



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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Date: April 19, 2017

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Policy Analyst

Re: **AGENDA ITEM 4: Staff Memorandum Regarding Commissioner Keane's Campaign Finance and Ethics Proposal, Introduced at the March 27, 2017 Ethics Commission Meeting.**

Summary: This memorandum discusses Staff's research and identified policy considerations to date regarding the restoration of "Prop J," as submitted to the Ethics Commission on March 27, 2017.

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 on its proposed plan for public engagement on potential Prop J and additional campaign finance reform recommendations.

I. Introduction

During the Commission's March 27, 2017, regular meeting, Commission Chair Peter Keane introduced proposed revisions to San Francisco's Campaign Finance Reform Ordinance ("CFRO") designed to restore the November 2000 voter initiative commonly referred to as Proposition J ("Prop J"). Prop J, then-known as the "Oaks Initiative"¹ or "Oaks Ordinance"², sought to eliminate corruption by city officials (appointed and elected) by prohibiting those officials from accepting personal or campaign advantages from persons that had or were about to receive a public benefit from an official. In 2015, at the request of then-Chair Paul Renne, Commissioner Keane was tasked with exploring whether provisions of Prop. J that had been approved by local voters, and later superseded by another ballot measure, could be restored in City law. In March, Chair Keane announced that he worked with the Friends of Ethics and former Ethics Commission staffer Oliver Luby to expand the provisions of Prop. J by the end of 2017 through a new series of proposals, which this Memorandum will refer to as "Revised Prop. J."

After hearing a presentation by Mr. Luby, the Commission voted unanimously in favor of exploring adoption of Revised Prop. J, a project aimed at further limiting the opportunities and circumstances which enable corruption and its appearance to occur. Commission members

¹ *City of Santa Monica v. Stewart*, 24 Cal. Rptr. 3d 72, 126 Cal. App. 4th 43 (Ct. App. 2005).

² See: 11/15/2005 letter from Robert Stern, then President of the Center for Governmental Studies.

expressed strong approval of the goals of the Revised Prop J and their belief that the proposal would advance those goals, with the aim of prohibiting and preventing undue influence in government decision making before it can occur. As introduced, the Revised Prop. J seeks to limit those circumstances by prohibiting any public official from receiving, fundraising, or gaining other personal or campaign advantage from an individual or entity which has appeared before or received some public benefit from the official. The Revised Prop. J would have the Commission or other agency create an electronic database of public benefit recipients to track and audit compliance with the law.

The Commission, at its March 27 meeting, asked staff to review and make recommendations on the restoration of a Revised Prop J. This memorandum will first outline the background of Prop J in San Francisco, highlighting the larger Oaks Project in California and a brief exploration of the proposed restoration project. The memorandum will next turn to an exploration of current legal and policy contexts, including an analysis of constitutional considerations and existing regulatory framework. The memorandum will conclude with a framework of new and existing provisions addressing conflicts of interest and next steps for implementation of a revised law consistent with the intent of the Oaks Initiative and the voters of San Francisco in “reducing the corrupting 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.”³

II. Background

Prop J in San Francisco

Prop J was originally contemplated and sponsored by the Oaks Project of the Foundation for Taxpayer and Consumer Rights (“FTCR”). The Initiative and ultimately Prop J were premised on a conviction that public benefits are frequently awarded based on personal or campaign advantages, and not on merit or for the public good.⁴ In general terms, the Initiative prohibits city officials from receiving campaign contributions, employment for compensation, gifts, or honoraria for a specified time after the end of their term of office from any person or entity who or which benefited financially from the officials' discretionary decisions made while in office.⁵

The voters of San Francisco passed the Initiative as Prop J, “Taxpayer Protection Amendment”, in November 2000 in substantially similar form as the sponsored language of FTCR’s Oaks Initiative. Prop J was formally codified as S.F. Campaign and Governmental Conduct Code § 3.700 et seq. The Proposition contained four basic requirements:

1. City officials who exercised their discretion to approve a "public benefit" cannot receive certain specified "personal or campaign advantages" from the recipient of such a benefit.
2. City officials must "practice due diligence to ascertain whether a benefit ... has been conferred, and to monitor personal or campaign advantages ... so that any such qualifying advantage received is returned”.

³ Stewart at 78.

⁴ Id.

⁵ Id.

3. City officials "must provide, upon inquiry by any person, the names of all entities and persons known to them who respectively qualify as public benefit recipients....".
4. The City must provide written notice of the provisions of the Proposition and its limitations to any person or entity "applying or competing for any benefit enumerated".

After its adoption by San Francisco voters in November 2000, Prop J went into effect on July 13, 2001, after several regulations were considered and adopted by the Commission, including a determination that exempting variances and permits from the definition of "public benefits" was necessary to be legally enforceable⁶. The Commission also added sections on monitoring, due diligence, and safe harbor provisions to protect innocent or non-willful violations of the law.⁷ The monitoring and due diligence sections required candidates and public officials to review their contributions and contributors for potential public benefit recipients that would preclude the candidate or official from accepting the contribution. The safe harbor provision precluded a candidate or official who had received advice from the Commission or other enforcement officer from being punished based on incorrect or erroneous advice.

In 2003, the Ethics Commission proposed repealing Prop J at its April 2003 meeting as part of its effort to recodify conflict of interest laws out of the Charter, amending some of them and making non-voter amendments possible in the future—the effort that became Proposition E on the 2003 ballot.⁸ Prop J was subsequently superseded by Proposition E, which included the contractor contribution ban currently found in CFRO section 1.126.

The Prop J Experience in Other California Cities: Santa Monica and Pasadena

The Oaks Initiative qualified for the ballot in five California cities in 2000 and 2001. Public reports noted controversy about the constitutionality of some of the Initiative's provisions, The City of Vista, for example, filed suit to keep it off the ballot citing constitutional concerns.⁹ Officials in other cities expressed displeasure with the Initiative's approval and had campaigned against its the passage but didn't challenge the law until after the voters approved the Initiative.¹⁰ Eventually, the measure passed in some form in all five cities, although both Vista and San Francisco would later replace their provisions with other 'conflict of interest' laws. The sections below briefly outline the experiences in Santa Monica and Pasadena who ultimately deployed the law but only after protracted legal battles.

⁶ See: 04/07/2003 Letter from Ginny Vida, Executive Director or the San Francisco Ethics Commission.

⁷ See: 07/12/2001 Letter from Ginny Vida, Executive Director or the San Francisco Ethics Commission.

⁸ See Ethics Commission meeting minutes 4/14/2003:

(Staff) explained that Prop J, which places limits on gifts, future employment and campaign contributions, and which is currently part of the C&GCC, is now redundant because the goals of Prop J are either (a) already addressed in the proposed conflict of interest amendments, or (b) scheduled to be addressed by proposed amendments to be considered in Item VIII at tonight's meeting.

⁹ See: *City of Vista v. Drake* discussion available at:

https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2000/Dec-2000/12_05_2000_City_Suit_Corruption_Initiative.htm

¹⁰ *Stewart* at 79, 81.

Santa Monica

In May 2001, the Santa Monica City Attorney circulated a memorandum to the Santa Monica Mayor and City Council describing the background and purpose of the Initiative, her concerns about its constitutional validity.¹¹ The City Attorney reiterated her belief that the Initiative was unconstitutional and noted she had advised the City Clerk not to implement the Initiative until its constitutionality was resolved.¹²

In March 2002, a trial court issued an order dismissing an action on the constitutionality, among other issues, as a non-justiciable controversy. In January 2005, the Court of Appeals for the 2nd Appellate District agreed with the trial courts finding, never reaching the constitutional questions raised by the City.

Pasadena

After the initiative's passage in Pasadena, for over a year, that city refused to perform the ministerial duties required to authenticate, certify, and file copies of their Initiative with the Secretary of State.¹³

On March 15, 2002, a Pasadena resident filed a petition seeking to require Pasadena to authenticate the Initiative and file it with the Secretary of State. Pasadena answered the complaint and insisted it had no duty to comply with the statute due to its belief the Initiative was unconstitutional.¹⁴

At a hearing on May 31, 2002, the petition was granted on the ground Pasadena was required to comply, regardless of its position as to the constitutionality of the Initiative.¹⁵ The Mayor and City Clerk were ordered to certify the Initiative, and file it with the Secretary of State.¹⁶

Prop J Restoration

The Commission, at its March 27, 2017 meeting, received public comment on a legislative proposal by Commission Chair Keane to restore certain contribution-related restrictions contained in Prop J. Commission Chair Keane provided the Commission with a comparative chart for Prop J restoration which highlighted the changes and additions that the Revised Prop J would add. That chart has been reproduced in the attached materials.¹⁷ The proposed restoration language of Prop J contains some important distinctions and expansions of the language contained in the original proposition passed by San Francisco voters in 2000. Those distinctions are discussed in the *Current Legal Context and Considerations* section that follows.

Staff has begun the review and development of strategies for the implementation of a proposal that would advance the stated goals of reducing the corrupting influence of emoluments, gifts, and

¹¹ *Stewart* at 80.

¹² *Id.*

¹³ *Id.* at 81.

¹⁴ *Id.*

¹⁵ *Id.* at 82.

¹⁶ *Id.*

¹⁷ See: Commission Chair Keane Comparative Chart.

prospective campaign contributions on the decisions of public officials in the management of public assets and franchises, and in the disposition of public funds.

III. Current Legal Context and Considerations

As explained above, Prop J was initially enacted in 2000. In the seventeen years that followed, the Supreme Court of the United States acquired five new justices, whose First Amendment jurisprudence significantly altered the landscape of permissible campaign finance restrictions. Before enacting this new, broader Prop J, those decisions merit contextual review.

First Amendment - Corruption Narrowed

The revised Prop J's stated purpose is to limit the "appearance or reality of conflicts of interest".¹⁸ The revised Proposition attempts to achieve this goal by banning "personal or campaign advantages", including but not limited to the receipt of contributions.¹⁹ The Supreme Court has generally distinguished restrictions on expenditures for political speech (*i.e.*, expenditures made independently of a candidate's campaign) from restrictions on campaign contributions, reasoning that the former place a relatively heavier burden on First Amendments rights.²⁰ Restrictions on campaign contributions are subject to a form of intermediate scrutiny, which the Supreme Court has described as a "lesser but still rigorous standard of review."²¹ Under this intermediate standard, a restriction on contributions may be upheld only if the government demonstrates that the restriction promotes a "sufficiently important interest" and is "closely drawn to avoid unnecessary abridgment of associational freedoms."²²

The Supreme Court has recognized only one government interest that is sufficiently important to justify restrictions on campaign contributions: the interest in preventing *quid pro quo* corruption or its appearance.²³ The Supreme Court held its landmark decision in *Buckley v. Valeo*²⁴, that the Government's asserted interest in preventing "corruption and the appearance of corruption, provided sufficient justification for the contribution limitations imposed [. . .]".²⁵ By 2003's *McConnell v. FEC* decision however, the Supreme Court had embraced an even broader definition of corruption, ultimately concluding that Congress could regulate not only to "prevent simple cash-for-votes corruption" but also the "sale of access" and the use of campaign funds to obtain "undue influence" with officeholders.²⁶ For at least the last decade, the tides of corruption have returned to the original holding in *Buckley* with the new majority again limiting corruption to quid pro quo corruption or its appearance.²⁷

¹⁸ See: Luby Proposition Restoration – Final Draft

¹⁹ *Id.* at 14.

²⁰ *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).

