



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

PETER KEANE  
CHAIRPERSON

DAINA CHIU  
VICE-CHAIRPERSON

PAUL A. RENNE  
COMMISSIONER

QUENTIN L. KOPP  
COMMISSIONER

VACANT  
COMMISSIONER

LEEANN PELHAM  
EXECUTIVE DIRECTOR

**Date:** May 17, 2017

**To:** Members of the Ethics Commission

**From:** Kyle Kundert, Senior Policy Analyst

**Re:** **AGENDA ITEM 7: Introduction to the review and proposed revision of the Campaign Finance Reform Ordinance.**

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**Summary:** This memorandum provides the Commission with an introduction to Staff's proposed revision and review of the Campaign Finance Reform Ordinance ("CFRO"), including two initial memoranda on proposals from Supervisor Farrell, Supervisors Peskin and Ronen, and a proposed timetable for further consideration of these and related matters.

**Action Requested:** The Commission is not required to take an action at this time, but Staff will provide any policy direction acted on by the Commission to the proposals' authors for their information and consideration.

### Overview

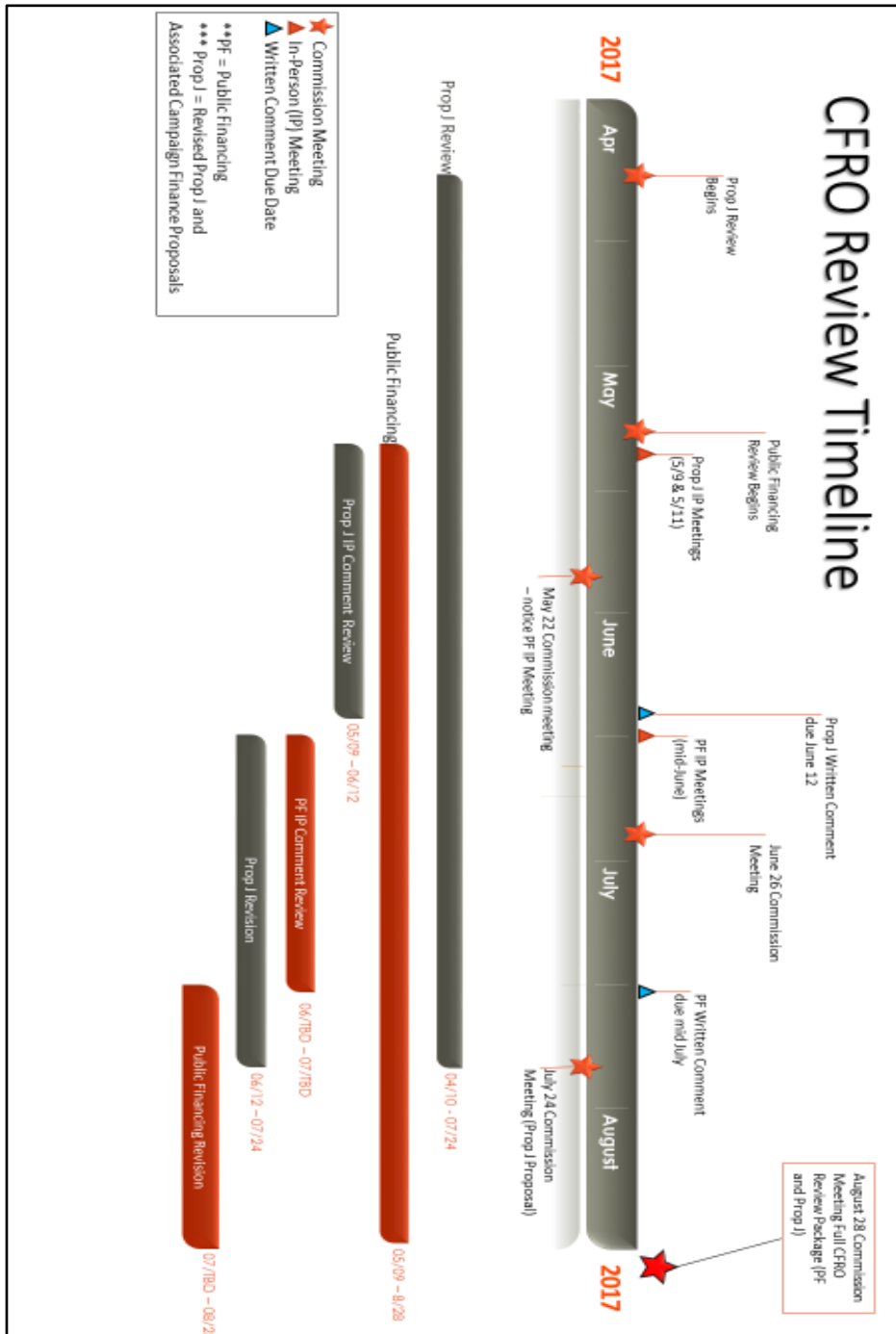
Commission Staff has been working diligently to analyze CFRO as part of the Commission's Annual Policy Plan ("Policy Plan"). As part of that review Staff has separately presented the Commission with a memorandum outlining the Revised Prop J which would modify and attempts to strengthen CFRO. The continued review of that proposal is included as Agenda item 6 for this meeting.

This item presents two campaign-finance related items, 7A and 7B, both of which address changes proposed by Supervisor Farrell (7A) and Supervisors Peskin and Ronen (7B). Staff has also provided a proposed schedule (see chart attached) for a comprehensive CFRO review, which would incorporate the Commission's fuller review of these items.

Staff began their internal review of CFRO this spring as part of the goals stated in the Policy Plan. This review has encompassed informal comment gathering from internal practitioners in each Staff division and a larger policy discussion that relates to potential improvements or clarifications that go along with the stated goals of CFRO. Along with that discussion, potential revision of the City's Public Financing system has also been identified by the Commission in its 2016 report on the public financing program as an area warranting focus. Based on that, Staff has identified two dates in early June for Interested Persons meetings to gather and analyze public comments as it relates to public financing.

## Staff Proposal

Staff is seeking the Commission’s policy direction as it relates to the review and proposed revision of CFRO, which would include the two attached items. Staff has provided recommendations in the memoranda that follow and would welcome further comment and discussion on the proposed timeline for the CFRO review.





# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

PETER KEANE  
CHAIRPERSON

Date: May 18, 2017

DAINA CHIU  
VICE-CHAIRPERSON

To: Members of the Ethics Commission

PAUL A. RENNE  
COMMISSIONER

From: Kyle Kundert, Senior Policy Analyst

QUENTIN L. KOPP  
COMMISSIONER

Re: **AGENDA ITEM 7A: Supervisor Farrell's campaign finance proposal to enhance disclosure of business entities' contributions (Board of Supervisors File No. 161196)**

VACANT  
COMMISSIONER

LEEANN PELHAM  
EXECUTIVE DIRECTOR

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**Summary:** This memorandum discusses Staff's preliminary research and identified policy considerations regarding a proposal introduced by Supervisor Mark Farrell to require San Francisco political committees to disclose additional information about campaign contributions they receive from business entities

**Action Requested:** As the Ethics Commission initiates its broader review of City campaign finance laws, this item appears on the Commission's May agenda to enable the Commission to provide its comments and further policy direction about the proposed new disclosure requirements.

