



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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**Date:** June 21, 2017

**To:** San Francisco Ethics Commission

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

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

**Summary:** This memorandum outlines Staff’s proposed changes to Revised Proposition J (“Proposition”) along with an explanation of the proposed changes.

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

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## I. Introduction

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

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

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

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

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<sup>1</sup> See CFRO § 1.101(b).

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

## **II. Background**

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

## **III. Overview**

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

### **A. Personal or Campaign Advantage and a Public Benefit**

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

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

#### **1. Public Beneficiary Class**

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

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

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

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

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

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

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

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

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

<sup>5</sup> *Id.* at 19.

<sup>6</sup> *Id.* at 7, 10.

<sup>7</sup> *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968).

<sup>8</sup> *Id.* at 17-18, 21.

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

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

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

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

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

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

<sup>11</sup> *Wagner* at 19.

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

<sup>13</sup> *Nollan* at 837.

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

## 2. Personal and Campaign Advantages Barred

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

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

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

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<sup>14</sup> See 11 C.F.R. § 115.2

<sup>15</sup> NJ Rev Stat § 19:34-45

<sup>16</sup> *Id.*

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

<sup>18</sup> *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).

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

<sup>20</sup> *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U.S. 563, (1968).

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

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

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

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

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

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

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

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

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

#### B. Political Activity Restrictions of City Officers

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

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<sup>23</sup> CGC §§ 89503 & 84308

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



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

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

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

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

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<sup>25</sup> 5 C.F.R. 733.106; L.A.M.C. § 49.7.11

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

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

<sup>28</sup> *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

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

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

<sup>31</sup> *Garcetti v. Ceballos*, 547 U.S. 410 (2006)

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

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

#### 1. Staff’s Amendments to the Fundraising Restrictions

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

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

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

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<sup>32</sup> *Public Workers v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754 (1947).

<sup>33</sup> *USCSC v. National Association of Letter Carriers*, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973).

<sup>34</sup> John Shutt and Rebecca Bowe, “3 Former Fundraisers for Mayor Ed Lee Charged With Bribery, Money Laundering” (2016), available at <https://ww2.kqed.org/news/2016/01/22/3-former-fundraisers-for-mayor-ed-lee-indicted-on-bribery-money-laundering-charges/>

<sup>35</sup> S.F. Code § 3.230.

<sup>36</sup> 5 C.F.R. 733.106; L.A.M.C. § 49.7.11

### C. Intra-Candidate Transfer Ban

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

The Proposition aims to limit the circumstances under which a candidate and their controlled committee(s) may transfer funds. Specifically, the Proposition aims to limit transfers only to committees that were “formed for the same office”. The California Supreme Court, however, struck down a similarly proposed intra-candidate transfer ban as unconstitutional in *SEIU v. Fair Political Practices*.<sup>37</sup> 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.”<sup>38</sup> Expenditure limitations are subject to strict scrutiny and will be upheld only if they are “narrowly tailored to serve a compelling interest.”<sup>39</sup>

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

#### 1. Staff’s Proposed Amendments - Assumed Name Contributions.

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

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<sup>37</sup> *Service Employees v. Fair Political Practices*, 747 F. Supp. 580 (E.D. Cal. 1990).

<sup>38</sup> See: Attorney General Opinion 01-313 (2002), available at <http://caselaw.lexroll.com/2016/10/31/opinion-no-01-313-2002/>

<sup>39</sup> Id.

<sup>40</sup> *Service Employees* at 1322.

<sup>41</sup> Id. at 1323.

<sup>42</sup> Id.

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

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

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

#### D. Enforcement Mechanisms

##### 1. Citizen Suit

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

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

<sup>44</sup> See L.A.M.C. § 49.5.1; Texas Admin. Code § 22.3; Wis. Stat. §§ 11.1303(1) & 11.1204(1)

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

<sup>46</sup> See CGC §§ 91004, 91007; SF C&GCC § 1.168

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

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

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

## 2. Staff's Proposed Amendments to Citizen Suit Provision

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

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<sup>47</sup> *Hale v. Morgan*, 22 Cal. 3d 388, 398 (Cal. 1978) (citing U.S. Const., Amend. VIII).

<sup>48</sup> *Id.*

<sup>49</sup> *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.

<sup>50</sup> L. Ward Wagstaff, *Citizen Suits and the Clean Water Act: The Supreme Court Decision in Gwaltney of Smithfield v. Chesapeake Bay Foundation*, 1988 UTAH L. REV. 891, 894 (1988).

<sup>51</sup> Travis a. Voyles, "Clearing Up Perceived Problems with the Sue-and-Settle Issue in Environmental Litigation", (2017). *Journal of Lang Use*.

<sup>52</sup> *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 900 F. Supp. 67, 77 (E.D. Tex. 1995).

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

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

### 3. Debarment

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

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

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

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

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.<sup>54</sup> Section 28.2 gives any charging official the authority to issue Orders of Debarment against any contractor for willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. Charging officials include: any City department head, the president of any board or commission authorized to award or execute a contract, the Mayor, the Controller, the City Administrator, the Director of Administrative Services, or the City Attorney.<sup>55</sup>

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

#### 4. Staff's Proposed Amendments to Debarment

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

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

### **IV. Additional Proposals and Amended Sections**

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

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<sup>53</sup> 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)).