²¹ *McCutcheon v. Federal Election Com'n*, 134 S. Ct. 1434, 572 U.S., 188 L. Ed. 2d 468 (2014).

²² *Id.* at 1444.

²³ *McCutcheon* at 1445-46.

²⁴ *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

²⁵ *Id.* at 26.

²⁶ *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003).

²⁷ *McCutcheon*, 134 S. Ct. at 1444 (quoting *Buckley*, 424 U.S. at 29)

Since the decision in *Citizens United*,²⁸ the Court has taken an even sharper turn away from its jurisprudence on corruption.²⁹ Instead of viewing access and influence as even potentially corrupting factors, the Supreme Court under Justice Roberts shrank the definition of corruption down to the explicit exchange of money for votes.³⁰ Justice Kennedy, now famously, remarked that:

“Favoritism and influence are not . . . avoidable in representative politics.”³¹

In *McCutcheon*, a challenge to the federal aggregate contribution limits, the Roberts Court continued to narrow the definition of corruption, reiterating that only quid pro quo exchanges are to be considered corruption.³² With this conception of corruption as the backdrop, the Court concluded that the aggregate limits were not justified by any important governmental interest and consequently are prohibited by the First Amendment.³³

The confirmation of Justice Gorsuch could give the Court occasion to further reconsider its definition of corruption and ultimately whether other restrictions on campaign finance activity are constitutional, including fundraising and contribution limits at any level.³⁴ ³⁵ In fact, the Court has already found one occasion to call general contribution limits unconstitutional. In *Randal v. Sorrell*³⁶, the court (in narrow holding) found Vermont’s limits on contributions to be so restrictive as to violate the First Amendment.

Staff and the proponents of the Revised Prop J believe the stated findings of the Proposition are laudable and worthy of reconsideration. Given the current constitutional framework, due diligence on the part of Staff and interested stakeholders will be required to effectively draft the strongest and most enforceable provisions to prohibit corruption that ensure they pass constitutional muster. This is particularly true given a record of several City Attorneys and a least one Judge having found the narrower original Prop J to be unconstitutional based on First Amendment considerations.³⁷

Intra-Candidate Transfer Bans and the First Amendment

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 California

²⁸ *Citizens United v. Federal Election Com'n*, 130 S. Ct. 876, 558 U.S. 310, 175 L. Ed. 2d 753 (2010).

²⁹ See: Trevor Potter comments from ““Ending Institutional Corruption” Conference at the Edmond J. Safra Center for Ethics at Harvard University, 2015, available at <http://www.campaignlegalcenter.org/news/blog/court-s-changing-conception-corruption>

³⁰ *Id.*

³¹ *McConnell* at 297

³² *Ending Institutional Corruption*.

³³ *Id.*

³⁴ See: *Riddle v. Hickenlooper*, 742 F. 3d 922 (2014), for a discussion of Justice Gorsuch’s campaign finance jurisprudence, available at <https://www.brennancenter.org/blog/neil-gorsuch-understands-campaign-finance-%E2%80%93-and-that%E2%80%99s-problem>

³⁵ See: discussion on fundraising limits in *Williams-Yulee v. The Florida Bar* distinguishing between fundraising limits in judicial and “political” elections.

³⁶ *Randall v. Sorrell*, 547 U.S., 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006).

³⁷ See: *Putting Political Reform to the Test*: October 23, 2002, available at <http://www.strumwooch.com/S-W-Press/2002/October/Putting-Political-Reform-to-the-Test.aspx>. See also: <http://articles.latimes.com/2002/jul/20/local/me-pasadena20>

Supreme Court struck down intra-candidate committee transfer bans as unconstitutional in *SEIU v. Fair Political Practices*.³⁸ 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.³⁹ Expenditure limitations are subject to strict scrutiny and will be upheld only if they are “narrowly tailored to serve a compelling state interest.”⁴⁰

The Commission, along with interested parties, must determine whether the intra-candidate ban can be resurrected in a form that is consistent with constitutional standards or whether it can be resolved from another policy perspective.

Due Process - Entitlements

Unlike developments in First Amendment case law noted above, the law surrounding whether and how governments can restrict “entitlements” has remained steadfast since 1970 when the Supreme Court decided that the government must provide Due Process—notice and opportunity to be heard—before it can restrict or deny access to certain government entitlement programs, such as Social Security, Medicaid, Temporary Assistance for Needy Families (“TANF”), or Women Infant and Children (“WIC”).⁴¹

Some of those programs are administered to San Francisco families through the county-based Health Services Agency. According to new section 1.126(a)(10)(C), the proposed expanded definition of public benefit includes “other entitlements for use where discretion is exercised in the granting of the permit or license.” If this provision goes into effect, individuals who apply for welfare benefits from the Health Services Agency could be restricted from conveying a personal or campaign advantage (which includes making a campaign contribution) on any individual holding City elective office for twelve months without notice and opportunity to be heard.⁴² After verifying with co-author Oliver Luby, Staff believes the word “entitlement” is overly broad and would need special consideration to meet the Commission’s goal of ending the corrupting influence of money in the government decision-making process.

Due Process - Debarment

New section 1.126(g) gives the Ethics Commission authority to debar contractors who have “violated” or “aided or abetted a violation of” section 1.126. “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

³⁸ *Service Employees v. Fair Political Practices*, 747 F. Supp. 580 (E.D. Cal. 1990).

³⁹ See: Attorney General Opinion 01-313 (2002), available at <http://caselaw.lexroll.com/2016/10/31/opinion-no-01-313-2002/>

⁴⁰ *Id.*

⁴¹ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁴² See: new section 1.126(b) in Revised Prop J Draft.

any ensuing judicial or administrative proceedings. Like welfare recipients, the California Supreme Court has determined that government contractors enjoy at least some Due Process protections, including notice of the charges, an opportunity to rebut the charges, and a fair hearing in a meaningful time and manner.⁴³

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. Section 28.2 gives any charging official 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 or 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.⁴⁴

Staff has asked the City Attorney's Office to analyze whether the Ethics Commission has jurisdiction as a debarment authority for City contractors separate from the existing ordinance or alternatively whether we should request the addition of the Commission to the list of charging authorities under the existing ordinance. If the latter, Staff will propose revisions to new section 1.126(g) that account for Due Process considerations noted above, including suspension as a precursor to debarment as well as notice and opportunity to be heard.

Eighth Amendment - Civil Penalties

As currently drafted, Revised Prop J section 1.168 proposes giving successful citizen plaintiffs a right to personally recover 50 percent of a civil penalty award directly from the defendant in certain circumstances to determine whether direct access to civil penalty recovery is constitutional and necessary in an administrative ordinance.

Generally, civil penalties are remedies afforded to the government, and private citizens are not entitled to civil penalties but instead may recover actual damages in litigation. Unlike damage awards, 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 . . .".⁴⁵ The government has police power to impose penalties to ensure prompt obedience to its regulatory requirements, but penalty assessment must not be arbitrary or unduly strict.⁴⁶ The government must assess factors, such as the sophistication of the plaintiff, willfulness of the violation, and the defendant's financial strength if called into question before it can assess a reasonable penalty under the constitutions.⁴⁷

⁴³ 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)).

⁴⁴ See: Admin. Debarment Proc. § 28.1(B).

⁴⁵ *Hale v. Morgan*, 22 Cal. 3d 388, 398 (Cal. 1978) (citing U.S. Const., Amend. VIII).

⁴⁶ Id.

⁴⁷ 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.

This rule is not absolute. For example, California's Private Attorney General Act⁴⁸ ("PAGA") gives citizen plaintiffs the right to recover civil penalties from employers who violate Labor Code sections 2698-2699.5, but 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.⁴⁹ The Labor and Workforce Development Agency is entitled to 75 percent of the penalty. The employer must pay the penalty monies directly to the citizen plaintiff. In addition to California's PAGA, under the federal False Claims Act,⁵⁰ a whistleblower may recover at least 15 percent but not more than 25 percent of the proceeds of an action or settlement of an action if the government intervened in the whistleblower's lawsuit AND the whistleblower aided in the prosecution of the lawsuit.⁵¹ Because the amount recovered is from "proceeds" obtained by the government, the government must make the payment to the whistleblower after determining what the penalty should be and whether to negotiate settlement.

Staff is evaluating the new section 1.168 and whether it is appropriate to limit civil penalty recovery to the narrow instances defined in the new section 1.168 or if broad access currently afforded to citizen plaintiffs under CFRO should extend to civil penalty recovery as well.

IV. Harmonizing New and Existing Approaches and Provisions

On April 28, 2000, San Francisco adopted what is commonly referred to as the Campaign Finance Reform Ordinance ("CFRO") in its current form, at Section 1.100, et seq. of the San Francisco Campaign & Governmental Conduct Code (hereinafter CFRO). At its core, San Franciscans hoped CFRO would, among other goals⁵²:

1. Place realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections, on the amount individuals may contribute to political campaigns in municipal elections, and to full and fair enforcement of all the provisions in this Chapter;
2. Ensure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes;
3. Limit contributions to candidates and committees, including committees that make independent expenditures, to eliminate or reduce the appearance or reality that large contributors may exert undue influence over elected officials;
4. Assist voters in making informed electoral decisions and ensure compliance with campaign contribution limits through the required filing of campaign statements detailing the sources of campaign contributions and how those contributions have been expended;
5. 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

⁴⁸ [Private Attorney General Act](#).

⁴⁹ Cal. Labor Code § 2699(i).

⁵⁰ [False Claims Act](#).

⁵¹ 31 U.S.C. § 3730(d).

⁵² See: CFRO § 1.101(b).

6. Help restore public trust in governmental and electoral institutions.

The Prop J Restoration provisions introduced in March would amend existing CFRO provisions. To maximize the strength, clarity, and effectiveness of the City's regulatory framework, Staff also analyzed other potential revisions to CFRO not introduced at the March 27, 2017, Commission meeting with an eye toward harmonizing all existing and proposed provisions.

Per Revised Prop J section 1.101(a), proposed amendments aim to end the widespread practice of "trading . . . special favors or advances in the management or disposal of public assets" in exchange for broadly defined "public benefits." Staff shares the Proponent's stated goal, and believes a clear assessment of how existing the provisions of a restored Prop J would mesh with other existing provisions is necessary to maximize its impact.

Revised Prop J section 1.126, for example, broadens CFRO's current contractor fundraiser/contribution ban to prohibit persons seeking any public benefit from participating in many common forms of political activity in the City.⁵³ Public benefit is broadly defined to include a contract; "a land use matter;" a "business, professional, and trade licenses and permit or other entitlement for use;" underwriting services; a tax, penalty, or fee exception, abatement, reduction or waiver; tax savings from existing law; any franchise award; cash or any other specific thing of value.⁵⁴

Existing law addresses actual or perceived corruption stemming from financial relationships with the City in several ways. First, enacted in 2003, current CFRO section 1.126 bans persons contracting with the City from making campaign contributions to candidates for or persons holding City elective office.⁵⁵ Current CFRO section 1.126 also bans candidates for or persons holding City elective office from soliciting contributions from persons seeking to contract with the City.⁵⁶

Next, the San Francisco Campaign & Governmental Conduct Code at section 3.200, *et seq.* broadly prohibits any City officer or employee from making, participating in making, or seeking to influence a government decision in which the officer or employee has a financial interest within the meaning of the Political Reform Act, Cal Govt. Code § 1090, *et seq.*⁵⁷ To the extent this broad prohibition is more narrowly construed than the Commission would like, the Commission may change certain definitions in its own Regulations to more closely comport with the prohibition contained in the ordinance. For example, Ethics Commission Regulation 3.214-4 limits the definition of financial interest to an investment interest of \$2,000 or more, the receipt of income of \$500 or more, or holding the position of officeholder in a business. The Ethics Commission could change this definition to include different types of financial interests, such as reputational interest, financial interests of spouses or agents of the officeholders, etc. City law further prohibits any person from making a gift with intent to influence a government official to perform an official act, imposes gift limits on all City officers and employees, restricts all gifts from persons doing business with or seeking to do business with the City, and requires

⁵³ See: New CFRO section 1.126(a)(9) (banning contributions, payments to slate mailer organizations, gifts, behested payments, contracts for employment, contract options, offers to purchase stock, emoluments, bundling of contributions, etc.); See also, New section 1.104, "*Prohibited Fundraising.*"

⁵⁴ New section 1.126(a)(10).