### Introduction

As noted in the January 2017 Executive Director report, on January 10, 2017, the Board of Supervisors referred to the Ethics Commission for its review and comment a proposal introduced in November 2016 by Supervisor Farrell to require additional disclosures for campaign contributions from business entities to San Francisco political committees.

The proposed disclosures would amend the City's Campaign and Governmental Conduct Code ("C&GGC") Section 1.103. Pursuant to that section, the Board of Supervisors may amend Chapter 1 if the Ethics Commission approves the proposed amendment in advance by at least a 4/5 vote of all its members.

As proposed, the ordinance would require local campaign committees to disclose to the Ethics Commission additional information for every contribution received from a limited liability company, S corporation or partnership, including:

- the purpose of the entity;
- the names of the entity's principal officers; and

- information about any funds the entity has received through a contract or grant from any federal, state or local government agency within the previous 15 years for a project located in San Francisco.

Committees would be required to provide this at the same time that they are required to file campaign statements with the Ethics Commission. The ordinance provides that the Ethics Commission may, through regulation, specify the form and manner in which committees must submit this information. No funding necessary to develop or administer the new filing process, however, was provided in the ordinance.

Were these requirements to be adopted, additional funding in the Commission's budget would be required to develop an online process for the new public disclosure requirements.

The ordinance proposes an operative date of January 1, 2018. It has been assigned to the Rules Committee. A copy of the proposed ordinance appears directly following this memorandum.

## Discussion

Disclosure regimes, in the wake of *Citizens United*, are seen by many as the frontline of campaign finance regulation. As other areas of campaign finance regulation have eroded during the previous decade, disclosure laws have been expanded and largely upheld by the courts.<sup>1</sup> In the last seven years, the Supreme Court has directly addressed disclosure on three separate occasions—twice in the context of campaign finance regulation and once in the context of referendum petitions. Each time, it affirmed the constitutionality of disclosure requirements.<sup>2</sup>

In the proposed ordinance, the changes would require disclosure from the limited scope of business entities, including corporations and other corporate forms which have been seen as having an expanded and ever-greater voice in American politics, at the expense of average citizens.<sup>3</sup> Even where those contributions are legal, public finance experts have voiced a fear that corporate contributors are expanding their influence on political campaigns.<sup>4</sup> Much of the anecdotal evidence that exists in the disclosure arena seems to support the concern that an increased influx of corporate dollars in campaigns is potentially corrupting and requires management.<sup>5</sup>

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

<sup>2</sup> *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1459-60 (2014); *Doe v. Reed*, 561 U.S. 186 (2010); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 371 (2010).

<sup>3</sup> See for example, Bruce F. Freed and Marian Currinder, "Do Political Business in the Daylight," [USNEWS.com](http://USNEWS.com) (April 2016), Russell Berman, "How Can the U.S. shrink the influence of money in politics" (March 2016), Jon Schwarz and Lee Fang, "Cracks in the Dam: Three Paths Citizens United Created for Foreign Money to Pour Into U.S. Elections" <https://theintercept.com/2016/08/03/citizens-united-foreign-money-us-elections/> (August 2016)

<sup>4</sup> Chisun Lee, Katharine Valde, Benjamin T. Brickner, and Douglas Keith, "Secret Spending in the States," Brennan Center for Justice, June 26, 2016, <http://www.brennancenter.org/publication/secret-spending-states> .

<sup>5</sup> See for example, T.W. Farnam and Dan Eggen, "Interest-group spending for midterm up fivefold from 2006; many sources secret," WASHINGTON POST (October 4, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/03/AR2010100303664.html>; Ashley Balcerzak, "Surge in LLC contributions brings

## Disclosure: Bird's Eye View

Disclosure has been seen recently as the response to increased scrutiny over limitations on expenditures and contributions. Whereas courts have reviewed expenditure limits under strict scrutiny, they have typically reviewed disclosure requirements less strictly under the exacting scrutiny standard.<sup>6</sup> The *Buckley* Court initially held that disclosure regimes advance at least these three important governmental interests: 1) giving citizens information on where political contributions come from and how there are spent; 2) discouraging actual corruption or the appearance of corruption by publicizing large campaign contributions or expenditures; and 3) producing data used to detect violations of contribution limits. The *Buckley* Court was clear that “disclosure requirements – certainly in most applications – appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist.”<sup>7</sup> More recently, in *Citizens United*, the Court again upheld disclosure and disclaimer requirements.<sup>8</sup>

The empirical research in the field of disclosure seems to support the three governmental interests laid out in *Buckley*, although researchers admit that more focused examination is needed.<sup>9</sup> Generally, studies have demonstrated that disclosure provides much-needed information in a nebulous electoral process.<sup>10</sup> Studies show that voters use campaign finance information to “reveal whose interests a candidate will be inclined to serve once elected—whatever the candidate’s own substantive views.”<sup>11</sup> Further, empirical evidence shows the effects of attack ads are neutralized when donors are revealed.<sup>12</sup> And in places where disclosure has been effectively implemented, voters have demanded disclosure and punished campaigns who act with anonymity.<sup>13</sup> Finally, while statistics show that very few Americans even make political contributions of any amount,<sup>14</sup> the public has seen much larger amounts of campaign contributions given by entities like corporations, unions, special interest groups,<sup>15</sup> and

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more mystery about true donors,” [opensecrets.org](https://www.opensecrets.org) (April 27, 2017),

<https://www.opensecrets.org/news/2017/04/surge-in-llc-contributions-more-mystery/>.

<sup>6</sup> The *Buckley* Court began its discussion of disclosure by noting that mandated disclosure “can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” This meant, the Court explained, that disclosure requirements could not be justified “by a mere showing of some legitimate governmental interest.” Rather, such requirements “must survive exacting scrutiny,” which requires both a sufficiently important government interest and a “‘relevant correlation’ or ‘substantial relation’ between the governmental interest and the information required to be disclosed.”

<sup>7</sup> *Buckley*, 424 U.S. at 68.

<sup>8</sup> *Citizens*, 558 U.S. at 319.

<sup>9</sup> See for example, Abby K. Wood and Douglas M. Spencer, “In the Shadows of Sunlight: The Effects of Transparency on State Political Campaigns”, *Election Law Journal* (2016); Michael D. Gilbert and Benjamin F. Aiken, “Disclosure and Corruption”, *Election Law Journal* (2015).

<sup>10</sup> Heerwig, Jennifer, and Katherine Shaw. “Through a glass, darkly: The rhetoric and reality of campaign finance disclosure.” (2014).

<sup>11</sup> Daniel R. Ortiz, *The Informational Interest*, 27 J.L. & POL. 663, 676 (2012).

