ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

Date: February 18, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Potential Campaign Finance Reform Ordinance Amendments

Introduction

At its last meeting, the Ethics Commission asked for a further discussion of ideas that might augment the City's Campaign Finance Reform Ordinance ("CFRO"), codified at Campaign and Governmental Conduct Code ("CGCC") section 1.100 et seq. This memorandum is intended to facilitate that discussion.

More specifically, staff has presented below six ideas whose purposes include improving disclosure and preventing corruption or the appearance of corruption in connection with City campaigns. These ideas were derived from prior Commission meetings, comments from interested parties, and Commissioner suggestions. Also, in August 2014, the Commission committed to discussing items 4 and 5 after reviewing recommendations issued by the 2013-2014 San Francisco Civil Grand Jury.

This memorandum presents a general overview of each idea. It is staff's hope that, after discussing these ideas, the Commission will identify those that it wishes staff to pursue and will give specific directions to staff in this regard.

Potential CFRO Amendments

1. Contribution limits and bans for candidate-controlled ballot measure and/or general purpose committees.

This proposal would subject committees that are "controlled" by City officials or candidates – but that are *not* directly related to their own campaigns to elective office – to the City's limits and prohibitions for candidate contributions. Under state law, a candidate is deemed to "control" a committee if he or she "has a significant influence on the actions or decisions of the committee." (Cal. Govt. Code § 82016.) The Friends of Ethics proposed this idea in connection with the CFRO amendments approved by the Commission in January 2015.

A City candidate's election campaign committee currently may only accept up to $500 per contributor and may not accept any contributions from corporations or certain City contractors. (CGCC §§ 1.114 & 1.126.) However, contributions to other committees that are controlled by candidates are generally *not* subject to any limits or prohibitions, *other than the contractor ban*. In other words, corporations and others may contribute well over $500 to these candidate-controlled committees, although not to their own campaign committees.

This proposal primarily concerns two types of candidate-controlled committees not directly related to the candidate's or officer's election campaign. First, a candidate can control a committee formed primarily to support or oppose a ballot measure. Second, a candidate can control a "general purpose" committee that supports and opposes various measures and other committees.[1] Both types of these candidate-controlled committees have been opened (both in and out of San Francisco) in the past, including the following:

Name	Type of Committee	Open
Yes on A -- a coalition of MUNI riders, environmentalists, labor and Supervisor Aaron Peskin	Ballot Measure Committee	2007-2011
Yes on Proposition B, supported by Public Defender Jeff Adachi et al.	Ballot Measure Committee	2010-2011
Yes on Proposition D, supported by Public Defender Jeff Adachi et al.	Ballot Measure Committee	2011-2012
Mayor Ed Lee for San Francisco Committee	General Purpose Committee	2012-2015

The Commission may wish to address contributions to candidate-controlled ballot measure committees, to candidate-controlled general purpose committees, or to both. These proposals would raise constitutional issues. In this regard, the Commission should bear in mind that the courts have struck down contribution limits on ballot measure committees and general purpose committees that make independent expenditures. (*Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290, 299; *Long Beach Area Chamber of Commerce v. City of Long Beach* (9th Cir. 2010) 603 F.3d 684, 699.)

However, contributions to *candidate-controlled* ballot measure or general purpose committees, even if not directly related to the candidate's election campaign, may present a risk of quid pro quo corruption (or the appearance thereof) with regard to the controlling candidate or officer -- i.e., a contributor could make contributions to a controlled committee in exchange for

[1] Candidates can also control legal defense funds and (in other jurisdictions) officeholder account funds. The Commission may also consider imposing limits on legal defense funds.

an official action. Indeed, federal law places limits on contributions to a federal officeholder's controlled "Leadership PAC" for this reason. (*See* FEC Advisory Opinion 2011-21.) But this is a relatively novel constitutional issue. Although dicta in one court of appeal opinion questioned the constitutionality of subjecting candidate-controlled ballot measure to limits (*Citizens to Save California v. Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, 753-54), staff is otherwise unaware of any caselaw that directly addresses this issue or limits on candidate-controlled general purpose committees.

Regardless, under existing caselaw, it is clear that any limit or prohibition that is ultimately enacted must be supported by a fully-developed factual record informed by interested persons meetings, further legal research, etc., which demonstrates the compelling interest served by any such limitations. (*Citizens for Clean Government v. City of San Diego* (9th Cir. 2007) 474 F.3d 647, 652-54 ["We cannot hold that hypotheticals, accompanied by vague allusions to practical experience, demonstrate a sufficiently important state interest" for campaign limits or prohibitions.].)

A final note regarding process, should the Commission decide to move forward on this issue. If the Board of Supervisors and/or Mayor does not support the Commission's amendment, the Commission has the ability to amend CFRO by directly placing a measure on the ballot for the next general election (i.e., November 2015) by a four-fifths vote of its members.[2] (Charter § 15.102.) The deadline for the Commission's submission of such a measure is the same as for an ordinance placed on the ballot by either the Board of Supervisors or the Mayor. In general, the deadline for submission falls in late July.

The Commission should bear in mind that if it directly places a measure on the ballot, the Charter significantly restricts the ability of Commission members and staff to advocate for its adoption. More specifically, Charter section 15.100(c) prohibits members of the Commission from participating in any campaign supporting a City ballot measure. For the purpose of this prohibition, participation includes making or soliciting contributions, publicly endorsing or urging any endorsement, or any involvement in decisions by organizations to participate in a campaign.

2. Fundraising and/or bundling reporting.

This proposal concerns requiring individuals who engage in a certain level of fundraising and/or bundling for candidates to file public reports disclosing such activity. In this regard, bundling typically refers to collecting multiple contributions and delivering them to a campaign, while fundraising is more expansive and encompasses holding a fundraiser, soliciting contributions, etc., even if the individual does not personally collect and forward the contribution checks to the campaign. The Friends of Ethics originally proposed fundraising/bundling bans in connection with the CFRO amendments approved by the Commission in January 2015.