⁵⁵ CFRO § 1.126(b).

⁵⁶ CFRO § 1.126(c).

⁵⁷ See: SF Ethics Ord § 3.206(a).

disclosure of gifts of travel.⁵⁸ Like the financial interest regulations, the Commission could change its own regulations to close any loopholes involving gift restrictions.

Finally, the Political Reform Act, which is incorporated by reference into CFRO at section 1.106, prohibits an officer of an agency from accepting, soliciting, or directing a contribution of more than \$250 from any party or their agent, or from any participant or their agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency where the officer works and for three months following the date a final decision is rendered.⁵⁹ “In addition, PRA section 84308(c) requires each officer of an agency who received a contribution of \$250 or more within the preceding 12 months to disclose that fact on the record and recuse themselves prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency. PRA section 84308(d) further requires a party to a proceeding before an agency involving a license, permit, or other entitlement to disclose contributions made to any an officer or their agent during the twelve-month period before the proceeding and prohibits a party from making a contribution of \$250 or more to any officer of the agency during the three-month period following the agency’s final decision.

Along with these concrete prohibitions and disclosure requirements, the City’s public financing program encourages public participation and transparency in City elections by decreasing candidate reliance on special interest groups and compelling participants to engage the public in meaningful ways. As part of the Commission’s Annual Policy Plan, a review of the City’s public financing program is also planned for this Spring to harmonize its structure with recent legal developments and to ensure the program operates as effectively as possible. Incorporating that review and analysis as part of this process to identify needed changes to City campaign finance law would ensure the most robust, expansive program improvements to support the important goal articulated by the Commission to reduce actual or perceived corruption. When candidates rely on public funding, they have reduced incentive to participate in the type of quid pro quo fundraising Prop J hoped to curtail. Identifying how the public financing program can be better leveraged to expand participation, and therefore expand the program’s impact on city governance, could also serve the goals of Prop J’s restoration.

V. Other Implementation Considerations

In addition to legal considerations, Staff also preliminarily researched and identified some technological and cost considerations that may be associated with implementation of the proposed revisions to Prop J. These considerations will also need to be considered to ensure any new provisions adopted are strong and workable once implemented.

For example, the Commission currently uses an outside vendor, Netfile, to manage its online campaign reporting and disclosure database. Currently, Netfile’s system does not track or communicate with the

⁵⁸ See SF Ethics Ord § 3.216.

⁵⁹ Cal. Govt. Code § 84308(b) (where “Officer” means any elected or appointed officer of an agency; “license, permit, or other entitlement for use,” means all “business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts . . . and all franchises.” “Participant” means any person who is not a party but who actively supports or opposes a decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision. *Id.* at (2)).

Office of Controller's contractor database. The Commission is in preliminary discussions for a long-range plan to integrate the two systems, but neither department has had the opportunity to assess what costs could be associated with such a large technological undertaking. Staff fully supports integration, and funding would be necessary to ensure this goal is met effectively and in a timely manner.

Notably, Prop J goes further than contracts by requiring the Commission to maintain a database of all persons in the City seeking or adjudicating public benefits, as broadly defined in proposed section 1.126(a). In a 2006 report produced by the City of Pasadena's Task Force on Good Government the City of Pasadena projected annual administration costs of \$194,000 to ensure the City met the requirements of the Taxpayer Protection Act, or Pasadena's Prop J.⁶⁰ The \$194,000 annual figure accounted for staff time only. Staff has not yet been able to assess expected or potential costs associated with building a tracking database, but based on past contracts with Netfile, Staff estimates costs for development of a comprehensive, integrated system could be several hundred thousand dollars. Ensuring a new legislative package that identifies sufficient funding to implement its provisions in practice is critical to ensuring the effectiveness of the new law. Absent a database for logging city contracts and a corresponding legal provision requiring City and county contracts to be warehoused in one location, the administrative and enforcement duties required of the Commission may be obstructed by organizational infeasibility. That is, if Staff can't accurately evaluate and audit a database of city contracts for violators, the proposed provisions may ring hollow at the implementation stage.

VI. Proposed Next Steps

Staff is excited to begin the stakeholder engagement process over the next month, including Friends of Ethics, Represent Us, interested members of the Board of Supervisors, public citizens, and other interested persons. Staff has scheduled two interested persons' meetings, scheduled to take place at 25 Van Ness, Rm 610 on May 9 at 5:30 p.m. and 25 Van Ness, Rm 70 May 11 at 12:00 p.m. to give people an opportunity to attend when their schedule allows. For these meetings, Staff plans to publish the Commission's proposed revisions to Prop J, along with a list of specific calls for public comment on Thursday, April 27. Based on the Commission's discussion at its April meeting, Staff will prepare materials to seek input on specific questions Commissioners would like interested persons to answer. For example, Staff will seek assistance from stakeholders to build a thorough factual record in support of any revisions to the Campaign Finance Reform Ordinance under consideration, and also seek input about ways to ensure the City's campaign ordinance and public financing program can also be strengthened to support the goals of the Prop J Restoration project.

As is the case with our Interested Persons process generally, public comment may be provided verbally or in writing at one of the Interested Persons' meetings, or submitted in writing to (ethics.commission@sfgov.org) on or before May 12, 2017, by 5:00 p.m.

Staff will then analyze all comments in advance of the May 22, 2017, regular Commission meeting, and present a complete set of public comments with associated Staff recommendations to the Commission and public at that meeting. After further hearing the Commission's May meeting and any additional

⁶⁰ See: Report of the City of Pasadena Task Force on Good Government, p. 7 (2006) *available at* http://ww2.cityofpasadena.net/councilagendas/2006%20agendas/Feb_27_06/7C1.pdf (Robert Stern, consultant, Center for Governmental Studies).

policy guidance, Staff will integrate any further changes and bring final revisions to the Commission in June. The Commission may then send proposed changes on to the Board of Supervisors for its consideration or send the revisions back to Staff for additional review and re-drafting. As the Commission knows, the Board of Supervisors recesses in August, so it is likely that the Board's consideration of the Commission's proposals would take place this Fall.

We look forward to the Commission's further discussion and public input at the April 24th meeting, and to answering any questions you might have about this report at that time.



Mabel Ng/ETHICS/SFGOV
11/15/2005 12:19 PM

To "Robert Stern" <rstern@cgs.org>
cc
bcc John St.Croix/ETHICS/SFGOV@SFGOV
Subject Re: Question on Oaks Measure

Bob:

As stated in the Sutton advice letter, the Commission made a determination that it could not legally enforce Proposition J if the term "public benefit" included variances and permits.

Mabel

Mabel Ng
Deputy Executive Director
San Francisco Ethics Commission
415/581-2300
"Robert Stern" <rstern@cgs.org>



"Robert Stern"
<rstern@cgs.org>
11/10/2005 02:57 PM

To "Mabel Ng" <Mabel_Ng@ci.sf.ca.us>
cc
Subject Question on Oaks Measure

Mabel

Do you know why the Commission exempted variances and permits from the Oaks Ordinance the San Francisco passed in 2000 and then was repealed? I thought the ordinance explicitly included these and so I wonder why variances and permits were deleted.