<sup>12</sup> Wood and Spencer at 5, citing (Dowling and Wichowsky, 2015).

<sup>13</sup> *Id.*

<sup>14</sup> See National Election Studies, Center for Political Studies, University of Michigan, *The NES Guide to Public Opinion and Electoral Behavior*.

<sup>15</sup> See <https://www.opensecrets.org/outsidespending/>

unlimited independent expenditures by millionaires.<sup>16</sup> A majority of Americans want full disclosure of these large and often undisclosed campaign contributions.<sup>17</sup>

On the other hand, critics of increased disclosure in campaign finance regulation have argued that disclosure can have the unintended consequence of pushing money into darker avenues of political giving, such as independent expenditures or issue advocacy.<sup>18</sup> Secondly, critics argue that disclosure can subject the discloser to harassment or economic reprisals, although the Supreme Court examined and contested that argument in *Doe v. Reed*.<sup>19</sup> <sup>20</sup> Lastly, critics of increased disclosure argue that disclosure regimes are implemented far too broadly and sweep up more activity than is necessary. Particularly, this has been evidenced when disclosure is extended beyond speech related to electing officials and into compelled disclosure of activities related to direct democracy activities, such as: ballot measures, initiatives and referenda.<sup>21</sup>

### Disclosure: Worm's Eye View

San Francisco has seen relatively modest levels of corporate giving as a percentage of political committees' total reported contributions over the past five years. As evidenced in the Chart 1 below, for example, in 2016 LLCs accounted for less than nine percent of the total \$66.5 million contributions made during this period to all committees, including candidate, ballot measure and general purpose committees. Although nine percent is a small fraction of the whole, corporate giving in 2016 nevertheless amounted to roughly 6 million dollars.

Note that much of the 2016 corporate giving came from relatively few contributors. When viewed over the past five years, five LLCs have been responsible for the clear majority of the giving in San Francisco campaigns, as seen in Chart 2, below. Five corporations (Five Point Holdings LLC, FC Pier 70, LLC/Forest City Residential Group, Inc., Pacific Waterfront Partners LLC, Yerba Buena Consortium LLC and Kilroy Realty, LP) have made nearly \$10 million in contributions to all committees during this period. Much of the spending was directed towards ballot measures directly relating to these corporation's business activity.

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<sup>16</sup> See 2012 Top Donors to Outside Spending Groups,

<https://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=D>.

<sup>17</sup> Megan Thee-Brenan, "Americans Want Disclosure and Limits on Campaign Spending," NEW YORK TIMES (Oct. 28, 2010).

<sup>18</sup> Eric Wang, "Disclosure's Unintended Consequences", The Hill (September 2013),

<http://thehill.com/blogs/congress-blog/technology/323135-disclosures-unintended-consequences->

<sup>19</sup> *Doe* (2010). (J. Scalia; remarking that "harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed).

<sup>20</sup> Hasen, Richard L. "Chill Out: A Qualified Defense of Campaign Finance Disclosure Laws in the Internet Age." (2011) citing: Smith, Bradley A. *Unfree speech: the folly of campaign finance reform*. Princeton University Press, (2009).

<sup>21</sup> Brief of Amici Curiae, Center for Competitive Politics, *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010); (Arguing compelled disclosure for "issue committees" distracts from the information and arguments concerning ballot questions, and fails to legitimately or significantly inform voters).

Chart 1

Percent of All Contributions from LLC, LLP, RLLP, LP

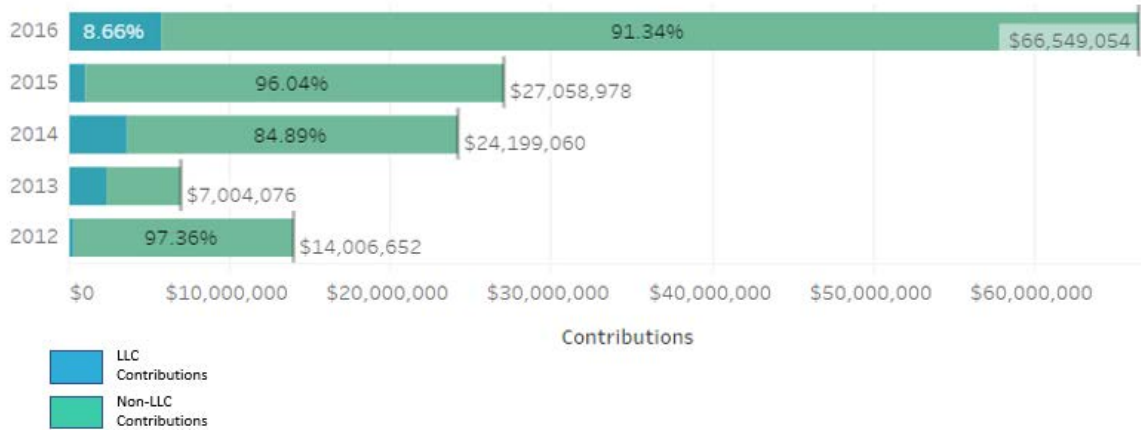
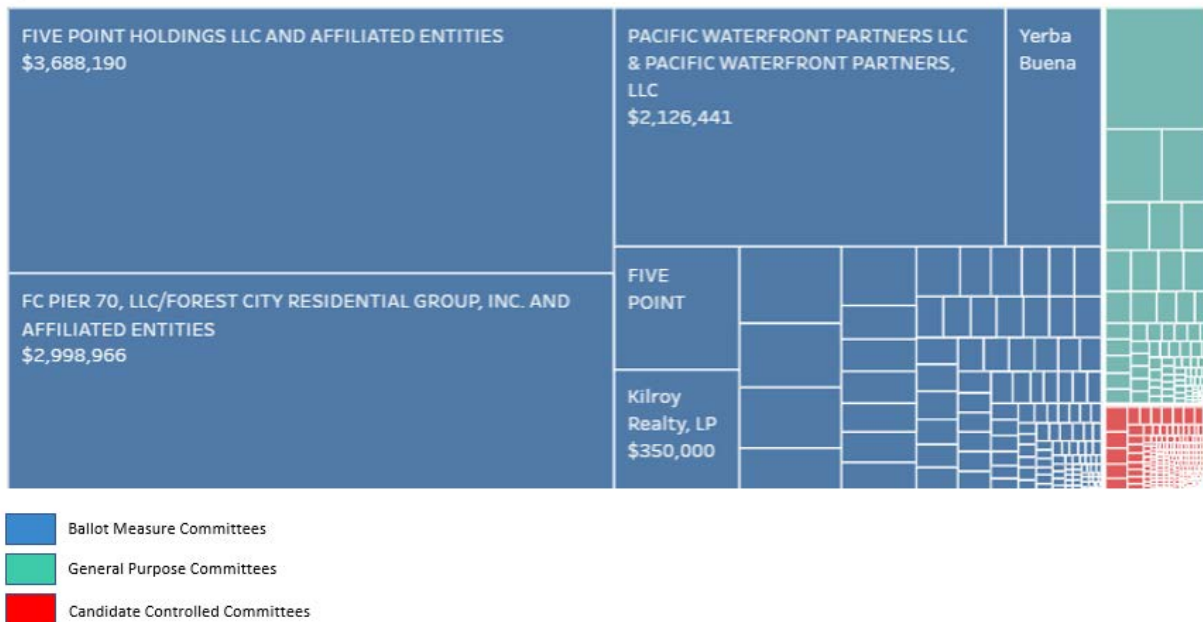