The Supreme Court has recognized that larger contributions implicate quid pro quo corruption concerns. (*See Buckley v. Valeo* (1974) 424 US 1.) Such concerns are also implicated by "bundling or fundraising [which if] over a threshold level can represent a more significant

[2] This is also true for any CFRO amendment discussed in this memorandum.

level of support for a candidate than merely making a personal contribution." (Richard Briffault, *The Anxiety of Influence: The Evolving Regulation of Lobbying*, 13 Elec. L. J. 160, 180 (2014).) However, given the First Amendment issues inherent in banning such activity, a reporting requirement may be more appropriate than an outright ban.

There is precedent for such disclosure, although it is typically limited to lobbyists. For example, lobbyists in San Francisco are currently required to disclose contributions of $100 or more that they fundraise for City candidates and committees. (CGCC § 2.110(c)(8).) Moreover, federal campaigns are required to disclose lobbyist bundlers on special supplemental reports. (2 U.S.C. § 30104(i); 11 CFR § 104.22.)

This proposal would require bundling and/or fundraising disclosure (after reaching a certain threshold) even for non-lobbyists.[3] Some may argue that such disclosure is not warranted and burdensome, particularly for those who are not currently attempting to affect City decisions. On the other hand, many individuals other than lobbyists who raise funds for City candidates and officers may have financial interests affected by City laws.

Finally, should it decide to pursue this issue, the Commission will have to decide (among other things) whether to impose additional reporting requirements on candidate committees, or to require separate reporting by the individuals engaged in fundraising/bundling.

3. Enhanced private right of action.

This proposal involves enhancing the private right of action found in CFRO section 1.168(b), which allows any voter to sue a City candidate or committee to force compliance with CFRO, so long as the Commission and the City Attorney have decided not to pursue an enforcement action. The San Francisco Civil Grand Jury for 2013-2014 made this recommendation and in August 2014, the Commission decided to consider its merits.

In short, the Civil Grand Jury (and the Friends of Ethics) has argued that section 1.168(b) should be amended to better incentivize potential plaintiffs to enforce CFRO violations. In this regard, the Friends of Ethics has pointed to analogous laws in Los Angeles and at the state level, which provide for the recovery of 50 percent of any penalty eventually imposed on the defendant after a court proceeding. (L.A. Muni. Code section 49.7.38(b); Cal. Govt. Code §§ 91004, 91005 & 91009.) Section 1.168(b) does not contemplate *any* penalties, but does provide a significant incentive by allowing a successful plaintiff to recover attorneys' fees.

Staff is aware of only one instance in San Francisco when a potential plaintiff threatened to pursue a private right of action for a CFRO violation (and ultimately did not do so). Similarly, in Los Angeles and at the state level, the private right of action has evidently been used in only a very few instances. In Los Angeles, it has been invoked only once in recent memory by a plaintiff who evidently failed to follow correctly the statutory procedures.

[3] Federal campaigns will sometimes voluntarily disclose non-lobbyist bundlers. Former FEC chairman Trevor Potter has proposed *requiring* such disclosure as part of his "American Anti-Corruption Act."

Should it decide to enhance section 1.168(b), the Commission should consider allowing a recovery of penalties only with respect to certain violations (as is done at the state level)[4] or requiring a certain minimum penalty amount in order to avoid the possibility of lawsuits for smaller, technical violations.

4. Contribution bans for persons receiving a "public benefit" from the City.

The San Francisco Civil Grand Jury for 2013-2014 recommended that the Commission consider whether to re-enact contribution bans on persons receiving a "public benefit" from the City and otherwise re-incorporate findings and declarations found in Proposition J, a measure approved by San Francisco voters in 2000.[5] In August 2014, the Commission decided to consider the merits of this proposal in the future.

Proposition J imposed a prohibition on campaign contributions and gifts to certain City officials from persons receiving a "public benefit," such as a variance, special use permit, tax abatement, etc. The prohibition lasted up to six years in some instances. (A copy of the text of Proposition J is attached.) Proposition J was subsequently superseded in 2003 by Proposition E, which included the contractor contribution ban currently found in CFRO section 1.126, among other things. The current contractor ban lasts for only six months after approval of a contract.

The proposal being considered entails re-enacting certain aspects of Proposition J which were changed when Proposition E passed. In essence, this is a "pay-to-play" proposal that posits that contributions from persons receiving public benefits of a certain value present a particular risk of quid pro quo corruption (or the appearance thereof) which justifies a complete ban on contributions to the persons approving those matters. The idea is that the logic behind the ban on contractor contributions should similarly be applied in these instances. The ban would apply to an entity's directors and officers, as well as certain of its owners.

While a full analysis of Proposition J is beyond the scope of this memorandum,[6] staff would again note that reenactment of any of Proposition J's prohibitions would have to be supported by a fully-developed factual record demonstrating the need for such prohibitions and their appropriate scope. In this regard, the Commission would likely have to consider (based on the record) what decisions and monetary thresholds should trigger a ban, as well as the appropriate length of the ban.[7]

Finally, the Commission should also be aware that certain pay-to-play laws are currently the subject of litigation given how narrowly the Supreme Court construed the constitutionally

---

[4] Recovery for campaign violations is allowed under state law for reporting violations and cash and anonymous contributions. (Cal. Govt. Code §§ 91004, 91005.)

[5] Proposition J also imposed gift and employment bans, but staff understands that such bans are not before the Commission at this time as they are not properly considered part of CFRO.

[6] The Los Angeles County Superior Court struck down a similar law in 2002, although the court did not issue a written opinion explaining its ruling in that matter.

[7] Staff would also note that state law already prohibits appointed officials accepting contributions in excess of $250 from persons with matters before them, and for three months following the resolution of the matter. Those officials must also recuse themselves from considering a matter involving a person who contributed more than $250 in the past 12 months. (Cal. Govt. Code § 84308.)

acceptable anti-corruption interest in its recent *McCutcheon* case. (*See McCutcheon v. Federal Election Commission*, No. 12-536; *New York Republican State Committee et al. v. Securities and Exchange Commission* No. 14-01345 [challenging constitutionality of SEC pay-to-play laws].)

5. Debarment as a penalty.

This proposal concerns adding debarment as a penalty for CFRO violations, particularly impermissible contributions made by City contractors. Generally, debarment renders a person ineligible from bidding on or being considered for a City contract for a predetermined period of time. The Friends of Ethics proposed this idea in connection with the CFRO amendments approved by the Commission in January 2015, and believes that debarment should render a person ineligible for many of the "public benefits" described in Proposition J (i.e., not just City contracts).