Bob

Robert M. Stern
President

~~~~~  
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## **Ethics Commission City and County of San Francisco**

### **Advice Letter – April 7, 2003 – James R. Sutton, Esq. – Proposition J (application to non-profit organizations)**

April 7, 2003

James R. Sutton, Esq.

Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP

591 Redwood Highway #4000

Mill Valley, California 94941-3039

Dear Mr. Sutton:

You requested the Ethics Commission's advice regarding various provisions of the Taxpayer Protection Amendment, Proposition J in the November 2000 election, S.F. Campaign and Governmental Conduct Code sections 3.700-3.740.

The Ethics Commission provides two kinds of advice: written formal opinions or informal advice. S.F. Charter § C3.699-12. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. Id. Informal advice does not provide similar protection. Id.

Because your letter seeks general advice and does not pertain to particular persons or events, the Commission is treating your letter as a request for informal advice.

#### Discussion

##### The General Prohibition under Proposition J

Under Proposition J, a City and County public official who "has exercised discretion to approve and who has approved or voted to approve a public benefit" may not receive a personal or campaign advantage<sup>1</sup> from the public benefit recipient for a specified period of time ranging from two to six years from the date the official approves or votes to approve the public benefit. S.F. C&GC Code § 3.715(a). The prohibition does not

apply when the public official's approval of the public benefit is a ministerial function, or when the public official does not participate in, influence or attempt to influence the approval of the public benefit. Ethics Commission Regulation 3.715(a)-1.

1. Do volunteer members of the boards of directors of a nonprofit organization which received a grant from the City valued over \$10,000, or a City contract valued over \$50,000, qualify as "public benefit recipients"?

You ask whether Proposition J applies to nonprofit organizations that receive City grants that are valued over \$10,000 or contracts that are valued over \$50,000. You further ask whether the law also applies to volunteer members of the boards of directors of these nonprofit organizations such that the directors are

prohibited from contributing to any candidate for City elective office who voted to approve the grants or contracts. You ask whether the Commission's response would differ "if the contribution is not in any way connected to the City's grant, and even if the volunteer board member does not in any way personally benefit from the grant."

The fundamental task of statutory construction is to determine the legislative intent in order to effectuate the law's purpose. See *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572. "If the plain language of [an ordinance] is unambiguous, no court need, or should, go beyond that pure expression of legislative intent." *Id.*, citations omitted. The plain language of Proposition J is clear with respect to whether volunteer members of boards of directors of nonprofit organizations that receive City grants or contracts are public benefit recipients. Therefore, we need not look beyond the words of the Ordinance.

S.F. C&GC Code section 3.710(b) states the following:

Those persons or entities receiving public benefits as defined in Section 3.710(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.

The plain language of the Ordinance provides that any entity that receives public benefits is a public benefit recipient. The plain language of the Ordinance also provides that the directors of any entity that receives public benefits are also public benefit recipients. No distinction is made between for-profit and nonprofit entities that receive public benefits, nor is a distinction made between volunteer and paid directors. The usual and ordinary meaning of the Ordinance's words leads the Commission to conclude that nonprofit organizations that receive public benefits are public benefit recipients covered by Proposition J. For similar reasons, the Commission concludes that the directors of these nonprofit organizations are public benefit recipients.<sup>2</sup>

Although we believe that the Ordinance is clear, the language in Proposition J's preamble supports the Commission's conclusions. In adopting the initiative, the people of San Francisco sought to ensure that the use or disposition of public assets is not tainted by conflicts of interest among City officials who are entrusted with their management and control, and that decisions that confer private benefits are "arranged strictly on the merits for the benefit of the public, and irrespective of the separate personal or financial interests of involved public officials." S.F. C&GC Code § 3.705(a). The voters stated:

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 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.

*Id.*, § 3.705(b) and (c).

In deciding that they did not want decisions to award City contracts and grants to be based on whether the decision-makers received or would receive gifts or contributions from the public benefit recipients, the voters did not limit their concern to organizations that exist only for profit or to directors who serve only for pay. Instead, they used the term "any substantial beneficiary." Nonprofit corporations are substantial beneficiaries of public benefits and nothing in the legislative history suggests that they were to be excluded from the Ordinance's reach.

2. Does Proposition J prohibit PACs sponsored by public employee unions from contributing to City candidates?



You note that Proposition J specifically excludes public employment from the term "public benefit." See San F.C. & G.C. Code § 3.710(a). You ask whether this exemption allows only individuals who work for the City to make contributions to candidates for City elective office, or whether the exemption also allows the various public employee unions that negotiate large City contracts on behalf of their members (memoranda of understanding or MOUs) to make such contributions. You indicate that several of these public employee unions sponsor political action committees (PACs) that often contribute to City candidates.

Proposition J provides that "the term public benefit does not include public employment in the normal course of business for services rendered." Id. § 3.710(a). It is unclear from the plain language of the Ordinance whether this exception applies only to public employees or whether it extends to the unions that represent public employees and are parties to MOUs. Accordingly, we must rely on the tools of statutory construction to determine the meaning of the phrase "public employment in the normal course of business for services rendered."

If the plain language of an ordinance is ambiguous or uncertain, we must look to the legislative history for assistance in interpreting the meaning of a law. See *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1239. When the voters change a law, ballot arguments should be used as the legislative history. See *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 113-115. If the legislative history does not provide an answer, we must apply common sense to the language and, if possible, interpret the words in a manner that makes them reasonable, in accord with common sense, and avoids an absurd result. See id. When interpreting the statutory language in a manner that makes the words reasonable, in accord with common sense, and avoids an absurd result, the language must be read not in isolation but in light of the overall statutory scheme. See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.

None of the paid arguments in support of or in opposition to Proposition J sheds light on the meaning of this phrase. See Voter Information Pamphlet and Sample Ballot, November 7, 2000 Consolidated Presidential General Election Ballot, at pp. P-128-132. Accordingly, we must interpret this phrase in a manner that makes its words reasonable, in accord with common sense, and avoids an absurd result.

To supply a reasonable interpretation of this phrase in a manner that is in accord with common sense and avoids an absurd result, we must examine the overall statutory scheme of Proposition J. As discussed above, the overall statutory scheme of Proposition J sets forth the goal of ensuring that the use or disposition of public assets is not tainted by conflicts of interest among City officials arising from the receipt of campaign contributions, gifts or promises of future employment. Specifically, the preamble to Proposition J identifies the "trading of special favors or advantage in the management or disposal of public assets and in the making of major public purchases" that "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" as its core concerns. Accordingly, we must determine whether approval of MOUs by public officials who receive campaign contributions, gifts or future employment from unions implicates these concerns.

In order to make this determination, it is important to understand the role a union plays in negotiating an MOU on behalf of its members. Collective bargaining between the City and its employees is controlled by the Meyers-Millias-Brown Act. Cal. Gov't Code § 3500 et seq. Under the Act, employee collective bargaining units have the authority to represent their employees in "all matters related to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment." *San Bernardino Public Employees Association v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1220 (citations omitted). The Act requires the City to negotiate exclusively with the collective bargaining units. Id. Under state and local law, both the City and the bargaining units are mutually obligated to negotiate in good faith. Cal. Gov't Code § 3505; S.F. Charter § A8-409-3. Once an MOU has been negotiated and approved by the governing body of the public entity and the membership of the bargaining unit, it is binding on both parties for its duration. *San Bernardino*, supra, 67 Cal.App.4th at 1220. The Act does not permit individual employees to negotiate the terms of their employment, and "... a member of an employee bargaining unit is bound by the terms of a valid collective bargaining agreement, though he is not formally a party to it and may not even belong to the union which negotiated it." Id. at 1220-1221, citations omitted.

Thus, it is only through the collective bargaining units that individual employees may voice their concerns. In addition, individual employees are bound by the MOU, and they may not negotiate the terms of their own employment. Finally, the law prescribes that the City must negotiate exclusively with collective bargaining units that have been chosen to represent the City's employees. These conditions lead the Commission to conclude that an MOU is not a special favor that deprives any person or entity of fair opportunity or that deprives the public of its right to the effective use and enjoyment of public assets.

Accordingly, to interpret the phrase "public employment in the normal course of business for services rendered" in a reasonable manner that is in accord with common sense and avoids an absurd result, the Commission determines that the exemption includes collective bargaining units that are designated by law to negotiate MOUs with the City on behalf of City employees.<sup>3</sup> Public officials who approve MOUs may receive campaign contributions from PACs set up by these public employee unions. However, the Commission cautions that should such public employee unions receive grants or contracts or other public benefits from the City for purposes not related to the negotiations for the MOUs for City employees, such public benefits may be covered by Proposition J. In such a case, public officials who participated in the approval of the public benefit might be prohibited from receiving campaign contributions, gifts or employment from the unions for the specified time periods under the law.

3. Do the prohibitions in Proposition J apply to a supervisor who approves a public benefit during the budget process?

You state that several individuals and entities receive funding from the City through the annual budget process rather than through separate action by the Board of Supervisors. You explain that although Board members may debate certain line items in the budget during committee meetings or other public hearings, they generally vote on the budget as a whole rather than on individual line items in the budget. You ask whether a supervisor who approves the budget would be prohibited from accepting a contribution from the individual entity listed in a line item, assuming that the line item constitutes a public benefit (for example, a cash grant over \$10,000). You state that although Board members technically "exercise discretion to approve" the line items, they do not really have the opportunity to vote against most line items, unless they choose to vote against the entire budget. Thus, you appear to contend that Board members do not exercise discretion to approve the line item contracts and grants. The Commission disagrees.

In considering the budget, the Board members necessarily exercise legislative judgment to determine how to prioritize key functions and responsibilities of City government and whether or not to fund certain benefits and services for local residents. As you indicate, supervisors often debate line items at committee meetings and other hearings. Even though line items may not be considered separately in the vote to approve the budget, their inclusion in the budget reflects both a determination by the supervisors that the items are not inconsistent with the policy choices being made and a decision by the supervisors to award a grant or contract to certain recipients. Indeed, members of the Board may propose amendments to the budget to add or delete these line items. In doing so, they exercise discretion.

In adopting Proposition J, the voters specifically sought to limit the trading of special favors or advantages in the management and disposal of public assets. To exclude contracts and grants that are awarded via a line item in the budget on the basis that supervisors do not exercise discretion to approve them would undermine the purpose of the Ordinance. Because the Commission finds that supervisors actually do exercise discretion when they vote on a budget that includes line items and are not engaged in a ministerial function, the Commission cannot agree that the supervisors "do not really have the opportunity to vote against most line items." As a result, the Commission concludes that Proposition J prohibits members of the Board of Supervisors from accepting personal or campaign advantages from public benefit recipients who are granted public benefits during the budget process.

4. Does a payment received from the City to settle a lawsuit constitute a "public benefit"?

You indicate that the City must defend itself against a wide range of lawsuits brought by individuals and entities, that the City Attorney often concludes that it is in the City's best interest to settle these lawsuits rather than spending resources on trial, and that the Board of Supervisors typically has to approve these cash settlements. You ask if these settlements constitute a public benefit under Proposition J.

The fundamental task in statutory construction is to determine the legislative intent in order to effectuate

the law's purpose. See White, *supra*, 21 Cal.4th at 572. As discussed above, if the plain language of the ordinance is clear, there is no need for statutory construction. See *id.* But the literal meaning of a law must be in accord with its purpose. See *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

The plain language of the Ordinance states that the term public benefit includes a contract, benefit, or arrangement between the City and County and any person or entity "to receive cash or specie of a net value to the recipient in excess of \$10,000 in any 12-month period." S.F. C&GC Code § 3.710(a)(7). Generally, the settlement of a lawsuit includes a monetary payment. Accordingly, it appears when examining the plain language of Proposition J that the settlement of a lawsuit constitutes a public benefit if the net value of the settlement to the recipient includes a monetary payment that is in excess of \$10,000 in any 12-month period.

But this literal meaning may not be in accord with the Ordinance's purpose. The voters adopted Proposition J to prevent the trading of favors "in the management or disposal of public assets" in a way that deprives meritorious persons of a fair opportunity to obtain public benefits and deprives the public of its effective use and enjoyment of public assets. See S.F. C&GC Code

§ 3.705(a) and (b). Because a final judgment in a lawsuit might otherwise cause the City to have a legal obligation to make a payment, it is unclear that including a settlement of a lawsuit before final judgment within the meaning of the term "public benefit" is in accord with the purpose of Proposition J.

Generally speaking, when a decision to settle a lawsuit is reached, the City has decided either that the City will make a monetary payment because it has exposure to a liability that may exceed the settlement amount, or that the costs of going forward with a trial exceed the possible return on the lawsuit or the settlement amount. Thus, settlement payments are compromises reached after negotiations by both the City and the affected parties. They do not appear to provide special favors to the recipients, nor do they deprive some other meritorious person or entity of fair opportunity for a public benefit or undermine the public's effective use of public assets. Instead, they appear to ensure that public assets are used efficiently. Thus, settlement payments do not implicate the types of arrangements that were at the core of the concerns that Proposition J sought to address. Accordingly, the Commission does not believe that payments made to settle lawsuits constitute public benefits. The Commission cautions, however, that Proposition J authorizes civil actions by private citizens to enforce its provisions, and a court may reach a different conclusion.

5. Do City contracts for health care, telephone or other "services" constitute "selling or furnishing any material, supplies or equipment" to the City?

You state that the definition of public benefit includes certain but not all City contracts, namely, those contracts that exceed \$50,00 for "personal services" or for "material, supplies or equipment." You indicate that the quoted terms are not defined in the ordinance or regulations, and you add that a January 21, 1997 memorandum from the City Attorney appears to define those terms narrowly in the context of Campaign and Governmental Conduct Code section 1.126. Thus, you ask whether, if the terms are narrowly defined for the Ordinance, board members of a nonprofit organization that has a contract with the City to provide health care services to low-income residents could contribute to a supervisor who voted to approve the contract. You also ask whether a company that provides long-distance telephone service to City offices and employees is covered under the law, as well as a law firm retained by the City Attorney to represent the City in a lawsuit. You further inquire how a candidate can distinguish between contracts that come under Proposition J and contracts that do not.

The Commission does not find that the terms "personal services" or "materials, supplies or equipment" are ambiguous with respect to the types of grants or contracts you referenced and does not believe that the January 21, 1997 memorandum from the City Attorney would cause the Commission to reach a different conclusion. The plain and ordinary meaning of the terms covers the grant or contract to provide health care services, long-distance telephone services or legal services, as long as the grant or contract otherwise meets the financial thresholds for coverage. Inasmuch as Proposition J covers such contracts, Proposition J forbids public officials who approved such contracts from receiving gifts or campaign contributions for periods of time ranging from two to six years from the date the contracts were awarded. If you have additional questions as to whether a specific contract is considered a public benefit, please do not hesitate to contact the Ethics Commission for further advice.

6. Are individuals and entities which receive "variances" or "permits" from the City exempt from all enforcement under Prop J?

You correctly state that the Commission has exempted variances and permits from the definition of public benefits. EC Reg. 3.710(a)-1. You also note that Proposition J sets forth three ways to enforce its provisions: through an enforcement action by the Ethics Commission, an action by the City authorities, or a civil lawsuit by a City resident. You ask whether the Commission's regulation estops a civil lawsuit brought by the City or a City resident.

In adopting Regulation 3.710(a)-1, the Commission made a determination that it could not legally enforce Proposition J if the term "public benefit" included variances and permits. While a court may give weight to the Commission's determination, a court may adopt another interpretation of the term. Thus, the Commission's interpretation does not preclude or estop a lawsuit from either the City's other enforcement authorities or private residents.

7. Does the "Public Benefit Recipient Report – By Supervisor" satisfy the "due diligence" requirement of Regulation 3.720(a)-1(a)?

You state that the Clerk of the Board of Supervisors distributes a document entitled "Public Benefit Recipients Report – By Supervisor" which "purportedly lists all actions approved by the Board which qualify as public benefits." In providing a copy of the document, you ask whether a supervisor who relies on the document in order to determine whether he or she may accept a contribution, has satisfied the due diligence requirements of Regulation 3.720(1)-1(a).

Under Regulation 3.720(a)-1, a public official satisfies the due diligence and monitoring requirements of the law if

- (1) the public official's board, commission or department establishes a record of public benefits conferred (a "departmental record");
- (2) the departmental record identifies the public officials who exercised discretion to approve and approved or voted to approve the public benefits;
- (3) the departmental record identifies the public benefit recipients; and
- (4) the public official relies in good faith on the departmental record.

In examining the document you provided, it appears to identify the public officials who approved the public benefits. In some circumstances, the document lists the public benefit recipients; in other circumstances, it is not clear that it lists all the recipients. For example, for the contract approved on July 15, 2002, the public benefit recipient listed is "SF Institute for Criminal Justice Board of Directors." Under the law, the individuals who are the directors – and trustees, partners or officers, if applicable – are considered public benefit recipients and therefore their names should be listed. While the regulation provides that there is a rebuttable presumption that a public official relied in good faith on the departmental record, good faith cannot be premised on a record that contains insufficient information. Entries that contain all the required information satisfy the due diligence requirements, but entries with insufficient information do not.

I hope you find this letter responsive to your inquiry. Please do not hesitate to contact Deputy Executive Director Mabel Ng at (415) 581-2300 if you have questions.

Sincerely,

Ginny Vida

Executive Director

By: Mabel Ng

Deputy Executive Director

1 A personal or campaign advantage includes a campaign contribution, a gift or honoraria worth more than \$50, and any employment for compensation. S.F. C&GC Code § 3.710(c) and EC Reg. 3.710(c)-1.

2 The Ethics Commission clarified that an individual or entity is deemed to be the recipient of a public benefit if the individual is a trustee, director, partner or officer of a party to the contract "at the time the public benefit is awarded." Ethics Com. Reg. 3.710(b)-1.

3 In light of the Commission's conclusion, it need not reach the question of whether Proposition J's prohibitions extend to a PAC established by a union given tha

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"Robert Stern"  
<rstern@cgs.org>  
11/10/2005 02:57 PM

To "Mabel Ng" <Mabel\_Ng@ci.sf.ca.us>  
cc  
bcc  
Subject Question on Oaks Measure

Mabel

Do you know why the Commission exempted variances and permits from the Oaks Ordinance the San Francisco passed in 2000 and then was repealed? I thought the ordinance explicitly included these and so I wonder why variances and permits were deleted.

Bob

Robert M. Stern  
President  
~~~~~  
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ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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ISABELLA H. GRANT
COMMISSIONER