Chart 2

Largest LLC Contributors since 2012



**Other Considerations**

As discussed above, the general policy goal of additional disclosure may have merit, as public disclosure can advance voters’ electoral knowledge, and increase electoral integrity. The ordinance proposed may more effectively shine light on which and how these corporations and their associated officers are spending on San Francisco election activities. However, even if Supervisor Farrell’s proposal were

enacted, it may be difficult to ascertain how much money corporations and their principal officers have spent outside traditional contributions, such as through independent expenditures or 501c group advocacy. Ensuring any new disclosure requirements can be effectively implemented and enforced also requires consideration of the administrative requirements necessary for their intended impact. In this regard, three considerations are noted below for more in-depth focus and discussion.

### 1. Breadth of proposed new disclosures

The Commission should consider, based on the evidence above, whether the proposals provisions would survive the exacting scrutiny standard stated in *Buckley*, which requires both a sufficiently important government interest and a ‘substantial relation’ between the governmental interest and the information required to be disclosed.

For example, as proposed, the ordinance would require all local campaign committees to disclose, for every contribution received from a limited liability company, S corporation or partnership, any funds the entity has received through a contract or grant from any federal, state or local government agency within the previous 15 years for a project located in San Francisco.

The Commission will want to consider whether the length and type of disclosure which requires a retroactive revelation of government contracts or grants going back 15 years is substantially related to at least one of the three interests that have passed the courts exacting scrutiny rationale, again those are: 1) the informational interest, 2) the corruption interest, and 3) the enforcement interest.

### 2. Promote comprehensive laws through seamless alignment of campaign law improvements

As the Commission’s Annual Policy Plan indicates, a comprehensive review of city’s Campaign Finance Reform Ordinance (“CFRO”) has been slated to begin this spring to ensure compliance, effectiveness, and the integrity of the City’s campaign finance rules. Toward that end, Staff has developed a more detailed timeline for the Commission’s larger CFRO review revision project, which includes a goal of updating several campaign finance-related proposals, including the Revised Prop J. To help ensure that these related, moving parts of city law are effectively harmonized, Staff recommends that the proposed ordinance be folded into that review and considered by the Commission as part of that larger package.

Staff recommends that the comprehensive package be reviewed by the Commission before advancing it with its recommendations to the Board of Supervisors for action. Staff will continue to evaluate and integrate proposals into the CFRO review for the Commission’s consideration to support comprehensive implementation of any CFRO changes.

### 3. Funding to implement and administer the new disclosure requirements

Any amendment or expansion to the current disclosure requirements of CFRO will result in the additional expenditure of organizational resources to effectively implement and enforce those new requirements. As proposed, Staff estimates the initial iteration of the proposed disclosure ordinance could require \$115,000 to implement, followed by potential maintenance costs of roughly \$40,000 annually. However, the current draft of the proposal contains no funding mechanism to implement



changes within existing disclosure software. Alternatively, costs associated with staff time required to process a manual disclosure system have not been calculated, as that approach within existing staffing levels would could not ensure timely and effective public disclosure given other existing disclosure mandates.

### **Recommendations**

Staff supports the policy goals of the proposal generally as effective disclosure is an essential mechanism for deterring corruption and providing valuable information to voters to make informed choices. Further, expanding disclosure is important if we want to continue to shine light on all significant sources of campaign funding that have a role in San Francisco elections. Staff recommends that the mechanism of the proposed ordinance be further reviewed to ensure a strong and meaningful nexus to city decisions. In addition, Staff recommends that an appropriate funding mechanism be established as part of the proposal to ensure its implementation in practice is not rendered flawed and ineffective.



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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: May 17, 2017

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Policy Analyst

Re: **AGENDA ITEM 7B: Supervisor Peskin and Ronen's campaign finance proposal to enhance disclosure of contributions and ban contributions from persons with pending or recently resolved land use matters, (Board of Supervisors File No. 170029).**

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**Summary:** This memorandum discusses Staff's research and identified policy considerations to date regarding Supervisor Peskin and Ronen's proposal to require disclosure of contributions solicited by elected officials for ballot measure and independent expenditure committees, require disclosure of bundled contributions and prohibit campaign contributions from persons with pending or recently resolved land use matters.

**Action Requested:** As the Ethics Commission initiates its broader review of City campaign finance laws, this item appears on the Commission's May agenda to enable the Commission to provide its comments and further policy direction about the proposed disclosure regime and contribution ban.

### Introduction

The proposal was introduced on January 10, 2017 and referred to the Ethics Commission on March 22, 2017. As proposed, the ordinance would enact and expand campaign disclosure requirements for certain persons and would prohibit the giving and solicitation of contributions from individuals with a pending or recently resolved "land use matter" before the City.

The proposed disclosures would amend the City's Campaign and Governmental Conduct Code ("C&GCC") Section 1.103. Pursuant to that section, the Board of Supervisors may amend Chapter 1 if the Ethics Commission approves the proposed amendment in advance by at least a 4/5 vote of all its members.

Specifically, the proposal would:

1. Require city elective officers, or subordinates working on their behalf, to disclose any contributions of \$10,000 that they have solicited for a ballot measure committee or independent expenditure committee within 24 hours.
  - a. The officers or subordinates would need to disclose their involvement in the solicitation and other information about the solicitation to the Ethics Commission.
2. Require candidate-controlled committees to identify the persons who have bundled \$5,000 or more in campaign contributions for their fundraising efforts.
  - a. “bundling” would include activities such as asking others for contributions, hosting fundraising events or delivering contributions made by other persons.
3. Prohibit persons with a financial interest in certain land use matters from making campaign contributions. Such persons would be prohibited from making contributions from the filing or submission of the land use matter until six months after the date of the final decision or ruling. Candidates for Board of Supervisors or Mayor and their controlled committees would also be prohibited from soliciting such contributions.
  - a. Any person with a financial interest in a land use matter would be required, within 10 days of the filing or submitting of the matter to disclose to the Ethics Commission a report of information related to the filing.

As proposed, the ordinance would become effective 30 days after enactment.

As proposed, the ordinance does not provide any funding to develop and implement a public disclosure process for the proposed disclosure requirements.

A copy of the proposed ordinance appears directly following this memorandum.

