an official who assists a worthy organization is both appropriate and conducive to garnering needed support from the broader public. Federal law

already restricts 501(c)(3) nonprofits from engaging in activities that feature officials and candidates when it's close to an election.

- Reporting requirements expose donors and recipients to the risk of civil or criminal penalties for the act of charity. Any requirements on these parties should include a safe harbor exempting them from any penalties where they do not receive proper notice about the behest.

- <u>We support some additional reporting requirements for donors of major behested contributions ($100,000+), but have concerns about specific requirements</u>.
  - Because contributions of this magnitude are rare, it is reasonable and less onerous to require donors to report any pending business before the public official and provide notice of requirements to the recipient. Similarly, it is reasonable to ask recipients to provide information about events and literature featuring the public official, and about the purpose of the donation.
  - However, some of the information requested of recipients is irrelevant to the donation or inappropriate.
  - The draft requires disclosure of expenditures within a mere 30 days of receipt of the payment, while the funds may not actually be spent for months or even years (e.g. in a capital campaign to purchase a building). A more helpful disclosure would be a description of the specific purpose for which the donor provided the funds or for which the recipient intends to use the funds.
  - The draft legislation requires disclosure of the recipient organization's five largest contributors. This provision violates the legitimate right of donors to protect their confidentiality, and forces the recipient organization to jeopardize such contributions. Donors frequently ask nonprofits to maintain their privacy for many reasons (e.g. humility, avoiding inundation by requests from similar organizations, religious tithing traditions, fear of harassment by opponents, and HIPPA-related issues or other personal privacy concerns). Even Administrative Code 12L (referred to as the nonprofit sunshine law) recognizes the need for donor confidentiality and protects organizations from disclosing donor identities.
  - The nexus that gives rise to the disclosure requirement is between the public official and the donor – not the recipient. Therefore, the City should not require recipient organizations to report their specific lobbying activities unless they reach the threshold that requires them to register under the City's lobbying ordinances.

From: Art Agnos [redacted]
Date: November 12, 2017 at 11:20:58 AM PST
To: "pkeane@ggu.edu" <pkeane@ggu.edu>
Subject: Ethic Reform

Dear President Keane and Commissioners:

I respectfully urge the Commission to approve a strong version of the pending San Francisco Anti-Corruption and Accountability Ordinance, including the provision modeled on Los Angeles' private right of action.

As mayor and earlier in the state assembly, I was in the room when important decisions had to be made. I always knew who was in the room, but more importantly, I recognized who was not. Most often, those missing were the people whose lives would be directly affected by the decisions we were making.

In the room were those with strong financial interests, or representatives of city agencies with a strong interest in how the decision would affect their operation, and advocates who came with a viewpoint and intent to persuade. There was nothing wrong or inappropriate in their desire to represent the varying interests from their perspective, but I recognized that it would take a special effort to ensure that people who weren't in the room had their voices heard.

It also happened that because it wasn't always recognized that decisions required greater input, decisions would be made that were met with less than full agreement or even opposition. The safety valve in our Democracy is the citizen's initiative process. Decisions that appeared final can be tested by voters through an initiative or referendum and overturned in favor of a new decision.

It is my strong belief that this tool is making our city better. I was involved in elections that challenged City Hall decisions on our waterfront approvals and for a measure that now requires citizen approvals when existing waterfront height limits are set to be increased. The outcome was much more than just changing those decisions. It has brought more affordable housing than otherwise would have been planned, greater respect for the recreation and public use of space, and ensured continuation of such important economic assets as the Flower Mart and the Design Center. It also has led to approvals for new "jewels" for San Francisco with Pier 70 and the Warriors Arena.

The point is that the ability to challenge and win new decisions doesn't mean an adversarial approach to City government. In fact, it has actually led to a new level of cooperation that is more inclusive of broader interests. Decision-makers are aware that the final decision isn't only in the hands of those who are "in the room" but is subject to community action and thus seek to ensure greater input and participation, and a greater respect for the public's values.

I make this point because the private right of action is a similar tool that empowers citizens when decisions are made that need to be given broader oversight than what is provided by special interests, agency officials and even advocates. There are many pressures in government to take an "easier way" than complying with all the conditions that voters may have set. It isn't always prompted by the weight of political allies and supporters against complying with the letter or spirit of the law, but it can be and sometimes is. Regardless of what prompts it, the message is sent that "we" know better than what the public believes it has established as the rules for governing the city and standards for officeholders.

What alters that is knowing that a citizen can go into court to require that the city comply with its own laws. It has a sobering effect even when it is not specifically brought into play.

Under our current private right of action, however, this is an empty option. A voter can sue when city officials don't act to uphold the law, but the result is an injunction to halt an action or prohibit its continuing. Attorney fees are reimbursed.

All we need to know about whether this is an effective regulator on decision-making is to see how often citizen private of action is used. The answer is just once in the past 20 years. At the same time, other lawsuit options from environmental concerns, planning laws, rent laws, and open space have frequently been employed and brought good results.