The Friends of Ethics has argued that the current penalties for CFRO violations do not provide a significant deterrent effect,[8] and that debarment would likely have such an effect. Voters in the City of Los Angeles approved a debarment penalty in March 2011 in connection with a ban on certain City contractor contributions and fundraising. (L.A. City Charter § 470(c)(12)(l).) The Los Angeles City Ethics Commission has yet to consider a debarment matter, but its staff has noted the importance of its "mitigation" regulations which allow that commission to waive a debarment remedy based on consideration of the severity of the violation and the effect of debarment on City services, finances, projects and legal obligations.

San Francisco already has a debarment process under Chapter 28 of the Administrative Code (copy attached), and any violation of the ban on contractor contributions could qualify as a ground for debarment. Under Chapter 28, it would be up to the discretion of the "charging official" -- such as the Mayor, the Controller, the City Administrator or the City Attorney to pursue debarment on this basis. However, there have been very few debarment proceedings under Chapter 28 since it took effect in 2004. Additionally, the Commission could also currently pursue debarment as an agreed-upon condition for settlement.

Should the Commission wish to investigate this issue further, staff would recommend interested persons meetings with City contractors and City agencies, among others, given its potential effect on the City's competitive bidding process. Moreover if the Commission adopts debarment as a penalty, it would likely be advisable to reserve debarment for more serious, deliberate violations given the severity of the sanction it imposes, as Los Angeles has essentially done through its "mitigation" regulations.

[8] The Commission is currently able to impose penalties of up to five thousand dollars ($5,000) for each violation or three times the amount which a person fails to report properly or unlawfully contributes, expends, gives or receives, whichever is greater. (Charter § C3.699-13(c)(3).)

6. Slate Mailer Filings.

This proposal would require slate mailer organizations ("SMOs") active primarily in San Francisco to file their semi-annual and pre-election reports with the Ethics Commission, instead of with the Department of Elections, as is currently required under City law. This idea was most recently mentioned by Friends of Ethics in connection with the CFRO amendments approved by the Commission in January 2015.

SMOs are entities that are paid at least $500 to produce and distribute mailers supporting or opposing four or more candidates or measures on a given ballot. (Cal. Govt. Code §§ 82048.3, 82048.4.) SMOs are required to include certain disclaimers on their mailers, and are required to file semi-annual and pre-election reports that disclose payments received and made. (Cal. Govt. Code §§ 84218, 84219.)

Although certain SMOs are very active in San Francisco elections, these SMOs are considered state entities and file their reports with the Secretary of State and with the Department of Elections, which does not post those reports online. This proposal would require SMOs to instead file copies of their reports with the Commission.

The FPPC has advised that the City may transfer filing officer responsibility for SMOs to the Commission. (*FPPC Advice Letter to Oliver Luby (7/26/10) No. I-10-105*.) Although such a transfer would impose additional administrative burdens on the Commission (i.e., staff time accepting and uploading the reports),[9] the public would be able to view reports for City SMOs along with reports for City candidates and committees.

* * * * *

S:\C.F.R.O\2015\EC Mem CFRO Addl Ideas 2 18 15.docx

[9] Under state law, San Francisco may not impose e-filing obligations on SMOs, which are already required to e-file with the state. (Cal. Govt. Code § 84615(a).)

City Contractor Contributions J

PROPOSITION J

Shall the City ban officials from accepting gifts, payments, or campaign contributions from a person or group if the official previously approved granting the donor a contract or special benefit?

YES
NO

Digest

by Ballot Simplification Committee

THE WAY IT IS NOW: Under state and local law, public officials may not participate in decisions in which they have a financial interest. For example, officials may not vote to give a contract to a company that they own in whole or in part.

Officials must report all gifts they receive worth more than $50, and may not accept more than $300 in gifts per year from any single source. An official may not participate in making a government decision affecting anyone who has given $250 or more in gifts or income to the official in the past year. Campaign contributions to an official are not considered gifts or income.

THE PROPOSAL: Proposition J is an ordinance that would ban any City official from accepting a gift, payment, job offer, or campaign contribution from a person or group, if the City official previously had approved granting a contract, lease, franchise, land use variance, special tax benefit, or monetary payment to that person or group. This ban would apply from the date of approval of the benefit until two years after the official's term of office ended or the official otherwise left office, or six years after the approval, whichever came first.

A "YES" VOTE MEANS: If you vote yes, you want to ban City officials from accepting gifts or campaign contributions from a person or group where the official has previously approved granting a contract or special benefit to that person or group.

A "NO" VOTE MEANS: If you vote no, you do not want to ban City officials from accepting gifts or campaign contributions from a person or group where the official has previously approved granting a contract or special benefit to that person or group.

Controller's Statement on "J"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition J:

Should the proposed ordinance be adopted, in my opinion, it would have a minor effect on the cost of government.

How "J" Got on the Ballot

On June 30, 2000 the Department of Elections certified that the initiative petition, calling for Proposition J to be placed on the ballot, had qualified for the ballot.

9,735 signatures were required to place an ordinance on the ballot.

This number is equal to 5 % of the total number of people who voted for Mayor in 1999. A random check of the signatures submitted on June 1, 2000 by the proponent of the initiative petition showed that more than the required number of signatures were valid.

THIS MEASURE REQUIRES 50%+1 AFFIRMATIVE VOTES TO PASS.

ARGUMENTS FOR AND AGAINST THIS MEASURE IMMEDIATELY FOLLOW THIS PAGE. THE FULL TEXT BEGINS ON PAGE P-133
SOME OF THE WORDS USED IN THE BALLOT DIGEST ARE EXPLAINED ON PAGE P-2

J City Contractor Contributions

PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION J

No arguments were submitted

REBUTTAL TO PROPONENT'S ARGUMENT IN FAVOR OF PROPOSITION J

City Contractor Contributions

J

OPPONENT'S ARGUMENT AGAINST PROPOSITION J

No arguments were submitted

REBUTTAL TO OPPONENT'S ARGUMENT AGAINST PROPOSITION J

J City Contractor Contributions

PAID ARGUMENTS IN FAVOR OF PROPOSITION J

Republicans stand for good government. This reform proposition was put on the ballot by a non-partisan, grassroots, good-government group. It should enjoy the respect of all citizens. This measure would help stop bribery and corruption in city hall.