## **Discussion**

The proposal would add three additional regulations to Chapter 1 of the City’s Campaign and Governmental Code of Conduct (C&GGC”). Those regulations generally affect two separate areas of campaign finance law: disclosure and contribution limits. The first two regulations generally expand Chapter 1’s disclosure regime to include contributions solicited by city elected officers for ballot measure committees, independent expenditure committees, and bundled campaign contributions. The third regulation would prohibit persons with pending or recently resolved land use matters before the City from contributing to certain elected officials. This memorandum will begin with a discussion of the legal and empirical rationales associated with regulations implementing disclosure and contribution limits. The memorandum will conclude with policy considerations for the Commission to deliberate, as well as Staff’s recommendations on the proposal.

## Disclosure Regimes

Disclosure has always been central to campaign finance regulation. However, disclosure has only recently been seen as the answer to increased scrutiny over limitations on expenditures and contributions rather than an add-on to those more contentious forms of campaign finance regulation.<sup>1</sup> The *Buckley* Court initially held that disclosure regimes advance at least these three important governmental interests: 1) giving citizens information on where political contributions come from and how there are spent; 2) discouraging actual corruption or the appearance of corruption by publicizing large campaign contributions or expenditures; and 3) producing data used to detect violations of contribution limits.<sup>2</sup>

Further, The *Buckley* Court noted that mandated disclosure “can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” The Court further explained, that disclosure requirements could not be justified “by a mere showing of some legitimate governmental interest.”<sup>3</sup> Rather, such requirements “must survive exacting scrutiny,” which requires both a sufficiently important government interest and a “‘relevant correlation’ or ‘substantial relation’ between the governmental interest and the information required to be disclosed.”<sup>4</sup> The court, by establishing that all three interests meet the exacting scrutiny standard, substantially reduced the burden on governments to prove that their disclosure regulations were sufficient to pass constitutional muster. In contrast, regulations imposing contribution or expenditure limits require governments to surpass more restrictive rationales. In the campaign finance context, only corruption and its appearance have been found to be a satisfactory governmental interest to pass constitutional muster when governments seek to limit contributions or expenditures.<sup>5</sup>

While the courts have placed lofty expectations on disclosure regimes as having--ostensibly, inherent and obvious benefits, the question of whether disclosure is and has been an effective tool in advancing the three interests stated by the courts--is an empirical one, which is still being fully developed. Much of the initial empirical evidence does reinforce the stated benefits recognized by the courts.<sup>6</sup> Most importantly, researchers have demonstrated that effective disclosure regimes allow voters to evaluate whose interests a candidate would be serving if elected.<sup>7</sup> Alternatively, critics have highlighted the limitations of disclosures requirements. For instance, some research points to the potential for disclosure to push political money into darker corners of political activity, such as issue advocacy or 501c

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<sup>1</sup> See Ciara Torres-Spelliscy, “Has the Tide Turned in Favor of Disclosure? Revealing Money in Politics after Citizens United and Doe v. Reed” (2011).

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

<sup>3</sup> *Id.* at 64.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 26.

<sup>6</sup> See for Example: Larry M. Bartels, Uninformed Votes: Information Effects in Presidential Elections, 40 AM. J. POL. SCI. 194, 217 (1996), Heerwig, Jennifer, and Katherine Shaw. “Through a glass, darkly: The rhetoric and reality of campaign finance disclosure.” (2014), Daniel R. Ortiz, The Informational Interest, 27 J.L. & POL. 663, 676 (2012).

<sup>7</sup> See for Example, Abby K. Wood and Douglas M. Spencer, “In the Shadows of Sunlight: The Effects of Transparency on State Political Campaigns”, Election Law Journal (2016); Michael D. Gilbert and Benjamin F. Aiken, “Disclosure and Corruption”, Election Law Journal (2015).

spending.<sup>8</sup> This research notes that this may be especially true where the disclosure is excessively burdensome on the regulated class or where the enforcement of the disclosure regime is ineffective.<sup>9</sup>

### Contribution Limits and Bans

At the center of the campaign finance reform debate is the concern that campaign contributions from entrenched private interests give rise to corruption and its appearance. This concern has motivated the U.S. Supreme Court to uphold most contribution limits at the federal and state level.<sup>10</sup> In doing so, however, the Court has recognized only one governmental interest that is sufficiently important to justify restrictions on campaign contributions: the interest in preventing *quid pro quo* corruption or its appearance.<sup>11</sup>

Specifically, 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."<sup>12</sup> 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."<sup>13</sup> The Court further noted, however, that because contribution limits are "merely `marginal' speech restrictions" and "lie closer to the edges than to the core of political expression," they are "subject to relatively complaisant review under the First Amendment."<sup>14</sup>

Important in the proposed regulation before the Commission is the additional wrinkle that it deals with not just a contribution limit but rather a complete contribution ban. The distinction, while having initial appeal has been found unpersuasive by at least two court of appeals circuits.<sup>15</sup> Those courts noted that "Although a ban ends association rights to a greater degree than does a limit by foreclosing the ability to make even a small donation, this amounts to a difference *in the scope* of a particular law, not a difference in the type of activity regulated by the law."<sup>16</sup> This is not to say that the difference in scope between a ban and a limit should be ignored. But it does mean, as the Supreme Court noted in *Beaumont* that "the time to consider it is when *applying* scrutiny at the level selected, not in selecting

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<sup>8</sup> See for Example: Eric Wang, "Disclosure's Unintended Consequences", The Hill (September 2013), Dick M. Carpenter, Institute for Justice, Disclosure Costs: Unintended Consequences of Campaign Finance Reform (2007), available at [http://www.ij.org/images/pdf\\_folder/other\\_pubs/DisclosureCosts.pdf](http://www.ij.org/images/pdf_folder/other_pubs/DisclosureCosts.pdf).

<sup>9</sup> See *Supra* note 7 Wood and Spencer at 6-7 (The availability of the signaling benefit varies with the strength of the disclosure regime) (In sum, the traditional view of campaign finance disclosure pits specific, individual level burdens against diffuse public benefits. From the perspective of an individual, the benefits of disclosure are relatively fixed regardless of the disclosure regime, whereas the costs of disclosure vary depending on the specific rules governing the contribution itself).

<sup>10</sup> See for Example: *Buckley at 143*, but see: *Randall v. Sorrell*, 547 U.S., 126 S. Ct. 2479, (2006).

<sup>11</sup> *McCutcheon v. Federal Election Com'n*, 134 S. Ct. 1434, 572 U.S., 188 (2014).

<sup>12</sup> *Id.* at 1444.

<sup>13</sup> *Id.*

<sup>14</sup> *Federal Election Comm'n v. Beaumont*, 539 U.S. 146, 123 S. Ct. 2200, at 161. (2003).

<sup>15</sup> See: *Preston v. Leake*, 660 F. 3d 726 (4<sup>th</sup> Cir. 2011) and *Green Party of Connecticut v. Garfield*, 616 F. 3d 189 (2d Cir. 2010)

<sup>16</sup> *Preston at 734*.

the standard of review itself.”<sup>17</sup> For these proposed regulations, we must then determine whether the contribution ban in the proposal puts forward a sufficiently important interest and whether the interest is closely drawn.