PHILIP S. RYAN
COMMISSIONER

SHARYN SASLAFSKY
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

DATE: July 12, 2001

TO: All Members of City Boards and Commissions
All Department Heads

FROM: Ginny Vida *G.V.*
Executive Director

RE: Implementation of Proposition J

On **Friday, July 13, 2001**, Proposition J, which the voters of San Francisco adopted on November 7, 2000, will go into effect. Proposition J imposes new rules affecting gifts, payments and campaign contributions to public officials.

Proposition J, codified as S.F. Campaign and Governmental Conduct Code § 3.700 et seq., prohibits public officials who approve certain contracts or other "public benefits" from accepting personal or campaign advantages from a recipient of the public benefit or contract. The prohibition begins on the date the public official approves or votes to approve the public benefit and ends no later than:

- (1) two years after the expiration of the term of office that the public official is serving at the time the official actually approves the public benefit;
- (2) two years after the public official's departure from office, regardless of whether there is a pre-established term of office; or
- (3) six years from the date the public official actually approves the public benefit, whichever is first.

Public officials are required to practice due diligence to determine whether a public benefit has been conferred and to monitor receipt of personal and campaign advantages from public benefit recipients. The regulations provide information on due diligence, monitoring and safe harbors. You may wish to review Regulations 3.720(a)-1 and 3.730-1 for more information on due diligence, monitoring and safe harbors and establish these procedures as soon as possible.

The text of Proposition J and the regulations are available from the Ethics Commission office and from its website at www.sfgov.org/ethics/pertin.htm. For further information, please contact the Commission at (415) 581-2300.

S:\Prop J\prop J memo 7.10.01.doc

Attachment 2

P. Keane Submission for Presentation at March 27, 2017 Ethics Commission Meeting

Comparative Chart for Prop J Restoration – 3.2.17

Provision	Original Prop J	Current 1.126	1.126 Prop J restoration
Personal or campaign advantage prohibited	(1) gift, honoraria, emolument, or personal pecuniary interest benefit of \$50+; (2) employment for compensation; (3) contribution for elective office said official may pursue.	Contributions	(1) Contribution, (2) payment to an SMO, (3) gift, (4) payment to an agency, (5) behested payment, (6) any other payment to nonprofit or business entity, (7) contract not widely available to public (including employment), (8) contractual option, (9) offer to purchase stock or other investment that is not widely available to the public, (10) any other personal pecuniary interest, emolument or other thing of value not widely available to the public, or (11) prohibited fundraising for any of the above
Official or candidate's interest that may not receive advantage	Public official	Officeholder, candidate, or their controlled committee (Regulation excludes CCC committees)	Officeholder (includes immediate family), candidate (includes immediate family), their controlled committee, SMO promoting them (<i>if at behest of officeholder or candidate</i>), their agency (<i>if executive or board member</i>), any person (<i>if at behest of officeholder or candidate</i>), organization run at least in part by officeholder, candidate or their appointee, or their business entity (<i>if 20% or more ownership</i>); <u>However</u> , is both Mayor, Supervisor, or candidates for those offices if land use matter

Attachment 2

P. Keane Submission for Presentation at March 27, 2017 Ethics Commission Meeting

Provision	Original Prop J	Current 1.126	1.126 Prop J restoration
Person prohibited from providing advantage	Persons who receives public benefit + <i>ancillary</i>	Person who contracts with + <i>ancillary</i>	Person who seeks or receives the public benefit (party or prospective party to the decision or person with a financial interest in the decision) + <i>expanded ancillary</i>
Prohibition period	From the date of approval/voting-to-approve to whichever of the following happens first: (1) Two years after the term of office of the individual serving when the decide whether or not to approve the public benefit made; (2) Two years after the individual in office, who decided or was on the board that decided whether or not to approve a public benefit, leaves office; (3) Six years from the date that of the decision of whether or not to approve the public benefit	Negotiation period + 6 months after decision to approve	Submission/negotiation period + 12 months after decision, whether or not decision approved
Decision-maker that triggers the prohibition	Public official	Officeholder, Board on which they serve, or State Board for which they made appointment	Officeholder, Board on which they serve, their subordinates or appointees & any Boards for which they made appointment; <i>However</i> , for land use matter matters, also the following: 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

Attachment 2

P. Keane Submission for Presentation at March 27, 2017 Ethics Commission Meeting

Provision	Original Prop J	Current 1.126	1.126 Prop J restoration
			Commission, Planning Commission, or Planning Department
Types of public benefits that trigger the law	Certain contracts, franchises (as defined), land use decisions, tax abatement, or providing money	Contracts	Contracts, land use decisions, licenses/permits/entitlement (where discretion used), underwriting services (as defined), tax/fee/penalty reduction (if not generally/regularly available), tax savings from change in law, franchise, or cash/other-thing-of-value
Types of land use decisions (public benefit) that trigger the law	Land use variance, special use permit, or other exception to a pre-existing master plan or land use ordinance pertaining to real property	n/a	Land use matter (as defined) or other land use decision including a variance or other zoning change, special or conditional use permit, subdivision, adoption of, amendment to, or exception to a master, specific, or general plan, adoption of, amendment to, or exception to a development agreement or disposition and development agreement, or any land use resolution or ordinance pertaining to real property
Value of public benefit decision that triggers	\$5,000 - 50,000, depending upon type of decision	\$50,000	\$0 - \$50,000, depending upon type of decision (for land use matters, project's value or construction cost must be \$1 million or more)

Attachment 2

P. Keane Submission for Presentation at March 27, 2017 Ethics Commission Meeting

Provision	Original Prop J	Current 1.126	1.126 Prop J restoration
the law			
Penalties	Misdemeanor; Fine up to 5 times amount of personal or campaign advantage; or injunctive	Misdemeanor (up to \$5,000 fine, 6 months jail, or both); Fine up to \$5,000; or Injunctive; + forfeiture	Misdemeanor (up to \$5,000 fine, 6 months jail, or both); Fine up to \$5,000 or 3 times amount received in excess of 1.126, whichever is greater; or Injunctive; + forfeiture, debarment, & lobbyist/contractor bar
How enforced	Private suit by resident or Ethics Commission	Civil prosecutor or Ethics commission, or private suit by voter (injunctive only)	Civil prosecutor or Ethics commission, or private suit by resident (suits for penalties subject to some thresholds)

Proposition J Restoration Anti-corruption Act – 2.27.17

<u>Sec.</u> <u>1.100.</u>	Purpose and Intent.
<u>Sec.</u> <u>1.102.</u>	Citation.
<u>Sec.</u> <u>1.103.</u>	Amendment or Repeal of Chapter.
<u>Sec.</u> <u>1.104.</u>	Definitions.
<u>Sec.</u> <u>1.106.</u>	Adoption of General Law – Exceptions.
<u>Sec.</u> <u>1.107.</u>	Training for Candidates and Treasurers.
<u>Sec.</u> <u>1.108.</u>	Candidate Committee Campaign Contribution Trust Accounts and Campaign Contingency Accounts.
<u>Sec.</u> <u>1.109.</u>	Retention of Records.
<u>Sec.</u> <u>1.110.</u>	Campaign Statements – Public Access.
<u>Sec.</u> <u>1.112.</u>	Electronic Campaign Disclosure.
<u>Sec.</u> <u>1.113.</u>	Disclosure Requirements During Signature Gathering Periods for Initiatives, Referenda and Recalls.
<u>Sec.</u> <u>1.114.</u>	Contribution Limits.
<u>Sec.</u> <u>1.115.</u>	Coordination of Expenditures.
<u>Sec.</u> <u>1.116.</u>	Limits on Loans to Candidates.
<u>Sec.</u> <u>1.118.</u>	Payment of Accrued Expenses.
<u>Sec.</u> <u>1.120.</u>	Contribution Limits – Post-Election Legal Proceedings.
<u>Sec.</u> <u>1.122.</u>	Solicitation, or Acceptance, or Delivery of Campaign Contributions – Limitations.
<u>Sec.</u> <u>1.126.</u>	<u>Limits on Contributions, Other Payments-Limits, and Fundraising – Bidders, Contractors Doing Business with the City and Other Persons Seeking or Receiving Public Benefits.</u>