And ***in San Francisco, that'll be a full time job!***

Adam Sparks
GOP Candidate for Congress, San Francisco

The true source of funds used for the printing fee of this argument is Adam Sparks.

The flow of corporate campaign contributions and gifts to public officials is corrupting our local democracy.

Joel Ventresca
President, Coalition for San Francisco Neighborhoods (1987-89; 1992-94)

The true source of funds used for the printing fee of this argument is Joel Ventresca.

Ralph Nader, both the San Francisco **Democratic** AND **Republican** committees and **California Common Cause** all agree on only one thing this year. They all endorse Measure J. That's because Measure J is good government without politics.

The signatures needed to qualify Measure J were collected by the non-partisan Oaks Project through an unprecedented 100% volunteer petition effort.

Measure J prevents corruption by banning "legal" kickbacks. J bars politicians from taking money, gifts, or jobs from anyone benefiting from the politician's actions (i.e. granting city contracts, special tax breaks of land deals).

VOTE **YES on Measure J.**

Ben Gertner
Oaks Project Volunteer

The true source of funds used for the printing fee of this argument is Nicholas Wirz.

Stop ***special deals*** to downtown special interests like ***Bloomingdales!***

Vote YES on Prop J!

Jake McGoldrick
Candidate for District 1 Supervisor

The true source of funds used for the printing fee of this argument is McGoldrick for Supervisor.

The three largest contributors to the true source recipient committee are 1. Hiroshi Fukuda 2. Mowitza Biddle 3. Steve Williams.

Elected officials shouldn't reward campaign contributors with city contracts and money. But that's exactly what has brought the FBI into City Hall. Keep everyone's hands out of the cookie jar. **Vote Yes on Proposition J.**

Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club

The true source of funds used for the printing fee of this argument is Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club.

The three largest contributors to the true source recipient committee are 1. Californians for Indian Self-Reliance 2. Assemblywoman Carole Migden 3. Harvey Milk Lesbian, Gay, Bisexual, Transgender Democratic Club.

We support city government for the public interest, not special interests!

Proposition J promotes integrity in city officials, saving taxpayers from wasteful contracts and favoritism. Vote Yes on J.

San Francisco Green Party

The true source of funds used for the printing fee of this argument is the San Francisco Green Party.

The three largest contributors to the true source recipient committee are: 1. Marge Harburg 2. Jo Chamberlain 3. John Strawn.

City Contractor Contributions J

PAID ARGUMENTS IN FAVOR OF PROPOSITION J

Should contractors with business before boards and commissions be prohibited from donating to the members of those boards? This is a tough one, I just don't know, hmmm, let me think...

Vote YES on J.

Matt Gonzalez

The true source of funds used for the printing fee of this argument is Matt Gonzalez.

Proposition J bans the quid pro quo of awarding city contracts for campaign contributions. It stops city officials from taking money and jobs from those they award contracts to.

Vote Yes on Proposition J!

San Francisco Tomorrow

The true source of funds used for the printing fee of this argument is San Francisco Tomorrow.

The three largest contributors to the true source recipient committee are 1. Jane Morrison 2. Zoanne Nordstrom 3. Jennifer Clary.

VOTE YES ON PROPOSITION J!

There are at least two reasons for voters and taxpayers to support Proposition J strongly: First, it's a sincere initiative by real voters, not elected officials, to control the disturbing syndrome of money and other gifts dictating Board of Supervisors and various commissions' actions. Secondly, it's plain good government policy to prohibit decision-makers from voting on matters where proponents or opponents have given campaign contributions or gifts or anything of value.

Proposition J stops that kind of purchased influence from dominating City Hall decisions that affect our lives and well-being. This measure was painstakingly qualified for the ballot by people like our neighbors and yours. Don't let them down. Send malodorous City Hall a strong message – San Francisco is not for sale. **Vote YES ON PROPOSITION J.**

Good Government Alliance

The true source of funds used for the printing fee of this argument is Good Government Alliance.

The largest contributor to the true source recipient committee is: 1. Kopps Good Government Alliance.

The San Francisco Republican Party supports reasonable and workable reforms of the political system.

That is why we are supporting Proposition J. Prop. J will help eliminate undue influence, whether in fact or in appearance, by entities or individuals doing or seeking business with the City.

Vote Yes on Proposition J.

San Francisco Republican Party
Donald A. Casper, Chairman

Mike Garza, Candidate 12th Congressional District	*Howard Epstein*, Candidate 12th Assembly District
Terence Faulkner, Candidate 3rd Senate District	*Harold Hoogasian*, Candidate District VII Supervisor
Julie Bell	*Albert Chang*
Lee S. Dolson, Ph.D.	*Joel Hornstein*
Gail E. Neira	*Denis Norrington*
Grace Norton-Fitzpatrick	*Rita O'Hara*
Les Payne	*Dana Walsh*

The true source of funds used for the printing fee of this argument is the above signers and the San Francisco Republican Party.

J City Contractor Contributions

PAID ARGUMENTS AGAINST PROPOSITION J

No Paid Arguments Were Submitted Against Measure J

TEXT OF PROPOSED INITIATIVE ORDINANCE
PROPOSITION J

Amendment to San Francisco Administrative Code

Chapter 16 of the San Francisco Administrative Code shall be amended by the addition of the following Article:

ARTICLE XX. TAXPAYER PROTECTION

Section 16.990. Title
This Article shall be known as the City and County of San Francisco Taxpayer Protection Amendment of 2000.

