

**Item 5 -- Supplemental
Attachment**

LeeAnn:

Thank you for a thoughtful outline of issues to be considered at the Commission meeting on Supervisor Peskin's proposal for filing and disclosure of behest payments.

Friends of Ethics supports the proposal to require that all behest payment disclosures be filed with Ethics. This both adds timeliness (since even those reports by elected officials are first filed with their offices, and then later with Ethics, resulting in a lag of several months) as well as transparency and public access (since most commissioners do not file behest payment disclosure forms with Ethics or in a place that is readily accessible).

The staff discussion raises some important considerations, and Friends of Ethics respectfully offers our comments and recommendations on those points.

The staff discussion begins with issues of what standard should be used to determine what needs to be disclosed.

Friends of Ethics believes that there is an important issue that needs to be addressed prior to any consideration of the disclosure.

This measure should bar soliciting contributions to third parties being made to those who lobby the city official or their office or department, or if the donor has a pending matter before the body, or within a reasonable period of time after a decision was or was not made.

We note the language found in LAMC Sec 49.7.11 C dealing with campaign contributions, and think it provides language that can be useful in dealing with behest donations:

It "provides that these officials shall not do either of the following: 1. Solicit, direct or receive a contribution from a person who has or, in the preceding 12 months had, a matter involving City action pending before the board or commission member or general manager, or chief administrative officer."

We would extend this to apply to behest payments and for a buffer period that extends to 12 months following when a decision was or

was not made.

For the same factors apply to soliciting, direct or receive a donation from a lobbyist registered to lobby the official, department or executive or legislative branch.

Friends of Ethics also supports disclosure filings when a commissioner, board member or other official solicits, directs or receives campaign contributions to a candidate or committee other than their own. This reasonable disclosure mirrors the Los Angeles ordinance that actually bans such soliciting of campaign contributions for campaigns other than one's own, but at a minimum would require disclosure. In view of the city's campaign contribution cap of \$500, Friends of Ethics also believes the \$5,000 threshold for this disclosure should be aggregated rather than for an individual contribution.

The Staff draft raises whether the disclosure should apply to all charitable and educational donations.

Friends of Ethics believes it should apply to all such donations, both for the simplicity and clarity it provides in enforcement.

We also note that the disclosure is not for only charitable or educational purposes but also for governmental purposes. This is a critically important aspect of the disclosures.

For example, Friends of San Francisco City Planning is a nonprofit supported by developers, registered lobbyists and others with interests that come before the Planning Commission and staff. Its funds are spent, among other purposes, for equipment and support for the Planning Department. It also has advocated for salary increases for City Planners. The Friends of City Planning board includes registered lobbyists, owners of major development companies, executives of nonprofit housing advocates, and others who have business before the Planning Department and Commission.

Another example is that District Attorney Gascon sought, and disclosed, behest payments to furnish rooms at the District Attorney's Office, including for his personal office.

Other city officials have solicited behest donations to pay for

additional staff, research assistance, and computer programming to assist their offices.

Supervisor Peskin referred to the “ecosystem” involving behest contributions. Friends of Ethics believes that one such ecosystem is asking a city developer with pending issues before the Planning Commission to contribute to Friends of San Francisco Planning, and where the donor also sits on the board of this nonprofit and participates in decisions on allocating funds to assist the Planning Department in the performance of its work.

This “ecosystem” is replicated with Foundation and Friends of the Public Library, the Parks Alliance, and other nonprofits whose mission is to support the work of city departments.

Such a close tie is obviously problematic, but the aim of a charitable organization may not be specific to a department but seek a broader impact on city policy. The behest payment can be earmarked for a 501c4 that is active in seeking to influence city policy, whether it is tax policy, asylum policies, bicycling or pedestrian issues, or educating the public on health and safety issues ranging from sugary drinks to toxics in the soil. Moreover, some of these organizations have a broad national or state operation, and their work would potentially resonate in San Francisco.

In short, having city commissioners or officials solicit contributions from those who have an interest in city policy, albeit through a charitable, educational or governmental entity, raises fundamental questions about undue influence.

For these reasons, Friends of Ethics does not believe Staff Recommendation one is insufficient since it limits disclosure based on an undefined “nexus” and involving income to the commissioner or official.

The Staff draft also raises the issue of commissioners who hold positions with nonprofits, and the disclosure they make both of donors who may wish not to be known, and whether all their fundraising is subject to the disclosures.

Friends of Ethics supports full disclosure of all behest payments to any 501c4 nonprofit since they are legally able to engage in influencing city policy and practices. There should not be an exemption that allows these donors to be hidden from public view.

The staff Draft also cites examples of commissioners who are executives in nonprofits. Friends of Ethics notes that this is an incomplete consideration. The Form 700 disclosures also require disclosure of positions that may be unpaid. Note that Form 700 Schedule C states: **Reporting Business Positions:** You must report your job title with each reportable business entity even if you received no income during the reporting period. Use the comments section to indicate that no income was received.”

This would include serving as an unpaid board member or advisory board member on a nonprofit.

For these reasons, Friends of Ethics does believes Staff Recommendation One is insufficient since it limits disclosure based on an undefined “nexus” and involving income to the commissioner or official.

Friends of Ethics supports Recommendation 2, which calls for funding to implement this new disclosure, but that seeks to balance that cost by examining the savings of eliminating the filings and record keeping at city agencies and departments.

Friends of Ethics supports Recommendation 3 that calls for implementation in January 2018.

Thank you for your consideration of these comments and recommendations

Larry Bush for Friends of Ethics