<u>Sec.</u> <u>1.128.</u>	Acceptance or Rejection of Voluntary Expenditure Ceilings.
<u>Sec.</u> <u>1.130.</u>	Amount of Voluntary Expenditure Ceilings.
<u>Sec.</u> <u>1.134.</u>	Lifting of Voluntary Expenditure Ceilings; Supplemental Reporting in Elections for Assessor, Public Defender, City Attorney, District Attorney, Treasurer, Sheriff, the Board of Education of the San Francisco Unified School District, or the Governing Board of the San Francisco Community College District.
<u>Sec.</u> <u>1.134.5.</u>	Lifting of Individual Expenditure Ceilings.
<u>Sec.</u> <u>1.135.</u>	Supplemental Pre-Election Statements.
<u>Sec.</u> <u>1.136.</u>	Public Financing of Candidates for the Board of Supervisors or Mayor.
<u>Sec.</u> <u>1.138.</u>	Election Campaign Fund; Appropriation of Funds.
<u>Sec.</u> <u>1.140.</u>	Eligibility to Receive Public Financing.
<u>Sec.</u> <u>1.142.</u>	Process for Establishing Eligibility; Certification by the Ethics Commission.
<u>Sec.</u> <u>1.143.</u>	Adjusting Individual Expenditure Ceilings.
<u>Sec.</u> <u>1.144.</u>	Disbursement of Public Funds.
<u>Sec.</u> <u>1.146.</u>	Termination of Payments.
<u>Sec.</u> <u>1.148.</u>	Restrictions on Use of Public Funds; Unexpected Public Funds.
<u>Sec.</u> <u>1.150.</u>	Audit; Repayment.
<u>Sec.</u> <u>1.152.</u>	Supplemental Reporting in Elections for Board of Supervisors and Mayor.
<u>Sec.</u> <u>1.154.</u>	Insufficient Funds in Election Campaign Fund.
<u>Sec.</u> <u>1.156.</u>	Report to the Mayor and Board of Supervisors.
<u>Sec.</u> <u>1.160.</u>	Disclosure Requirements for Draft Committees.

<u>Sec.</u> <u>1.161.</u>	Campaign Advertisements.
<u>Sec.</u> <u>1.162.</u>	Electioneering Communications.
<u>Sec.</u> <u>1.163.</u>	Member Communications.
<u>Sec.</u> <u>1.163.5.</u>	Distribution of Campaign Advertisements Containing False Endorsements.
<u>Sec.</u> <u>1.164.</u>	Duties of Ethics Commission.
<u>Sec.</u> <u>1.166.</u>	Duties of Enforcement Authority.
<u>Sec.</u> <u>1.168.</u>	Enforcement; Advice.
<u>Sec.</u> <u>1.170.</u>	Penalties.
<u>Sec.</u> <u>1.171.</u>	Issuance of Subpoenas.
<u>Sec.</u> <u>1.172.</u>	Extension of Deadlines That Fall on Weekends and Holidays.
<u>Sec.</u> <u>1.174.</u>	Effect of Violation on Certification of Election Results.
<u>Sec.</u> <u>1.175.</u>	Implementing Regulations; Forms.
<u>Sec.</u> <u>1.176.</u>	Rules of Construction.
<u>Sec.</u> <u>1.178.</u>	Severability.

Editor's Note:

Prior to the effectiveness of Ord. 71-00, adopted 4/28/2000, a many of the sections in this Chapter were codified as Administrative Code Secs. 16.501 et seq. Refer to the historical notes after each section for a detailed analysis of the legislative history after the transfer of the material to this Code.

SEC. 1.100. PURPOSE AND INTENT.

(a) ~~Immense~~Huge sums of money often are necessary to finance American election campaigns. Inherent to the high cost of election campaigning is the problem of improper influence, real or ~~perceived~~potential, exercised by campaign contributors over elected officials.

In addition, this fundraising distracts public officials seeking reelection from focusing upon important public matters, encourages contributions which may have a corrupting influence, gives incumbents an unfair fundraising advantage over potential challengers, and provides contributors with greater access to public officials than other members of the public. These developments undermine the integrity of the governmental process and the competitiveness of campaigns. The amount of money raised by many candidates and committees supporting or opposing candidates also erodes public confidence in local officials by creating the appearance that elected officials may be unduly influenced by contributors who support their campaigns or oppose their opponents' campaigns.

The people of the City and County of San Francisco find that the use or disposition of public assets is often tainted by the appearance or reality of conflicts of interest or other ethical problems for public officials entrusted with their management and control. Such assets, including publicly controlled 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. The people find that public decisions to sell or lease property, to confer cable, trashing 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 expectation or subsequent receipt of benefits from those with financial interests in the public decisions. The people further find that the sources of such potentially corruptive influence include not only anticipated campaign contributions but gifts and honoraria, future employment offers, and other things of value 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 buyers, lessees and sellers of fair opportunity, and deprives the public of its rightful enjoyment and effective use of public assets.

(b) It is the purpose and intent of the People of the City and County of San Francisco in enacting this Chapter to:

(1) Place realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections and to provide full and fair enforcement of all the provisions in this Chapter;

(2) Ensure that all individuals and interest groups in our city have a fair opportunity to participate in elective and governmental processes;

(3) Create an incentive to limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes beyond the amount necessary to communicate reasonably with voters;

(4) Reduce the advantage of incumbents and thus encourage competition for elective office;

(5) Allow candidates and officeholders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents' community;

(6) Ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns;

(7) Within constitutional parameters, limit contributions to candidates and committees, including committees that make independent expenditures, to eliminate or reduce the appearance or reality that large contributors may exert undue influence over elected officials;

(8) Assist voters in making informed electoral decisions and ensure compliance with campaign contribution limits through the required filing of campaign statements detailing the sources of campaign contributions and how those contributions have been expended;

(9) Make it easier for the public, the media and those enforcing election campaign finance lawsthis Ordinance 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;

(10) Help restore public trust in governmental and electoral institutions; and

(11) Within constitutional parameters, hHelp ensure the integrity of the election process by prohibiting campaign advertisements that contain false endorsements of current and former public officials, candidates, political clubs, and organizations, as: sSuch false endorsements undermine the integrity of the electoral process by misleading and confusing voters about the actual support for or opposition to candidates or ballot measures, and it can beis too burdensome for individual voters, inundated with campaign messages, to verify the accuracy of such claims, and for persons whose positions arecorrections to misrepresented positions can occur too late to curbecorrect the election influence of the misrepresentations close in time to the election; and

(12) Reduce 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.

(c) This Chapter is enacted in accordance with the terms of Sections 5 and 7 of Article XI of the Constitution of the State of California and Section 1.101of the Charter of the City and County of San Francisco.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 3-06, File No. 051439, App. 1/20/2006; Ord. 228-06, File No. 060501, App. 9/14/2006; Ord. 234-09, File. No. 090989, App. 11/20/2009)

...

SEC. 1.104. DEFINITIONS.

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

"Advertisement" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000 *et seq.* and its enabling regulations, provided that the advertisement supports or opposes one or more City measures or candidates for City elective office.

"Candidate" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, *et seq.*, but shall include only candidates for City elective office.

"Candidate committee" shall mean a committee controlled by a candidate, and primarily formed to support that candidate's election for City elective office.

"Charitable organization" shall mean an entity exempt from taxation pursuant to Title 26, Section 501 of the United States Code.

"City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, Member of the Board of Education of the San Francisco Unified School District and Member of the Governing Board of the San Francisco Community College District. The Board of Supervisors consists of eleven separate City elective offices, the San Francisco Community College District consists of seven separate City elective offices, and the Board of Education of the San Francisco Unified School District consists of seven separate City elective offices.

"Code" shall mean the San Francisco Campaign and Governmental Conduct Code.

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

"Contribution" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000, *et seq.*; provided, however, that "contribution" shall include loans of any kind or nature.

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

"Distributed" and "distribution" shall mean any act that permits a communication to be viewed, read or heard.

"Election" shall mean any general, or special municipal election held in the City and County of San Francisco for City elective office or for a local measure, regardless of whether the election is conducted by district or Citywide.

"Electioneering communication" shall mean any communication, including but not limited to any broadcast, cable, satellite, radio, electronic, or telephone communication, and any mailing, flyer, door hanger, pamphlet, brochure, card, sign, billboard, facsimile, or printed advertisement, that:

(a) refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election; and

(b) is distributed within 90 days prior to an election for the City elective office sought by the candidate or a recall election regarding the City elective officer to 500 or more individuals who are registered to vote or eligible to register to vote in the election or recall election. There shall be a rebuttable presumption that any broadcast, cable, satellite, or radio communication and any sign, billboard or printed advertisement is distributed to 500 or more individuals who are eligible to vote for or against the candidate clearly identified in the communication.

(c) The term "electioneering communication" shall not include:

(1) communications that constitute independent expenditures under this Chapter or expenditures by a candidate committee for the candidate's election;

(2) communications made by a slate mailer organization if such communications are required to be disclosed under the California Political Reform Act, California Government Code Section 81000, *et seq.*;

(3) communications paid for by the City or any other local, State or Federal government agency;

(4) non-recorded communications between two or more individuals in direct conversation unless such communications are made by telephone and at least one of the individuals is compensated for the purposes of making the telephone communication;

(5) communications that appear on bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar memorabilia;

(6) 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;

(7) member communications;

(8) communications that occur during a candidate debate or forum;

(9) communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate for City elective office or a City elective officer who is the subject of a recall election; and

(10) invitations sent by an entity exempt from taxation pursuant to Title 26, Section 501(c)(3) of the United States Code for its own fundraising event.

"Enforcement authority" shall mean the District Attorney for criminal enforcement, the City Attorney for civil enforcement, and the Ethics Commission for administrative enforcement. Nothing in this Chapter shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this Chapter under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

"Ethics Commission" shall mean the San Francisco Ethics Commission.

"Executive Director" shall mean the Executive Director of the Ethics Commission, or the Executive Director's designee.

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

"Independent expenditure" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000 *et seq.* An expenditure is not considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf or for whose benefit the expenditure is made, if the expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made.

"Individual Expenditure Ceiling" shall mean the expenditure ceiling established for each individual candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds under this Chapter.

"Itemized disclosure statement" shall mean a form promulgated by the Ethics Commission that provides a detailed description of the separate costs associated with a communication, including but not limited to photography, design, production, printing, distribution, and postage.

"Mass mailing" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000 *et seq.*, provided that the mass mailing advocates for or against one or more candidates for City elective office.

"Matching contribution" shall mean a contribution up to \$500, made by an individual, other than the candidate, who is a resident of San Francisco. Matching contributions shall not include loans, contributions received more than 18 months before the date of the election, qualifying contributions or contributions made by the candidate's spouse, registered domestic partner or dependent child. Matching contributions must also comply with all requirements of this Chapter. Matching contributions under \$100 that are not made by written instrument must be accompanied by written documentation sufficient to establish the contributor's name and address. The Ethics Commission shall set forth, by regulation, the types of documents sufficient to establish a contributor's name and address for the purpose of this subsection.

"Measure" shall mean any City, San Francisco Unified School District or San Francisco Community College District referendum, recall or ballot proposition, whether or not it qualifies for the ballot.