Section 16.991. Findings and Declarations
(a) The people of the City and County of San Francisco ("City and County") find that the use or disposition of public assets is often tainted by conflicts of interest among local public officials entrusted with their management and control. Such assets, including publicly owned real property, land use decisions conferring substantial private benefits, conferral of a franchise without competition, public purchases, taxation, and financing, should be arranged strictly on the merits for the benefit of the public, and irrespective of the separate personal or financial interests of involved public officials.
(b) The people find that public decisions to sell or lease property, to confer cable, trash hauling and other franchises, to award public construction or service contracts, or to utilize or dispose of other public assets, and to grant special land use or taxation exceptions have often been made with the expectation of, and subsequent receipt of, private benefits from those so assisted to involved public 'decision makers'. The people further find that the sources of such corruptive influence include gifts and honoraria, future employment offers, and anticipated campaign contributions for public officials who are either elected or who later seek elective office. The trading of special favors or advantage in the management or disposal of public assets and in the making of major public purchases compromises the political process, undermines confidence in democratic institutions, deprives meritorious prospective private buyers, lessees, and sellers of fair opportunity, and deprives the public of its rightful enjoyment and effective use of public assets.
(c) Accordingly, the people declare that there is a compelling state interest in reducing the corruptive influence of emoluments, gifts, and prospective campaign contributions on the decisions of public officials in the management of public assets and franchises, and in the disposition of public funds. The people, who compensate public officials, expect and declare that as a condition of such public office, no gifts, promised employment, or campaign contributions shall be received from any substantial beneficiary of such a public decision for a reasonable period, as provided herein.

Section 16.992. Definitions
(a) As used herein, the term public benefit does not include public employment in the normal course of business for services rendered, but includes a contract, benefit, or arrangement between the City and County and any individual, corporation, firm, partnership, association, or other person or entity to:
(1) provide personal services of a value in excess of $50,000 over any 12 month period;
(2) sell or furnish any material, supplies or equipment to the City and County of a value in excess of $50,000 over any 12 month period;
(3) buy or sell any real property to or from the City and County with a value in excess of $50,000, or lease any real property to or from the City and County with a value in excess of $50,000 over any 12 month period;
(4) receive an award of a franchise to conduct any business activity in a territory in which no other competitor potentially is available to provide similar and competitive services, and for which gross revenue from the business activity exceeds $50,000 in any 12 month period;
(5) confer a land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property where such decision has a value in excess of $50,000;
(6) confer a tax abatement, exception, or benefit not generally applicable of a value in excess of $5,000 in any 12 month period;
(7) receive cash or specie of a net value to the recipient in excess of $10,000 in any 12 month period.
(b) Those persons or entities receiving public benefits as defined in Section 16.992(a)(1)-(7) shall include the individual, corporation, firm, partnership, association, or other person or entity so benefiting, and any individual or person who, during a period where such benefit is received or accrues,
(1) has more than a ten percent (10%) equity, participation, or revenue interest in that entity; or
(2) who is a trustee, director, partner, or officer of that entity.
(c) As used herein, the term personal or campaign advantage shall include:
(1) any gift, honoraria, emolument, or personal pecuniary benefit of a value in excess of $50;
(2) any employment for compensation;
(3) any campaign contributions for any elective office said official may pursue.
(d) As used herein, the term public official includes any elected or appointed public official acting in an official capacity.

Section 16.993. Prohibitions
(a) No City and County public official who has exercised discretion to approve and who has approved or voted to approve a public benefit as defined in Section 16.992(a) may receive a personal or campaign advantage as defined in Section 16.992(c) from a person as defined in Section 16.992(b) for a period beginning on the date the official approves or votes to approve the public benefit, and ending no later than
(1) two years after the expiration of the term of office that the official is serving at the time the official approves or votes to approve the public benefit;
(2) two years after the official's departure from his or her office whether or not there is a pre-established term of office; or
3) six years from the date the official approves or votes to approve the public benefit; whichever is first.
(b) Section 16.993(a) shall also apply to the exercise of discretion of any such public official serving in his or her official capacity through a redevelopment agency, or any other public agency, whether within or without the territorial jurisdiction of the City and County either as a representative or appointee of the City and County.

Section 16.994. Responsibilities of City and County Public Officials and Advantage Recipients
(a) City and County public officials shall practice due diligence to ascertain whether or not a benefit defined under Section 16.992(a) has been conferred, and to monitor personal or campaign advantages enumerated under Section 16.992(c) so that any such qualifying advantage received is returned forthwith, and no later than ten days after its receipt.
(b) City and County public officials shall provide, upon inquiry by any person, the names of all entities and persons known to them who respectively qualify as public benefit recipients under the terms of Sections 16.992 and 16.993.

Section 16.995. Disclosure of the Law
The City and County shall provide any person, corporation, firm, partnership, association, or other person or entity applying or competing for any benefit enumerated in Section 16.992(a) with written notice of the provisions of this Article and the future limitations it imposes. Said notice shall be incorporated into requests for 'proposal,' bid invitations, or other existing informational disclosure documents to persons engaged in prospective business with, from, or through the City and County.

Section 16.996. Penalties and Enforcement
(a) In addition to all other penalties which might apply, any knowing and willful violation

(Continued on next page)

of this Article by a public official constitutes a criminal misdemeanor offense.

(b) A civil action may be brought under this Article against a public official who receives a personal or campaign advantage in violation of Section 16.993. A finding of liability shall subject the public official to the following civil remedies:

(1) restitution of the personal or campaign advantage received, which shall accrue to the General Fund of the City and County;

(2) a civil penalty of up to five times the value of the personal or campaign advantage received;

(3) injunctive relief necessary to prevent present and future violations of this Article;

(4) disqualification from future public office or position within the jurisdiction, if violations are willful, egregious, or repeated.

(c) A civil action under subdivision (b) of this section may be brought by any resident of the City and County. In the event that such an action is brought by a resident of the City and County and the petitioner prevails, the respondent public official shall pay reasonable attorney's fees and costs to the prevailing petitioner. Civil penalties collected in such a prosecution shall accrue 10% to the petitioner and 90% to the General Fund of the City and County.

(d) Any person who believes that the provisions of this Article have been violated may file a complaint with the Ethics Commission. Upon receipt of a complaint, or upon its own initiative, the Commission may investigate alleged violations of this Article and may enforce the provisions of this Article pursuant to Charter Section C3.699-13 and to the rules and regulations adopted pursuant to Charter Section 15.102.

Section 16.997. Effect of Article

The provisions of this Article are intended to supplement, and not to replace, any provisions of the San Francisco Charter and Administrative Code that relate to campaign finance, lobbying, conflicts of interest or governmental ethics.