Prior to 2000, federal courts differed on how low campaign contributions could be restricted and still be constitutional. The U.S. Supreme Court answered this question in *Nixon v. Shrink Missouri Gov't PAC*.<sup>18</sup> In that case the Court noted that the test for determining the validity of a limitation (even if that limitation is an absolute ban), is whether the limit is so low as to impede the ability of candidates to amass the resources necessary for effective advocacy.<sup>19 20</sup>

Several states and the federal government impose bans on contributions in certain limited contexts. For example, in at least three states, including California, there are prohibitions on lobbyists from making contributions at any time to statewide or legislative candidates that the lobbyists are paid to lobby.<sup>21</sup> Additionally, at the Federal level, the Court of Appeals for the District of Columbia recently upheld a ban on contributions to federal officeholders by federal contractors.<sup>22</sup>

It is less clear whether a law could ban contributions by other invested persons. To impose a complete ban, the government must be able to show the relationship between the contributions and a corrupting influence. It should be further noted that any limit or prohibition that is ultimately enacted must be supported by a fully-developed factual record informed by interested person’s meetings, further legal research and empirical evidence.<sup>23</sup>

While the courts have been more skeptical of the inherent effectiveness of contribution limits, as opposed to disclosure regimes, a fairly robust record of empirical research does exist to evaluate contribution limits.<sup>24</sup> Again, while an evaluation of the research in its entirety is beyond the scope of this memorandum, we can provide a summation of that exploration. The research generally points to the success of limiting donors’ influence on policy choice when stricter contribution limits and fuller

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<sup>17</sup> *Beaumont* at 162.

<sup>18</sup> *Nixon v. Shrink Missouri Government PAC*, 119 S. Ct. 901, 525 U.S. 1121, (1999).

<sup>19</sup> *Id.* at 396-97.

<sup>20</sup> It is important to note that just 6 years after the decision in *Nixon*, the Court found Vermont’s contribution limits of \$250 to State Candidates to be unconstitutional, holding: “[The] limits violate the First Amendment, for they burden First Amendment interests in a manner that is disproportionate to the public purposes they were enacted to advance.” *Randall v. Sorrell*, 547 U.S., 126 S. Ct. 2479, (2006).

<sup>21</sup> See: Lobbyist and Lobbying Firm Restrictions, available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Lobbying/Lobbyist-Manual-Folder/Lobbying%20Manual%20-%20Chapter%207.pdf>

<sup>22</sup> *Wagner v. Federal Election Commission*, 793 F.3d 1 (D.C. Cir. 2015).

<sup>23</sup> *Citizens for Clean Government v. City of San Diego*, 474 F.3d 647 (9th Cir. 2007) (“We cannot hold that hypotheticals, accompanied by vague allusions to practical experience, demonstrate a sufficiently important state interest.”) See Also: *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 392 (2000) (“We have never accepted mere conjecture as adequate to carry a First Amendment burden”)

<sup>24</sup> See for Example: Cotton, Christopher. “Pay-to-play politics: Informational lobbying and contribution limits when money buys access.” *Journal of Public Economics* 96.3 (2012): 369-386, Stratmann, Thomas, and Francisco Javier Aparicio. “Competition Policy for Elections: Do Campaign Contribution Limits Matter?” (2001), Hasen, Richard L. “Rethinking the Unconstitutionality of Contribution and Expenditure Limits in Ballot Measure Campaigns.” (2005).

transparency are in place.<sup>25</sup> Once more, as is typical of campaign finance regulation, contribution limits are not without their stated limitations. Opponents again invoke the law of unintended consequences to cast doubt on the efficacy of contribution limits.<sup>26</sup>

## **Other Considerations**

As discussed above, the general goals contained in the proposal may have merit, since both contribution limits and disclosure can limit corruption and/or increase voters' informational penchant, among other interests. As the above research points out, much of the effectiveness of any disclosure regime will stem from its successful implementation and enforcement. However, as noted above, no funding is identified in the proposal to develop and implement mechanisms for these new disclosure requirements. Operationally, it would be difficult to fully implement an effective public disclosure regime without a sufficient funding mechanism contained within the final proposal.

Additionally, although Staff has begun to develop an anecdotal record of instances of corruption, for a full contribution ban to pass constitutional muster we will require a more fully developed record supported by empirical evidence, interested person meetings, etc. In that vein, and to ensure any new regulations can be effectively implemented and enforced, we are required to evaluate the following considerations.

### 1. Breadth of Proposed New Disclosures

The Commission should consider, based on the evidence above, whether the proposals disclosure provisions would survive the exacting scrutiny standard stated in *Buckley*, which requires both a 'sufficiently important' government interest and a 'substantial relation' between the governmental interest and the information required to be disclosed.

The Commission will want to consider whether the type of disclosures contained in the proposal are substantially related to at least one of the three interests that have passed the courts exacting scrutiny rationale: 1) the informational interest, 2) the corruption interest, and 3) the enforcement interest.

Secondly, the Commission will want to consider whether the disclosure regime advanced in the proposal will have the stated effect(s) that the courts have cited. For any disclosure regime to meet its stated goals it must be implemented so that the regulated class understands their obligations under the regime. Additionally, it must be enforced so the Commission can track and audit for compliance.

Lastly, any new regulation will require organizational resources to ensure sufficient training and outreach about the new provisions. Because the disclosure regimes contained in the proposal require

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<sup>25</sup> See for Example: Fang, Hanming, Shapiro, Dmitry, et al. "Contribution Limits and Transparency in A Campaign Finance Experiment." (2015), Torres-Spelliscy, Ciara, et al., "Electoral Competition and Low Contribution Limits" (2009), Thomas Stratmann, "Contribution Limits and the Effectiveness of Campaign Spending" (2004).

<sup>26</sup> See: *Supra* note 7, Also see: Contribution Limits: Center for Competitive Politics, available at: <http://www.campaignfreedom.org/external-relations/contribution-limits/>

the disclosure of a substantial amount of material, the burden will fall on the regulated class of individuals to learn and understand the law. The Commission, however, will be responsible for ensuring that forms, guidance and other tools are in place for the regulated class to use and to ensure the disclosure regimes are as effective as possible.

## 2. Expansion of Contribution Ban to Person with Pending Land Use Matters

As briefly noted in the contribution limits section above, the Commission should consider, whether the proposals' expansion of a contribution ban to a person with pending or recently concluded land use matters would survive the scrutiny developed in *Buckley*. That standard provides that any 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.

It is important to note that the proposal, as written, does contain an exception for an individual's primary residence, which has the effect of narrowing the scope of the proposals regulated class to comply with the required level of review. While this may help "closely draw" the proposal, the Commission must still evaluate whether the proposal will be able to show a sufficient nexus between the land use decision recipients contributions and a corrupting effect.