"Member communication" shall be defined as set forth in the California Political Reform Act, California Government Code section 81000 *et seq.* and its enabling regulations, provided that the communication advocates for or against one or more City measures or candidates for City elective office.

"Person" shall mean any individual, partnership, corporation, association, firm, committee, club or other organization or group of persons, however organized.

"Prohibited fundraising" shall mean any of the following:

- (a) Requesting that another person make a contribution, award, ~~or payment,~~ or offer;
- (b) Inviting a person to a fundraising event;
- (c) Supplying names to be used for invitations to a fundraising event;
- (d) Permitting one's name or signature to appear on a solicitation for contributions or payments 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 percent of the costs of a fundraising event;
- (h) Hiring another person to conduct a fundraising event;
- (i) 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;
- (j) Acting as an agent or intermediary in connection with the making of a contribution, payment, award, or offer; or
- (k) Serving on the finance committee of a campaign or recipient committee.

"Qualified campaign expenditure" for candidates shall mean all of the following:

(a) Any expenditure made by a candidate, or by a committee controlled by the candidate, for the purpose of influencing or attempting to influence the actions of the voters for the election of the candidate to City elective office.

(b) A nonmonetary contribution provided to the candidate, officeholder or committee controlled by the candidate.

(c) The total cost actually paid or incurred by the candidate or controlled committee of the candidate for a slate mailing or other campaign literature produced or authorized by more than one candidate.

(d) Expenses incurred, but for which payment has not yet been made.

(e) Expenses associated with complying with applicable laws, including but not limited to the California Political Reform Act, California Government Code Section 81000, et seq., and the provisions of this Chapter.

(f) "Qualified campaign expenditure" shall not include filing fees, expenses incurred in connection with an administrative or judicial proceeding, payments for administrative, civil or criminal fines, including late filing fees, costs incurred after the election that do not directly affect the outcome of the election, including but not limited to utility bills, expenses associated with an audit, and expenses related to preparing post-election campaign finance disclosure reports as required by the California Political Reform Act, California Government Code Section 81000, et seq., and the provisions of this Chapter, or for inaugural activities or officeholder expenses.

"Qualifying contribution" shall mean a contribution of not less than \$10 and not more than \$100 that is made by an individual who is a resident of San Francisco and that complies with all requirements of this Chapter. Qualifying contributions shall not include loans, contributions received more than 18 months before the date of the election or contributions made by the candidate or the candidate's spouse, registered domestic partner or dependent child. Qualifying contributions under \$100 that are not made by written instrument must be accompanied by written documentation sufficient to establish the contributor's name and address. The Ethics Commission shall set forth, by regulation, the types of documents sufficient to establish a contributor's name and address for the purpose of this subsection.

"Recorded telephone message" shall mean a recorded audio message that expressly supports or opposes a candidate for City elective office that is distributed by telephone.

"Refers to a clearly identified candidate for City elective office or a City elective officer who is the subject of a recall election" shall mean any communication that contains the candidate's or officer's name, nickname or image or makes any other unambiguous reference to the candidate or officer such as "your Supervisor" or "the incumbent."

"Surplus funds" shall mean funds remaining in a candidate's campaign account at the time the candidate leaves City elective office, or at the end of the post-election reporting period following the defeat of the candidate for City elective office, whichever occurs last, and funds remaining in the campaign account of a committee primarily formed to support or oppose a measure at the end of the post-election reporting period following the election at which the measure appeared on the ballot.

"Total Opposition Spending" shall mean the sum of any expenditures made or expenses incurred by any person or persons for the purpose of making independent expenditures, electioneering communications or member communications in opposition to a specific candidate for Mayor or the Board of Supervisors.

"Total Supportive Funds" shall mean the sum of all contributions received by a candidate committee supporting a candidate for Mayor or the Board of Supervisors, other than any funds in the candidate's Campaign Contingency Account exceeding the candidate committee's Trust Account Limit, plus the expenditures made or expenses incurred by any person or persons for the purpose of making independent expenditures, electioneering communications or member communications in support of that same candidate.

"Trust Account Limit" shall mean the amount of funds in the Campaign Contribution Trust Account of a candidate committee supporting a candidate for Mayor or the Board of Supervisors whom the Ethics Commission has certified as eligible to receive public funds under this Chapter such that the expenditure of this amount would cause the candidate to reach, but not exceed, the candidate's Individual Expenditure Ceiling. The Trust Account Limit shall be reduced as the candidate spends money and shall be increased when his or her Individual Expenditure Ceiling increases.

"Unexpended public funds" shall mean all funds remaining in the candidate committee's account on the 30th day after the candidate controlling the committee is either elected or not elected to office, regardless of the source of the funds, but shall not exceed the amount of public funds provided to the candidate. Funds raised after this date are not unexpended funds.

"Voter" shall mean an individual registered to vote in San Francisco.

"Withdrawal" or "withdraw" shall mean, prior to an election, ending one's candidacy or failing to qualify for an office for which a candidate has solicited or accepted contributions.

"Written instrument" shall mean a check, credit card receipt, or record of electronic transfer of funds.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 187-01, File No. 010779, App. 8/31/2001; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 3-06, File No. 051439, App. 1/20/2006; Ord. 31-06, File No. 051773, App. 2/23/2006; Ord. 228-06, File No. 060501, App. 9/14/2006; Ord. 268-07, File No. 071003, App. 11/26/2007; Ord. 234-09, File No. 090989, App. 11/20/2009; Ord. 102-15, File No. 150294, App. 6/25/2015, Eff. 7/25/2015)

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SEC. 1.122. SOLICITATION, OR ACCEPTANCE, OR DELIVERY OF CAMPAIGN CONTRIBUTIONS – LIMITATIONS.

(a) **DECLARATION OF INTENT REQUIRED.** No candidate or candidate committee shall solicit or accept, or cause to be solicited or accepted, any contribution unless and until the candidate has filed a declaration of intention to become a candidate for a specific City elective office with the Department of Elections on a form prescribed by the Director of Elections.

No person shall file a declaration of intention to become a candidate for more than one City elective office.

(b) USE OF CAMPAIGN FUNDS.

(1) **GENERAL.** Except as otherwise provided in this Chapter, funds in a candidate committee's campaign account may be used only on behalf of the candidacy for the office specified in the candidate's declaration of intention filed under Subsection (a) or for expenses associated with holding that office, provided that such expenditures are reasonably related to a legislative, governmental, or political purpose. Contributions solicited or accepted under this Section for one candidate shall not be expended for the candidacy of any other candidate for local, state or federal office, in support of or opposition to any measure or in support of or opposition to any state ballot proposition, or for donations to a charitable organization. Nothing in this section shall prohibit a candidate committee for a candidate in a ranked choice election from expending funds to support the ranking of another candidate if the primary purpose of the expenditure is to further the candidate's own campaign.

(2) **WITHDRAWAL FROM CANDIDACY.** If a candidate has withdrawn his or her candidacy, campaign funds held by that candidate's committee's Campaign Contribution Trust Account shall be:

(A) returned on a "last in, first out" basis to those persons who have made said contributions;

(B) donated to the City and County of San Francisco;

(C) donated to a charitable organization;

(D) used to pay outstanding campaign debts or accrued expenses;

(E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or

(F) used for other permissible purposes established by the Ethics Commission by regulation.

(3) **SURPLUS FUNDS.** Surplus funds held by a candidate or committee shall be:

(A) returned on a "last in, first out" basis to those persons who have made said contributions;

(B) donated to a charitable organization;

(C) donated to the City and County of San Francisco;

(D) used to pay outstanding campaign debts or accrued expenses;

(E) used to pay expenses associated with terminating the committee, such as bookkeeping, legal fees, preparation of campaign statements, and audits; or

(F) used for other permissible purposes established by the Ethics Commission by regulation.

(c) **TRANSFER OF FUNDS.** Subject to the restrictions set forth in Subsection (b), at any time, funds held in a candidate committee's Campaign Contribution Trust Account may be

transferred to any legally constituted committee established by the candidate under the California Political Reform Act, California Government Code section 81000 et seq. if both committees were formed for the same office. Contributions transferred under this subsection shall be attributed to specific contributors using a "first in, first out" or "last in, first out" accounting method. A candidate committee may not receive transfers from other controlled committees unless they are formed for the same office.

(d) MEMBERS OF CITY BOARDS AND COMMISSIONS AND DEPARTMENT HEADS. Other than an individual holding City elective office, a member of a board or commission who is required by Article III, Chapter 1 of this Code to file a statement of economic interest, the chief executive officer under any such board or commission, the head of each City department, the Controller, and the City Administrator shall not do either of the following:

(A) 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;

(B) Engage in prohibited fundraising on behalf of an elected City officer, a candidate for elected City office, or a controlled committee of such an officer or candidate. This prohibition does not apply to members of City boards or commissions or general managers, or chief administrative officers who are engaging in fundraising on behalf of their own candidacies for elected office.

(C) Any individual who violates Subsection (d) shall be subject to disciplinary action and may be the subject of an Ethics Commission letter recommending suspension or removal in the same manner as provided by Section 3.1-102.5 of the Campaign and Governmental Conduct Code.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 228-06, File No. 060501, App. 9/14/2006; Ord. 234-09, File No. 090989, App. 11/20/2009)

...

SEC. 1.126. LIMITS ON CONTRIBUTIONS, OTHER PAYMENTS LIMITS, AND FUNDRAISING – BIDDERS, CONTRACTORS DOING BUSINESS WITH THE CITY AND OTHER PERSONS SEEKING OR RECEIVING PUBLIC BENEFITS.

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

(1) "Person who seeks or receives contracts-with" includes (A) any party or prospective party to a contractpublic benefit, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, president, vice-president, executive director, deputy director, any person with an ownership interest of more than 20 percent in the party, any subcontractor or sub-beneficiary listed in a bid,-or contract, or other document proposing or comprising the public benefit, 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, (B) any person with a financial interest in a public benefit, as well any member of that person's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, president, vice-president, executive director, or deputy director, and (C) any lobbyist, consultant, attorney, architect, permit expeditor, or other professional as prescribed by Ethics Commission regulation representing any of the above with regard to (1) seeking or receiving the public benefit or (2) the financial interest in the public benefit, unless the representation only consists of services that can only be provided by a licensed professional such as an attorney or architect.

(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,
- (E) community benefits agreements made in connection with land use decisions or project approvals, or
- ~~(D)~~(F) any other thing or matter except an agreement with a recognized collective bargaining organization over the terms and conditions of employment or a personal employment contract.

(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.

(4) "Financial interest" means: except as used under "Participant," an ownership interest of at least 10% or \$1,000,000 in the business, property, project, or other thing that is the subject or recipient of the public benefit.

(5) "Individual holding a city elective office" and "candidate for the office held by such individual" shall include the spouse and immediate family members of such individual or candidate, as defined by California Government Code section 82029.

(6) "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.), or any development agreement, not including an ordinance or resolution unless it applies

only to or provides an exception for a single project or property and not including the primary residence of a person who seeks or receives or their family member.

(7) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a public benefit and who has a financial interest in the decision, as described in California Government Code sections 87100 et seq. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person a public official, testifies in person before the official or a body on which the official sits, or otherwise acts to influence officials.

(8) "Party" means any person who files an application for, or is the subject of, a proceeding involving a public benefit.