Section 16.998. Severability

If any provision of this Article is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications which can be given effect without the invalidated provision, and to this end the provisions of this Article are severable.

Print

San Francisco Administrative Code

CHAPTER 28: ADMINISTRATIVE DEBARMENT PROCEDURE

Sec. 28.0. Findings.
Sec. 28.1. Definitions.
Sec. 28.2. Debarment Authority.
Sec. 28.3. Grounds for Debarment.
Sec. 28.4. Initiating the Proceedings; Counts and Allegations.
Sec. 28.5. Service of the Counts and Allegations.
Sec. 28.6. Request for a Hearing.
Sec. 28.7. Failure to Respond to the Counts and Allegations.
Sec. 28.8. Appointment of the Hearing Officer.
Sec. 28.9. Pre-Hearing Procedure.
Sec. 28.10. Hearings and Determinations.
Sec. 28.12. Term and Effect of Administrative Debarment; Violation of Order.
Sec. 28.13. Publication and Reports of Debarment.

SEC. 28.0. FINDINGS.

The Board of Supervisors finds that contracting with the City and County of San Francisco is an important municipal affair, and that the award of contracts to contractors who fail to deal with the City and County in good faith compromises the integrity of the contracting process and results in the improper expenditure of public funds. The Board of Supervisors recognizes that the City and County must afford contractors due process in any determination that precludes any individual or business entity from participating in the contracting process. This Chapter does not apply to a determination of nonresponsibility for a single contract or identifiable group of contracts, but for the broader determination of irresponsibility of a contractor for the general purpose of contracting with the City and County of San Francisco for a specified period. The Board of Supervisors therefore adopts this Chapter 28 to prescribe standard procedures for the prosecution, determination and implementation of administrative debarments.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.1. DEFINITIONS.

The following definitions apply for only the purposes of this Chapter 28:

(A) **Affiliate.** Any individual person or business entity related to a contractor where such individual

or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized or following the suspension, debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the contractor.

(B) **Charging Official.** Any City department head or the President of any Board or Commission authorized to award or execute a contract under the San Francisco Charter or the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services or the City Attorney. All charging officials are authorized to act on behalf of the City and County in prosecuting any administrative debarment proceeding and in issuing an Order of Debarment under this Chapter.

(C) **Contractor.** Any individual person or business entity who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with the City and County of San Francisco for the purpose of providing any goods or services to or for the City and County of San Francisco including without limitation any contractor, subcontractor, consultant, subconsultant or supplier at any tier. The term "contractor" shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City and County of San Francisco or in supervising and/or performing the work prescribed by the contract.

(D) **Debarment.** The administrative determination against a potential bidder, or contractor declaring such potential bidder or contractor irresponsible and disqualified from participating in the competitive process for contracts with the City and County of San Francisco or from entering into contracts, with the City and County of San Francisco for a period specified in the debarment order.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.2. DEBARMENT AUTHORITY.

Notwithstanding any other provision of the Administrative Code, any charging official shall have authority to issue Orders of Debarment against any contractor in accordance with the procedures set forth n this Chapter.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.3. GROUNDS FOR DEBARMENT.

A charging official shall issue an Order of Debarment for any contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. Such willful misconduct may include, but need not be limited to the following: (a) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications or a request for proposals; (b) failure to comply with the terms of a contract or with provisions of this Administrative Code; (c) a pattern and practice of disregarding or repudiating terms or conditions of City contracts, including without limitation repeated unexcused delays and poor performance; (d) failure to abide by any rules and/or regulations adopted pursuant to the San Francisco Municipal Codes; (e) submission of false claims as defined in this Administrative Code, Chapter 6, Article V; (f) a verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of any civil or criminal law against any government entity relevant to the contractor's ability or capacity honestly to perform

under or comply with the terms and conditions of a City contract; and/or (g) collusion in obtaining award of any City contract, or payment or approval thereunder.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.4. INITIATING THE PROCEEDINGS; COUNTS AND ALLEGATIONS.

Any charging official may initiate an administrative debarment proceeding by issuing Counts and Allegations. A charging official may issue Counts and Allegations against any contractor relating to any matter consistent with the foregoing grounds for debarment. A charging official may issue Counts and Allegations regardless whether such charging official awarded, was responsible for or was involved in any way with the underlying contract or circumstances leading to the Counts and Allegations.

The charging official shall append to the Counts and Allegations a photocopy of this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or validity of the Counts and Allegations.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS.

The charging official shall serve the Counts and Allegations on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery.

The charging official shall also serve the Counts and Allegations on the Controller and the City Attorney.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.6. REQUEST FOR A HEARING.

Within 15 days after receipt of the Counts and Allegations, the contractor may submit a written request for an administrative hearing. The contractor may make such request through counsel or other authorized representative. Any such request shall be filed with the Controller and copied to the charging official.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS.

Failure of the contractor to submit to the City a written request to be heard within the time required by this Chapter, or failure of the contractor or the contractor's representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the contractor to the Counts and Allegations. In accordance with the procedures set forth below, the charging official shall present evidence in support of the debarment to the appointed hearing officer and the hearing officer shall make

a determination on such evidence.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

A charging official shall request either the Controller or the Director of Administrative Services to appoint a hearing officer for any debarment proceeding. If either the Controller or the Director of Administrative Services is the charging official then he or she shall request the other to appoint the hearing officer. Within 15 days of the request, the Controller or the Director of Administrative Services shall appoint a hearing officer and notify the contractor and the charging official of the appointment. The notice of appointment shall include the name of the hearing officer. The contractor or the charging official may object to the appointed hearing officer within five business days of the notification. If the Controller or the Director of Administrative Services, at his/her sole discretion, appoints a new hearing officer, then he/she shall notify the contractor and the charging official as soon as practicable but not more than 15 days after receipt of the objection.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.9. PRE-HEARING PROCEDURE.

Within 15 calendar days of his/her appointment, the hearing officer shall notify each contractor named in the Counts and Allegations and the charging department of the scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion, except the hearing must commence within 120 days of the date the charging official served the Counts and Allegations. The hearing officer may extend the 120-day period only upon good cause shown; proceeding as expeditiously as possible is in the public's best interests.

Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment procedure.