<sup>54</sup> See Also: California Labor Code § 1777.1.

<sup>55</sup> See: Admin. Debarment Proc. § 28.1(B).

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

#### A. Sunshine and Ethics Training

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

#### B. Technology: Disclosure Database and Contracts Tracker

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



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

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

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

2

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

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

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

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

1           **SEC. 1.104. DEFINITIONS.**

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

3           \* \* \* \*

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

5           \* \* \* \*

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

10          \* \* \* \*

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

18          \* \* \* \*

19  
20           **SEC. 1.114. CONTRIBUTIONS - LIMITS.**

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

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

9 (c) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

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

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

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

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

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

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

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

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

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

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

4  
5 **SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.**

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

14 (b) ASSUMED NAME CONTRIBUTIONS.

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

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

20 (c) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each  
21 committee that receives a contribution which does not comply with the requirements of this Section  
22 1.114 shall pay promptly the amount received or deposited to the City and County of San Francisco by  
23 delivering the payment to the Ethics Commission for deposit in the General Fund of the City and  
24 County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

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

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

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

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

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

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

19                    (1) the name of the contributor;

20                    (2) the amount of the contribution;

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

23                    (4) the date the City elective officer, or the City elective officer’s subordinate, solicited  
24 the contribution;



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

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

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

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

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

14  
15                  **SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS**  
16 **MADE BY BUSINESS ENTITIES.**

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

21                   (1) the purpose of the business entity;

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

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

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

10  
11                    **SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED**  
12 **CONTRIBUTIONS.**

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

15                    “Bundle” shall mean delivering or transmitting contributions, other than one’s own or those  
16 made by one’s immediate family members.

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, occupation, and mailing address of the person who bundled the  
23 contributions;

24                    (2) a list of the contributions bundled by that person (including the name of the  
25 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 officer who  
5 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 for that  
18 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                    *“Affiliated entities” shall mean business entities directed and controlled by a majority of the*  
5 *same persons, or majority-owned by the same person.*

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

10                    *“Made at the behest of” a candidate or officer shall mean under the control or at the direction*  
11 *of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with*  
12 *the express, prior consent of the candidate or officer.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14  
15 **SEC. 1.168. ENFORCEMENT; ADVICE.**

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

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

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

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

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

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

17 (c) STATUTE OF LIMITATIONS.

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

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

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

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

17           (d) **ADVICE.** Any person may request advice from the Ethics Commission or City  
18 Attorney with respect to any provision of this Chapter. The Ethics Commission shall provide  
19 advice pursuant to Charter Section C3.699-12. The City Attorney shall within 14 days of the  
20 receipt of said written request provide the advice in writing or advise the person who made the  
21 request that no opinion will be issued. The City Attorney shall send a copy of said request to  
22 the District Attorney upon its receipt. The City Attorney shall within nine days from the date of  
23 the receipt of said written request send a copy of his or her proposed opinion to the District  
24 Attorney. The District Attorney shall within four days inform the City Attorney whether he or  
25



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

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

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

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

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

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

24 (i) EFFECT OF VIOLATION ON CANDIDACY.  
25

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

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

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

17 (j) DEBARMENT.

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

22  
23 Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is  
24 hereby amended by revising Sections 3.203 and adding Sections 3.207, 3.209, and 3.231 to  
25 read as follows:

1           **SEC. 3.203. DEFINITIONS.**

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

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

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

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

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

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

1                    **SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE**

2                    **OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.**

3                    (a) In addition to the restrictions set forth in Section 3.206 and other provisions of this Chapter  
4                    2, the following shall also constitute conflicts of interest for City elective officers and members of  
5                    boards and commissions:

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

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

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

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

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

4  
5                   **SEC. 3.209. RECUSALS.**

6                   (a) **Recusal Procedures.** Any member of a City board or commission, including a Member of  
7 the Board of Supervisors, who has a conflict of interest under either the California Political Reform Act  
8 (California Government Code Section 87100 et seq.) or California Government Code Section 1090,  
9 who must recuse herself from a proceeding under California Government Code Section 84308, or  
10 whose independence of judgment is likely to be materially affected within the meaning of Section  
11 3.207(a)(5) shall, in public meetings, upon identifying a conflict of interest immediately prior to the  
12 consideration of the matter, do all of the following:

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

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

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

19                   (b) **Repeated Recusals.** If a member of a City board or commission, including a Member of the  
20 Board of Supervisors, recuses himself or herself, as required by the California Political Reform Act,  
21 California Government Code Section 1090, California Government Code Section 84308, or Section  
22 3.207, in any 12-month period from acting on:

23                   (1) three or more separate matters; or

24                   (2) 1% or more of the matters pending before the officer's board or commission,

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

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

9  
10 **SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE**  
11 **OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.**

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

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

19  
20 Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.

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, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the “Note” that appears under  
6 the official title of the ordinance.

7  
8           Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word  
9 of this ordinance, or any application thereof to any person or circumstance, is held to be  
10 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
11 shall not affect the validity of the remaining portions or applications of the ordinance. The  
12 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
13 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
14 unconstitutional without regard to whether any other portion of this ordinance or application  
15 thereof would be subsequently declared invalid or unconstitutional.

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