The Commission will additionally want to consider whether expanding a contribution ban to a previously unrecognized class of contributors advances the goals of the C&GCC or whether the ban, as opponents argue, will have the unintended consequence of pushing this money into "darker" corners of political giving.

Finally, the Commission should consider how Staff will track the persons with qualifying land use matters. Staff would likely have to develop software or work with other City agencies who make land use decisions to create a system that tracks which persons with land use decisions are prohibited from contributing. The proposal does put the impetus on the land use decision recipient to notify the Commission within 10 days, but in order for the Commission to audit and enforce this section, Staff would have to ensure that the reported list of land use decision recipients is true and accurate.

## 3. Promote Comprehensive Laws Through Seamless Alignment of Campaign Law Improvements

As the Commission's Annual Policy Plan indicates, a comprehensive review of the City's Campaign Finance Reform Ordinance ("CFRO") has been slated to begin this spring to ensure compliance, effectiveness, and the integrity of the City's campaign finance rules. Toward that end, Staff has developed a more detailed timeline for the Commission's larger CFRO review revision project, which includes a goal of updating several campaign finance-related proposals, including the Revised Prop J. To help ensure that these related, moving parts of city law are effectively harmonized, Staff recommends that the proposed ordinance be folded into that review and considered by the Commission as part of that larger package. Of special note in the instant case is that Revised Prop J, previously presented to



the Commission at their April 24, 2017 meeting, contains a provision that closely mirrors the contribution prohibition contained within.<sup>27</sup>

Staff recommends that the comprehensive package be reviewed by the Commission before advancing it with its recommendations to the Board of Supervisors for action. Staff will continue to evaluate and integrate proposals into the CFRO review for the Commission's consideration, in an effort to support comprehensive implementation of any CFRO changes.

#### 4. Funding to Implement and Administer the New Disclosure Requirements

Any amendment or expansion to the current disclosure requirements of CFRO will result in the additional expenditure of organizational resources to effectively implement and enforce those new requirements. Similar to estimates made for other disclosure regimes, Staff estimates any initial iteration of the proposed disclosure, assuming its implemented independently of other provisions, could require as much as \$115,000 to implement, followed by potential maintenance costs of roughly \$40,000 annually. However, the current draft of the proposal contains no funding mechanism to implement changes within existing disclosure software. Alternatively, Staff has not calculated the costs associated with staff time required to process a manual disclosure system within existing staffing levels, since it could not ensure timely and effective public disclosure given other existing disclosure mandates.

#### **Recommendations**

Staff supports the goals of the proposal generally. Effective disclosure is an essential mechanism for deterring corruption and providing valuable information so voters can make informed choices. Further, expanding disclosure is important if we want to continue to shine light on all significant sources of campaign funding that have a role in San Francisco elections. Staff recommends that the mechanisms of the proposed ordinance be further reviewed to ensure a strong and meaningful nexus to city decisions. In addition, Staff recommends that an appropriate funding mechanism be established as part of the proposal to ensure its implementation in practice is not rendered flawed and ineffective.

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<sup>27</sup> It should be noted that the prohibition in Revised Prop J is actually more broad than contribution ban in this proposal. Prop J's current iteration restricts political activity beyond just the contribution ban. Further, the Peskin-Ronen Proposal makes an important exception for land use matters involving an individual's primary residence.

[Campaign and Governmental Conduct Code - Campaign Contributions from Business Entities]

**Ordinance amending the Campaign and Governmental Conduct Code to require additional disclosures for campaign contributions from business entities to San Francisco political committees.**

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

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

Section 1. The Campaign and Governmental Conduct Code is hereby amended by revising Section 1.104 and adding Section 1.124, to read as follows:

**SEC. 1.104. DEFINITIONS.**

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

\* \* \* \*

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

\* \* \* \*

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

(a) Additional Disclosures. In addition to the campaign disclosure requirements imposed by the California Political Reform Act and other provisions of this Chapter, any San Francisco general purpose committee, candidate committee, or committee primarily formed to support or oppose a City ballot measure or candidate for City elective office that receives a contribution from a business entity must disclose the following information to the Ethics Commission for each contribution:

1 (1) the purpose of the business entity;

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

5 (3) whether the business entity has received funds through a contract or grant from any  
6 federal, state or local government agency within the last 15 years for a project located in San  
7 Francisco, and if so, the name of the government agency that provided the funding, the amount of funds  
8 provided, and the date of the contract or grant agreement between the government agency and the  
9 business entity.

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

14  
15 Section 2. Effective and Operative Dates. This ordinance shall become effective 30  
16 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
17 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
18 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall  
19 become operative on January 1, 2018.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By: \_\_\_\_\_  
24 JON GIVNER  
25 Deputy City Attorney

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BOARD of SUPERVISORS



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## MEMORANDUM

TO: LeeAnn Pelham, Executive Director, Ethics Commission

FROM: *ll*  
*for* Derek Evans, Clerk, Rules Committee  
Board of Supervisors

DATE: March 22, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following legislation, introduced by Supervisor Peskin on January 10, 2017. This matter has been referred to the Ethics Commission for comment and recommendation.

Pursuant to Campaign and Governmental Conduct Code, Section 1.103, the Board of Supervisors may amend Chapter 1 of that code if the Ethics Commission approves the proposed amendment in advance by at least a 4/5 vote of all its members.

### File No. 170029

**Ordinance amending the Campaign and Governmental Conduct Code to require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; require disclosure of bundled campaign contributions; and prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, and their controlled committees, from any person with pending or recently resolved land use matters.**

Please submit the Commission's response, which will be included with the legislation, with this cover sheet.

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**RESPONSE FROM ETHICS COMMISSION**

\_\_\_\_ **Approved** (*by \_\_\_\_ vote*)

\_\_\_\_ **Rejected** (*by \_\_\_\_ vote*)

\_\_\_\_ **Recommendation Attached**

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**Chairperson, Ethics Commission**

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**Date**

c: Shaista Shaikh, Ethics Commission

1 [Campaign and Governmental Conduct Code - Disclosure Requirements for Campaign  
2 Fundraising and Prohibiting Campaign Contributions from Persons with Land Use Matters]

3 **Ordinance amending the Campaign and Governmental Conduct Code to require**  
4 **disclosure of contributions solicited by City elective officers for ballot measure and**  
5 **independent expenditure committees; require disclosure of bundled campaign**  
6 **contributions; and prohibit campaign contributions to members of the Board of**  
7 **Supervisors, candidates for the Board, the Mayor, candidates for Mayor, and their**  
8 **controlled committees, from any person with pending or recently resolved land use**  
9 **matters.**

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

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

18 Section 1. The Campaign and Governmental Conduct Code is hereby amended by  
19 revising Section 1.104 and adding Sections 1.123, 1.125, and 1.127, to read as follows:

20 **SEC. 1.104. DEFINITIONS.**

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

22 \* \* \* \*

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

24 \* \* \* \*

25 "Financial interest" shall mean an ownership interest of at least 10% or \$1,000,000 in the  
project or property that is the subject of the land use matter. "Financial interest" shall also mean



1 holding the position of President, Vice-President, Chief Executive Officer, Chief Financial Officer,  
2 Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors.