The hearing officer may, in his/her sole discretion, direct any named contractor and the charging official to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

If the hearing officer determines, with the written agreement of each named contractor and the charging official, that the hearing shall be by written presentation, all final writings shall be due no later than 120 days of the date the charging official served the Counts and Allegations.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.10. HEARINGS AND DETERMINATIONS.

Hearings may occur in person or in writing, as set forth in the foregoing Section 28.09. If the hearing is to occur in person, the hearing officer shall specify the time and place for the charging official to present the case and for the contractor to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence presented based on

relevancy. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.

The hearing officer shall consider the evidence submitted by the charging department and the contractor. Within 15 days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Findings and Recommendation. The hearing officer shall serve the Findings and Recommendation on the charging official, the named contractor(s), and/or their respective counsels or authorized representatives, and shall submit the same to the Controller.

If the hearing officer finds that the named contractor has committed willful misconduct as described in the foregoing Section 28.3 and recommends a term of debarment, the charging official shall issue an Order of Debarment consistent with the hearing officer's recommendation. The charging official shall serve the Order on each named contractor, his/her/their counsel or authorized representative, if any, the City Attorney, and the Controller. An Order of Debarment under this Chapter shall be the final administrative determination by the City in the matter.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.12. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT; VIOLATION OF ORDER.

An Order of Debarment shall provide for a term of debarment not to exceed five years from the date of the Order. The Order shall prohibit any named contractor and the contractor's affiliates from participating in any contract at any tier, directly or indirectly, with or for the City and County; any contractor and the contractor's affiliates named in an Order of Debarment shall be deemed irresponsible and disqualified for the purposes of all City and County contracts. Upon such Order, any department head, board or commission may cancel any existing contract with a debarred contractor or direct the cancellation of an existing subcontract to which a debarred contractor is a party. In the event of such cancellation, no recovery shall be had on that contract by the debarred party other than for work satisfactorily completed as of the date of cancellation.

Administrative Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City and County.

Violation of an Order of Debarment, such as by submission of a proposal, bid or sub-bid during the debarment period, may be considered a false claim as provided in this Administrative Code and the California Government Code.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.13. PUBLICATION AND REPORTS OF DEBARMENT.

Any Order of Debarment issued under this Chapter shall be a public record. The Controller shall maintain and publish on the City's Internet website a current list of contractors subject to Orders of Debarment and the expiration dates for the respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the contractors then subject to Order of Debarment and the expiration dates for the respective debarment terms; (b) the status of any pending debarment matters; and (c) any Order of Debarment received by the Controller since the date of the last report.

(Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

ECLtrFeb23

Hon. Ben Hur, Chair

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Dear President Hur:

The Friends of Ethics appreciates the continued outreach from your staff to solicit our views on the upcoming Commission meeting.

At the last Commission meeting, we understood that the Commission intends to address the issues Friends of Ethics and others have raised regarding changes to the CFRO. Our purpose in proposing additional reforms is to assist the Commission in its stated Mission of "Creating reform within the political process to ensure fair and equitable consideration to public policy issues."

Our proposals dealt with both the policy side of the Commission's work and the practices of how the Commission undertakes its work.

It needs to be noted that nearly all the proposals we made have been presented to the Commission repeatedly over the past three years, including in a report from the Board Budget Analyst, in two San Francisco Civil Grand Jury reports, in a number of Interested Persons meetings and in correspondence and testimony before the Ethics Commission. They have been subject to repeated deliberations by the Commission but no further action.

While we continue to urge the Commission to fully respond to each of the issues we have raised, in response to staff requests we now are writing to highlight those items that we believe can be implemented in the short time frame available before the 2015 election cycle and the budget cycle are beyond reach.

Friends of Ethics strongly supports a budget augmentation to fund a Commission Secretary on at least a part time basis. The Commission minutes indicate a number of times when the Commission has directed staff to either draft legislative proposals or return to the Commission with further information but where nothing has happened:

- In November 2012, the Commission adopted a new disclosure law applying to "Draft Committees" supporting a named potential candidate who has not filed. At the January meeting, the Commission was informed that this did not move forward because no Board sponsor was identified. This response ignores the fact that the Commission itself could have placed this measure on the ballot. The minutes do not reflect that any of this information or option was presented to the Commission. It is just such follow-up that a Commission Secretary can provide.
- In May 2013, the Commission directed that staff draft legislation to increase the blackout period for contributor contributions from six months to 12 months. There is no record that the requested draft legislation ever returned to the Commission.

- In May 2013, the Commission directed that staff should review legislation then pending at the Board to amend the lobbyist ordinance for a change that would ban lobbyist contributions. The ordinance underwent revisions, was passed and signed into law, but staff has not returned to the Commission with any response.
- There are more examples from the May 2013 Commission meeting of requests to staff to monitor developments and return to the Commission with proposed actions. While all the pending issues were resolved more than a year ago, there has been no follow through by the staff in public commission meetings.
- The charter requires that the Commission acknowledge to any person filing a complaint under the Commission's jurisdiction that the complaint was received, what action is underway, and then what the final action was. There have been repeated statements to the Commission that this charter requirement is not being met. A Commission Secretary could handle these communications as a regular duty.
- The Commission has asked for regular updates on state and federal law changes that affect the Commission's duties and options. To date there has been no report from staff to the Commission on any developments. A Commission Secretary would assist the Commission in being knowledgeable about changes in laws that affect the Commission.

Friends of Ethics also continues to support a budget that includes any necessary augmentations for making Ethics information available in languages other than English, in creating searchable databases for travel, behest, contract, gift and contribution filings, and to work with the FPPC on Form 700 forms to ensure they can be searched, aggregated and compared.