Those examples for the most part deal with decisions that involve the private sector. When it comes to decisions from the public sector, which is the focus of the citizen right of action in the proposal before you, there is no strong deterrent and no record of accomplishing results.

The proposal before you, modeled on an existing Los Angeles law and a law that operates at the State Capitol where I also was an elected official, was recommended by the Board Budget and Legislative Analyst as long ago as 2012. It also has the support of many ethics and government groups.

Unlike the current law, this provision allows for the court to order a penalty for violating the law, just as there are penalties in violating almost all other laws. Violating the law by government officials should not be exempt from the ability of citizens to force compliance and accountability or mean that there is no penalty.

The private right of action is one of a number of important reforms in the measure you are giving final consideration. They will all help reduce the undue influence of money in our politics, something that is badly needed, and all are based in actual circumstances we have seen in San Francisco.

I urge you to approve a full version of this measure, and should this be altered to reduce citizen empowerment or to allow the continued influence of financial interests in our decisions, then I urge you to use your authority to place this directly on the ballot.

Thank you for considering my views.

Art Agnos

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Art Agnos

To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: Working Group for SF Charities
Date: November 27, 2017
Re: Anti-Corruption and Accountability Ordinance

The Working Group for SF Charities is comprised of community-based organizations and coalitions, including the San Francisco Human Services Network, Council of Community Housing Organizations and other nonprofits seeking to advance policies that support principled and productive partnerships between charities, city government, and the private sector. We respectfully submit these comments on the November 20, 2017 revised version of the Anti-Corruption and Accountability Ordinance.

The nonprofit community would like to express our appreciation to the Ethics Commission and staff for replacing the proposed ban on behested donations with a focus on disclosure requirements, and for the process over these last two months to more fully vet the proposal and work with stakeholders in an effort to 'get it right.' This revised version of the legislation shows tremendous improvement at addressing our sector's concerns about potential harm to charitable fundraising, and to the ability of nonprofits to share their expertise through service on City Boards and Commissions.

While we are supportive of many of the good-government provisions in the legislation, we do have remaining concerns about some specific provisions, including issues related to the new behested payments disclosure, which we feel strongly should be amended by the Ethics Commission or at the Board of Supervisors.

Regarding the behesting section, two major issues stand out:

1) Nexus for reporting requirement: Supervisor Peskin's behests legislation, which goes into effect in January and upon which this expanded disclosure regime is built, applies to donations from parties, participants and agents, defined by state law as those having a financial stake in the matter before the public official. The new version of legislation proposes a dramatic expansion of the law to encompass any interested party who actively supports or opposes a matter before the public body – defined to include any action to influence the public official.

   This overly broad scope would sweep up any individual who engages in any act of advocacy on an issue, no matter how small (public testimony, letter writing, signing a petition...), and regardless of whether the advocacy is around a financial interest or merely a matter of public opinion (e.g. opposing Tasers at a Police Commission hearing or supporting a Board of Supervisors resolution against the federal threat to defund sanctuary jurisdictions).

We don't understand how such a broadened definition would enhance the goal of exposing quid pro quo, and we are concerned that its breadth will have a chilling impact not only on charitable giving, but also on the willingness of potential donors to speak out about public policy issues. This expanded definition beyond the clear nexus terms established in the Peskin behest legislation is of serious concern, and we suggest it remain consistent with the existing law going into effect in January.

2) Donor reporting requirement: The proposed legislation imposes a burden on all donors of $1000 or more to file a report detailing the nature of their business before the public official. Requiring donors to report for all donations down to the thousand dollar level will have a chilling impact on charitable giving by creating a disincentive for donations, and by signaling to donors that their contribution is treated as suspect. Instead, we suggest that it is the public officials who should report whether they are aware of any pending matters involving the donor. We do support this reporting requirement for major donations at the $100,000 level, as proposed in the legislation. Contributions of this magnitude are rare enough that it is reasonable and less onerous to require donors to report their business matters pending before the public official.

Finally, we note additional issues that we have raised previously, and that are still of concern in the proposed ordinance. In summary:

- Nonprofit Boards of Directors: We see no justification for the inclusion of volunteer members of nonprofit Boards in the Ordinance's prohibition on campaign contributions, and urge the Commission to impose these restrictions only to *compensated* members of Boards.
- Repeated recusals: We ask the Commission to revise these provisions so that nonprofit representatives serving on City Commissions will not face scrutiny when they appropriately recuse themselves from votes for their employers' contracts.
- Disclosure of bidding information: The legislation would expand the term of the Section 1.126 campaign contribution ban to begin with submission of a proposal rather than with contract notification. This expansion would undermine the integrity of the City's sealed bidding process by requiring the disclosure of sensitive bidding information. Public disclosure of this information will expose the competitive bidding process to the possibility of collusion and corruption. At the Interested Persons meeting, staff indicated that they intended to change this provision, but apparently, that did not happen.