(9) "Personal or campaign advantage" means:

- (A) a contribution,
- (B) a payment to a slate mailer organization,
- (C) a gift as that term is defined by Section 3.216 of the Campaign & Governmental Conduct Code,
- (D) a payment made to an agency for use of agency officials as defined by California Code of Regulations Section 18944,
- (E) a behested payment, as described by California Government Code Section 82015(b)(2)(B)(iii), of any amount,
- (F) any other payment to a nonprofit or business entity,
- (G) a contract that is not widely available to the public, including employment,
- (H) a contractual option,
- (I) an offer to purchase stock or other investment that is not widely available to the general public,
- (J) any other personal pecuniary interest, emolument, or other thing of value that is not widely available to the general public, other than compensation from the City and County of San Francisco, or
- (K) prohibited fundraising for any of the above, A - J.

(10) "Public benefit" means any of the following entered into with or provided by 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:

- (A) a contract,
- (A)(B) if the project or thing has a value or construction cost of \$1,000,000 or more, a (i) land use matter or (ii) other land use decision including a variance or other zoning change, special or conditional use permit, subdivision, adoption of, amendment to, or exception to a master, specific, or general plan, adoption of, amendment to, or exception to a development agreement or disposition and development agreement, or any land use resolution or ordinance pertaining to real property,

(C) a business, professional, and trade licenses and permits or other entitlements for use where discretion is exercised in the granting of the permit or license,

(D) for underwriting services for sales of revenue or general obligation bonds, (i) selection for a pre-qualified list, (ii) selection to contract, or (iii) membership in the syndicate providing underwriting services on the scale of the revenue or general obligation bonds,

(E) a tax, penalty, or fee exception, abatement, reduction, waiver or benefit not generally applicable or regularly available to similarly situated individuals,

(F) a tax savings resulting from a change in the law,

(G) any (i) franchise as defined by Administrative Code Section 11.1(p) or (ii) franchise or award to conduct any business activity in a large portion of or throughout the City and County in which no other competitor potentially is available to provide similar services, or

(B)(H) cash or any other specific thing of net value to the recipient, including an investment or a non-contractual grant but excluding employment with the City and County.

(11) "Threshold amount" means:

(A) For Section 1.126(a)(10)(A) or (C), \$50,000;

(B) For (10)(B), \$0, except \$50,000 if the public benefit concerns any decision that is not a land use matter;

(C) For (10)(D), \$0;

(D) For (10)(E), \$5,000;

(E) For (10)(F), \$50,000 in projected savings during the next 12 months;

(F) For (10)(G), \$50,000 in projected gross business activity during the next 12 months;

(A)(G) For (10)(H), \$10,000.

(b) Prohibition on Personal or Campaign advantageContribution. ~~No person who seeks or receives a public benefit 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 provide or arrange, directly or through intermediaries, make any personal or campaign advantagecontribution to:

(A) An individual holding a City elective office if (i) the public benefiteontraet must be approved by such individual, the board on which that individual serves, an appointee or subordinate of that individual, or a state agency theon-whose board or commission, including of a state agency, on which an appointee of that individual serves or (ii) the individual is the Mayor

or member of the Board of Supervisors, if the public benefit is a land use matter that must approved by 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;

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

(C) Any committee controlled by such individual or candidate;

(D) Any slate mailer organization that has produced in the past six months or intends to produce in the next six months a mailer featuring such individual or candidate, if such production is at the behest of the individual or candidate;

(E) Such individual or candidate's agency if he or she is the executive or a board member, unless the public benefit and personal or campaign advantage at issue are the same contract;

(H) Any person, if made at the behest of such individual or candidate;

(I) Any organization run at least in part by such individual, candidate, or their an appointee or subordinate; or

(B)(J) Any business that such individual or candidate or owns 20% or more of.

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

(3) At any time from the commencement of negotiations, solicitation, or filing or submission, whichever is earlier, for such public benefit contract until.

(A) The termination of negotiations, solicitation, or submission for such public benefit contract, if no decision for the public benefit will be made; or

(B) ~~Twelve~~ Six months have elapsed from the date the public benefit contract is approved or not approved, with the twelve month period restarting if any City and County authority subsequently considers appeal, overruling, or reconsideration of the decision.

(c) Prohibition on Receipt of Personal or Campaign advantage Contribution. No individual holding City elective office or committee controlled by such an individual shall solicit or accept any personal or campaign advantage contribution prohibited by subsection (b) at any time from the formal submission or solicitation of the proposed public benefit contract to or by

the individual until the termination of negotiations, solicitation, or submission for the public benefit contract, if no decision for the public benefit will be made, or twelve~~six~~ months have elapsed from the date the public benefit contract is approved or not approved. For the purpose of this subsection, a proposed public benefit contract that is provided via passage of a resolution or ordinance is formally submitted to the Board of Supervisors at the time of the introduction of a resolution or ordinance to approve the public benefit contract.

(d) **Forfeiture of Contribution.** In addition to any other penalty, each committee that receives a contribution prohibited by subsection (c) 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) **Notification.**

(1) **Prospective Parties to Public Benefits Contracts.** Any prospective party to a public benefit 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 Subsection (b) by the commencement of negotiations for such public benefit contract.

(2) **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, an appointee or subordinate of the officer, or a board or commission, including of a state agency, on which an appointee of the officer sits, notify the Ethics Commission, on an electronic form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves, their appointee or subordinate, or the board or commission 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 if the Clerk or Secretary of a Board on which the individual serves or a board or commission of a state agency on which an appointee of the officer serves has filed the form on behalf of the board. The form may consist of submission into a City and County online contract database. The City and County of San Francisco shall provide integration of its campaign finance and contract databases, with robust online transparency.

(3) **Persons With Financial Interests in Land Use Matters.** 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, shall file with the Ethics Commission a report including the following information:

(A) the board or commission 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;

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

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

(F) 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.

(4) **Reporting and Database Regulations.** By regulation, the Ethics Commission may prescribe requirements, similar to those in Subsections (e)(2) or (e)(3), for (A) notification of other approved public benefits by individuals holding City elective office, boards on which such individuals serve, appointees or subordinates of such individuals, or boards or commissions, including a-state agencies, on which appointees of such individuals serve and (B) other database integrations that provide transparency regarding the intersection between personal and campaign advantages and public benefits.

(5) **Disclosure of the Law.** The City and County shall provide any person applying or competing for a public benefit with written notice of the provisions in this Section. Such 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.

(f) **Disqualification.** Prior to rendering any decision in a proceeding involving a public benefit not widely available to the general public pending before an elected official, each official who received a personal or campaign advantage within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No elected official shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a public benefit pending not widely available the general public before the a public official of the City and County, if the official has willfully or knowingly received a personal or campaign advantage in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent, if the official knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in California Government Code sections 87100 et seq.

(g) **Debarment.**

(1) In addition to any other penalties or remedies established by this Chapter, a person who is found to have violated or to have aided or abetted a violation of this Section shall not be eligible to receive or seek a public benefit unless otherwise required by California or federal law

or the Ethics Commission, as a body, determines that mitigating circumstances exist concerning such violation. Debarment also applies to an entity that has the same or similar management, ownership, or principal employees as the debarred person and is organized after the proceeding that results in the person's debarment has been initiated.

(2) The Ethics Commission, as a body, shall determine whether mitigating circumstances apply whenever a violation of this Section is determined to have occurred. If the Ethics Commission determines that mitigating circumstances do not exist, the person found to be in violation shall be debarred for the following periods of time after the Ethics Commission's determination:

(A) One year for the first violation;

(B) Two years for the second violation;

(C) Three years for the third violation;

(D) Four years for the fourth and subsequent violations.

(3) The Ethics Commission may adopt regulations regarding mitigating circumstances, including what constitutes mitigating circumstances and any other information determined to be necessary.

(4) The Ethics Commission staff shall notify all agencies, departments, board and offices of a determination of debarment within ten business days of the determination. The Ethics Commission's determination regarding debarment is final as to all offices, debarments, boards, and agencies and may not be waived.

(5) If an awarding authority has an existing contract with a person who is identified in a debarment notice from the Ethics Commission staff, the awarding authority shall determine in writing and, if the awarding authority is a City board, commission or City Council, at a public meeting whether it is the best interests of the City to terminate the contract. An awarding authority shall not determine whether a violation of this Article or any other City law regarding campaign financing, lobbying, or governmental ethics has occurred.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 228-06, File No. 060501, App. 9/14/2006; Proposition H, 6/3/2008)

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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 residentvoter, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter or to enforce civil penalties as prescribed by Section 1.170(b). A resident may bring an action to enforce civil penalties only if the violation (1) relates to a candidate or committee that has raised or spent \$100,000 or more in a year where the violations consists of either improperly reporting \$50,000 or more or receiving \$10,000 or more over the limits, (2) relates to independent expenditures, electioneering communications, or member communications of \$10,000 or more in value per affected candidate, (3) relates to a prohibited payment or fundraising of \$50,000 or more to a single committee or person, (4) is of Section 1.126 and occurred more than 12 months after the effective date of an amendment to 1.126, or (5) is of 1.128 or 1.140.

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.

A Court may award reasonable attorney's fees and costs to any residentvoter who obtains injunctive relief or prevails in a civil action 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.

If a resident obtains an award of civil penalties, the voter shall receive 50 percent of the amount. The remaining 50 percent shall be deposited into the City and County's General Fund. In an action brought by the City Attorney or the Ethics Commission, the entire amount shall be paid to the City and County's General Fund.

(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.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; renumbered and amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 3-06, File No. 051439, App. 1/20/2006; Ord. 234-09, File. No. 090989, App. 11/20/2009)

SEC. 1.170. PENALTIES.

(a) **CRIMINAL.** Any person who knowingly or willfully violates any provision of this Chapter 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, other receipts, or expenditures done with intent to mislead or deceive or any willful or knowing violation of the provisions of Section 1.114 or 1.126 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 provided or received in excess of the amount allowable pursuant to Section 1.114 or 1.126 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 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 contributed or received in excess of the amount allowable pursuant to Section 1.114 or three times the amount provided or received in excess of the amount allowable pursuant to Section 1.126 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 shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for any penalties authorized therein.

(d) **LATE FILING FEES**

(1) **Fees for Late Paper Filings.** In addition to any other penalty, any person who files a paper copy of any statement or report after the deadline imposed by this Chapter shall be liable in the amount of ten dollars (\$10) per day after the deadline until the statement is filed.

(2) In addition to any other penalty, any person who files an electronic copy of a statement or report after the deadline imposed by this Chapter shall be liable in the amount of twenty-five dollars (\$25) per day after the deadline until the electronic copy or report is filed.

(3) **Limitation on Liability.** Liability imposed by Subsection (d)(1) shall not exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater. Liability imposed by Subsection (d)(2) shall not exceed the cumulative amount stated in the late statement or report, or two hundred fifty dollars (\$250), whichever is greater.

(4) **Reduction or Waiver.** The Ethics Commission may reduce or waive a fee imposed by this subsection if the Commission determines that the late filing was not willful and that enforcement will not further the purposes of this Chapter.

(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 person convicted of a misdemeanor under this Chapter may not act as a lobbyist, as

defined by Article II, or as a City contractor for four years following the date of the conviction, unless the court specifically determines at the time of sentencing that this provision should not be applied.

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

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; renumbered and amended by Proposition O, 11/7/2000; amended by Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 3-06, File No. 051439, App. 1/20/2006; Ord. 31-06, File No. 051773, App. 2/23/2006; Ord. 228-06, File No. 060501, App. 9/14/2006; Ord. 268-07, File No. 071003, App. 11/26/2007; Ord. 234-09, File No. 090989, App. 11/20/2009; Ord. 64-12, File No. 111082, App. 4/20/2012, Eff. 5/20/2012)