3 \* \* \* \*

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

11 \* \* \* \*

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

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

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

19 “Indirectly solicits” shall mean a solicitation made by any subordinate of a City elective officer,  
20 unless the subordinate or the City elective officer can demonstrate by clear and convincing evidence  
21 that the subordinate acted without the City elective officer’s authorization or knowledge.

22 “Subordinate” shall mean any employee of the City elective officer’s department; provided that,  
23 subordinate employees of a member of the Board of Supervisors shall mean the legislative aides that  
24 the member directs and supervises.

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

6                   (1) the name of the contributor;

7                   (2) the amount of the contribution;

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

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

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

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

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

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

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



1                    **SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED**

2 **CONTRIBUTIONS.**

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

5                    “Bundle” shall include the following fundraising activities:

6                    (1) requesting that another person make a contribution;

7                    (2) inviting a person to a fundraising event;

8                    (3) supplying names to be used for invitations to a fundraising event;

9                    (4) permitting one’s name or signature to appear on a solicitation for contributions or  
10 an invitation to a fundraising event;

11                    (5) providing the use of one’s home or business for a fundraising event;

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

13                    (7) hiring another person to conduct a fundraising event;

14                    (8) delivering a contribution, other than one’s own, through a third party, or in person;

15 or

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

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

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

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

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

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

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

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

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

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

17                   (2) fundraising staff who are paid by a committee to collect contributions; provided,  
18 that this exception shall only apply to one person for each committee.

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

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



1                    **SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS**

2 **BEFORE A DECISION-MAKING BODY.**

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

4                    *“Prohibited contribution” is a contribution to (1) a Member of the Board of Supervisors, (2) a*  
5 *candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, or (5) a*  
6 *controlled committee of a member of the Board of Supervisors, the Mayor or a candidate for either*  
7 *office.*

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

9                    *(1) No person with a financial interest in a land use matter before the Board of Appeals,*  
10 *Board of Supervisors, Building Inspection Commission, Commission on Community Investment and*  
11 *Infrastructure, Department of Building Inspection, Office of Community Investment and Infrastructure,*  
12 *Historic Preservation Commission, Planning Commission, or Planning Department shall make any*  
13 *prohibited contribution at any time from the filing or submission of the land use matter until six months*  
14 *have elapsed from the date that the board or commission renders a final decision or ruling. If the*  
15 *person is a business entity, such restriction shall also include any member of such person's board of*  
16 *directors, its chairperson, chief executive officer, chief financial officer, and chief operating officer.*

17                    *(2) The prohibition set forth in subsection (b)(1) shall not apply if the person's land use*  
18 *matter concerns their primary residence, or the primary residence of that person's family members.*

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

1           (c) Prohibition on Receipt of Contributions. *It shall be unlawful for a Member of the Board of*  
2 *Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, or*  
3 *controlled committees of such officers and candidates, to solicit or accept any contribution prohibited*  
4 *by subsection (b).*

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

12           (e) Notification. *Any person with a financial interest in a land use matter before the Board of*  
13 *Appeals, Board of Supervisors, Building Inspection Commission, Commission on Community*  
14 *Investment and Infrastructure, Department of Building Inspection, Office of Community Investment and*  
15 *Infrastructure, Historic Preservation Commission, Planning Commission or Planning Department,*  
16 *within 10 days of filing or submitting or receiving written notice of the filing or submission of a land*  
17 *use matter, shall file with the Ethics Commission a report including the following information:*

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

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

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

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

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



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

4  
5                   Section 2. Effective Date. This ordinance shall become effective 30 days after  
6 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
7 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
8 of Supervisors overrides the Mayor's veto of the ordinance.


9  
10                  Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word  
11 of this ordinance, or any application thereof to any person or circumstance, is held to be  
12 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
13 shall not affect the validity of the remaining portions or applications of the ordinance. The  
14 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
15 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
16 unconstitutional without regard to whether any other portion of this ordinance or application  
17 thereof would be subsequently declared invalid or unconstitutional.

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

7  
8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:

  
11 ANDREW SHEN  
12 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Campaign and Governmental Conduct Code - Disclosure Requirements for Campaign Fundraising and Prohibiting Campaign Contributions from Persons with Land Use Matters]

**Ordinance amending the Campaign and Governmental Conduct Code to require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; require disclosure of bundled campaign contributions; and prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, and their controlled committees, from any person with pending or recently resolved land use matters.**

Existing Law

The City's campaign finance laws do not require the disclosure of campaign contributions solicited by City elected officials for ballot measure and independent committees. These laws also do not generally require the disclosure of "bundling" of campaign contributions. (But the City's Lobbyist Ordinance does require lobbyists to disclose their involvement in campaign fundraising activities.)

City law prohibits campaign contributions from corporations and from persons who have a contract pending before the City. Campaign & Gov'tal Conduct Code §§ 1.114, 1.126.

Amendments to Current Law

1. Disclosure of campaign contributions solicited by a City elected official for ballot measure and independent expenditure committees

The proposal would require City elective officers, or subordinates working on their behalf, to disclose any contributions of \$10,000 that they have solicited for a ballot measure committee or independent expenditure committee within 24 hours after the contribution is made. These officers would need to disclose their involvement in the solicitation and other information about the potential relationships between the officers and the contributors to the Ethics Commission.

2. Disclosure of bundling of campaign contributions

The proposal would require candidate-controlled committees to identify the persons who have bundled \$5,000 or more in campaign contributions for their fundraising efforts. "Bundling" includes activities such as asking others for contributions, hosting fundraising events, or delivering contributions made by other persons. Committees that have benefited from such bundling would be required to identify their "bundlers," the contributions that have been

bundled by that person, whether the bundler is a member of a City board or commission, and whether the bundler has attempted to influence the officers who control such committees within the past 12 months. Committees would be required to disclose this information at the time that they file scheduled campaign statements with the Ethics Commission.

### 3. Prohibiting campaign contributions from persons with land use matters before the City

The proposal would prohibit persons with a financial interest in certain land use matters 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 from making certain campaign contributions. Such persons could not make a campaign contribution to a Member of the Board of Supervisors, the Mayor, candidates for those offices, and their controlled committees from the filing or submission of the land use matter until six months have elapsed from the date that the board or commission renders a final decision or ruling. Members of the Board of Supervisors, the Mayor, candidates for those offices, and their controlled committees would also be prohibited from soliciting such campaign contributions.

#### Background Information

The Board of Supervisors may only amend the City's campaign finance laws (as established by Article I, Chapter 1 of the Campaign and Governmental Conduct Code) if:

- (a) the amendment furthers the purposes of this Chapter;
- (b) the Ethics Commission approves the proposed amendment in advance by at least a four-fifths vote of all its members;
- (c) the proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and
- (d) the Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

Campaign & Gov'tal Conduct Code § 1.103.

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