We urge you to adopt these suggested changes when you consider the current revised legislation at the Ethics Commission hearing today. Alternatively, we encourage you to continue moving this process forward by sending the proposed legislation to the Board of Supervisors for further vetting and fine-tuning to address these issues.

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

November 29, 2017

Honorable Members
San Francisco Board of Supervisors
Attention: Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Proposed Ordinance – San Francisco Anti-Corruption and Accountability Ordinance

Dear Members of the Board:

At its November 27, 2017 Regular Meeting, the Ethics Commission voted by a four-fifths majority to support a series of amendments to City law that seek to strengthen the City's Campaign Finance Reform Ordinance and the Conflict of Interest Code to advance the purposes of reducing undue influence, limiting corruption, and ensuring and advancing an informed electorate. The Commission's proposed Ordinance, the *San Francisco Anti-Corruption and Accountability Ordinance* (the "Ordinance") would amend Articles I and III of the Campaign and Governmental Conduct Code ("SFC&GCC"). The Ethics Commission is transmitting the Ordinance to the Board of Supervisors for its consideration and urges the Board to enact the Ordinance into law.

Overview of Proposal

The Ordinance creates a series of new rules designed to reduce the incidence or appearance of corruption and to increase transparency regarding political fundraising and payments made at the behest of City officials.

The Ordinance would amend the SFC&GCC to create or expand certain prohibitions on political contributions. The Ordinance would further restrict the ability of City contractors, prospective City contractors, and individuals with a financial interest in a land use matter pending before a City agency to make payments benefitting certain City officials or other organizations with which these City officials are affiliated. The Ordinance would also prohibit the earmarking of contributions to evade contribution limits and make assumed name contributions a violation of City law.

The Ordinance would also institute new disclosure requirements to better inform the public about money being raised and spent on political campaigns or at the behest of a City official. Officials would be required to disclose certain fundraising activities in relation to ballot measure or independent expenditure committees. Candidates would need to disclose the identity of individuals who bundle large amounts of contributions for their committees. To

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E-Mail Address: ethics.commission@sfgov.org Web site: https://www.sfethics.org

further strengthen transparency of campaign finance activities in City elections, the Ordinance would establish a third public disclosure report for campaign committees prior to the date of the election, and business entities that contribute to candidates would be required to provide additional disclosures about their management. Additionally, the Ordinance would create local rules for reporting payments made at the behest of a City official.

Importantly, the Ordinance also would create new rules regarding conflicts of interest, including prohibitions on City officials using their position to obtain something of value for themselves or accepting something of value that is likely to influence their official actions. The Ordinance would also create new procedures for board and commission members who recuse themselves based on a conflict of interest, including a public notice of the conflict and steps to address any conflict that result in a member's repeated recusals.

The Commission's proposed Ordinance was developed and refined over a period of nine months through extensive public comment at Commission hearings and a series of interested persons meetings with Commission Staff. In transmitting its recommendations to the Board of Supervisors, the Commission urges the Board to enact the proposed changes to expand and strengthen City campaign finance and conflict of interest provisions.

For reference, a record of ordinance drafts, written comment received from the public and interested persons, and other supporting materials are attached.

If you have any questions for the Ethics Commission or would like any additional information from our office, please feel free to contact me at (415) 252-3100.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham
Executive Director

Pas 1), COB, Rpdc, Rules Clerk, Mayors Office - Dep. City Attys

President, District 5
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

London Breed

PRESIDENTIAL ACTION

Date: 3/23/18

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☒ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. 180280 Peskin (Primary Sponsor)

Title. Campaign and Governmental Conduct Code - Campaign Finance and Conflict

☐ Transferring (Board Rule No 3.3)

File No. _____ _____ (Primary Sponsor)

Title. _____

From: _____ Committee

To: _____ Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ (Date) _____ (Committee) Meeting

2018 MAR 23 PM 4:49

London Breed

London Breed, President
Board of Supervisors

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

2010 MAR 30 PM 2:25

Time stamp or meeting date

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- [ ] 2. Request for next printed agenda Without Reference to Committee.
- [ ] 3. Request for hearing on a subject matter at Committee.
- [ ] 4. Request for letter beginning :"Supervisor _____ inquiries"
- [ ] 5. City Attorney Request.
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget Analyst request (attached written motion).
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Question(s) submitted for Mayoral Appearance before the BOS on _____

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- [ ] Small Business Commission
- [ ] Youth Commission
- [ ] Ethics Commission
- [ ] Planning Commission
- [ ] Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Peskin

Subject:

[Campaign and Governmental Conduct Code - Campaign Finance and Conflict of Interest]

The text is listed:

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) require additional disclosures for campaign contributions from business entities to political committees; 5) require disclosure of bundled campaign contributions; 6) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 7) require committees to file a third pre-election statement prior to an election; 8) remove the prohibition against distribution of campaign advertisements containing false endorsements; 9) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 10) require financial disclosures from certain major donors to local political committees; 11) impose additional disclaimer requirements; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and

commissions; and 15) establish local ested payment reporting requirements donors and City officers.

Signature of Sponsoring Supervisor:

For Clerk's Use Only