Policy Recommendations:

1. Establish a private right of action that includes receiving an amount of the judgment recovered. The Ethics staff compared the San Francisco and Los Angeles private right of action in its memo to the Commission for the May 2013 meeting but omitted mention of the Los Angeles provision that provides a private plaintiff with 50 percent of the amount recovered (LA Campaign Finance Ordinance, Sec. 49.7.38 (B)(4). Friends of Ethics believe stronger enforcement will take place if a version of the Los Angeles model is adopted in San Francisco that requires notification to the enforcement authorities, a failure to act after a specified time, a threshold for violations, and 50% sharing in the penalties owed as done in LA.
2. San Francisco should amend its enforcement provisions to include a penalty of debarment modeled on the Los Angeles law, which states that a person who violated or to have aided or abetted a violation "shall not be eligible to bid on or be considered for a contract, extension or amendment" and applies it to an entity that has the same or similar management, ownership, or principal employees." This is a greater deterrent that a fine.
3. San Francisco should prohibit contributions from parties "who seek land use-related approvals that exceed a certain threshold monetary amount," a

recommendation suggested by Ethics staff to "explore" in its May 2013 memo. Notably, voters overwhelmingly approved in 2000 a measure that went further, dealing with franchises, tax abatement, permits, and variances, and covering campaign contributions, gifts and other benefits. This voter-approved provision was removed in 2003 in a major rewrite of Ethics laws that failed to mention that the effect would be to eliminate this provision. While Ethics staff has maintained that the 2003 language was approved by the Ethics Commission and the Board, Friends of Ethics includes former Ethics Commissioners and Supervisors who cast votes for the 2003 measure and who confirm that they were never informed that this provision would be eliminated. This falls far short of the transparent government that voters expect in general, much less from the Ethics Commission, and, except for the length of time since it took place, could well generate calls for an investigation into the staff's actions that essentially misled the commission, the Board and the voters. (See SF Civil Grand Jury Ethics Report, June 2014). Friends of Ethic strongly recommend that this language, consistent with subsequent court decisions, be re-enacted immediately.

4. Friends of Ethics also calls for a prohibition on contributions, gifts or behest payments from any person or entity, officers or owners of any entity, or agents of the entity that is subject to enforcement actions .Enforcement actions would include the initiation of criminal, civil, or administrative action. The prohibition on contributions, gifts, and payments would apply to an elected official who (a) has direct or indirect authority over the agency instituting the action (example: the DA in the case of a criminal prosecution; the City Attorney in the case of a civil law suit; the Mayor in the case of a department instituting an administrative proceeding) or (b) has appointed a majority of a Board with oversight of the enforcement action. The prohibition would last for the period of the enforcement action and a year following its termination
5. A prohibition on contributions or fundraising from lobbyists and those who receive a benefit from a proposed city action, similar to proposals in the American Anti-Corruption Act proposed by Trevor Potter, as well as a prohibition on fundraising by city commissioners and department heads for any candidate other than themselves. This is modeled on the Los Angeles law (see Board Budget Analyst Report, 2012).
6. Designate the Ethics Commission as the sole Filing Officer for Behest Statements, to end the practice of having Officials filing with their own office and to enable the Commission to issue late fees for untimely disclosures.

   In addition, Behest statements should be expanded to provide additional disclosure beyond the minimum requirements of state law, such as information about pending business activity that the person or entity making the payment has before the City.

7. Amend CFRO Section 1.122(c) to permit transfers to and from controlled committees only if the committees were formed for the same City elective office. This reform is needed both to preserve the intent of campaign contributors and maintain the integrity of contribution limits. The latter are undermined when transfers to City office committees are permitted by, for example, County Central

Committee candidate committees, which may receive unlimited donations and corporate contributions. The current attribution rules for transfers are inadequate for safeguarding the policy objectives of contribution limits on candidate committees.

We look forward to the Commission's review and consideration of our proposals, and hope that the result will be to strengthen protection of citizens against the corrupt influence of pay-to-play politics.

Sincerely,

Larry Bush for Friends of Ethics

cc: Commissioners Keane, Renne, Hayon, Andrews, Staff Ex Dir John St. Croix, Deputy Director Jesse Mainardi

Mainardi, Jesse (ETH)

From: LARRY BUSH <sfwtrail@mac.com>
Sent: Monday, February 09, 2015 12:24 PM
To: Benedict Y. Hur; Paul Renne; Peter Keane; St.Croix, John; Mainardi, Jesse (ETH)
Subject: Ethics response to Budget Analyst report of 2012

Please provide this message to all Ethics Commissioners:s

The Ethics Commission staff drafted a response to the Budget Analyst comparison of LA to SF for the May 2013 Commission meeting. Because some commissioners were not serving at that time and other interested persons may not be familiar with the report and the staff response, I am providing a linke here:

http://www.sfethics.org/files/mem_to_EC_5.13.2013_and_attachment.pdf

Notably, many of the iitems discussed in the Report and Response are virtually identical to the issues raised by Friends of Ethics at the January 2014 meeting.

These include:

* Banning contributions from those seeking city permits of significant size, particularly from Planning and related land use departments.
"In addition, staff believes that it is worth exploring whether section 1.126 should extend to cover parties who seek land use-related approvals that exceed a certain threshold monetary amount, with the aim of targeting larger development projects." However, we are unaware that any futher exploration took place after the May 2013 meeting.

*Prohibiting lobbyists from contributing or raising funds for officials they lobby.
"The Commission could consider several amendments to the Lobbyist Ordinance, such as banning contributions from lobbyists to City elective officers whom they lobby, and requiring an additional disclosure of fundraising activity, which Los Angeles defines as "soliciting a contribution or hosting or sponsoring a fundraising event or hiring a fundraiser or contractor to conduct any event designed primarily for political fundraising at which contributions for an elective City officer, candidate for elective City office, or any of his or her controlled committees are solicited, delivered or made." (*See* LA Municipal Code section 48.02.) The Commission could also consider requiring lobbyists to disclose written fundraising solicitations.[4]"

Other topics given some place in the staff report, but which appear to lack a specific recommendation, include the citiens right of action, debarment as a penalty for violations, extending the contribution ban to 12 months and converting loans to contributions subject to the limit within 90 days rather than the current 180 days, searchable data base data on contracts and other issues, prohibiting city commissioners and department heads from raising funds for candidates other than themselves.

Each of these topics were raised most recently by Friends of Ethics. The existance of a staff report to the Commission, based on a Budget Analyst report that was issued two years ago and a staff response issued 20 months ago, underscores that these are not new issues but have been marinating at the Commission for a sufficient length of time to make further delay a questionable outcome.

Friends of Ethics is providing this in advance of the February 23 meeting since these issues overlap the suggestions by Commissioners for the agenda.

Larry Bush
for Friends of Ethics