



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: September 20, 2017

To: San Francisco Ethics Commission

From: Kyle Kundert, Senior Policy Analyst
Pat Ford, Policy Analyst

Re: **AGENDA ITEM 4: Staff Memorandum Introducing the 2017 San Francisco Anti-Corruption and Accountability Ordinance (Amending the Initial Proposition J Revision Proposal and Expanding the Conflict of Interest Code)**

Summary: This memorandum outlines Staff's proposed changes to the draft of the Anti-Corruption and Accountability Ordinance given to the Commission at their August 28 meeting and provides the Commission with an amended draft for the Commission's review.

Action Requested: Staff first recommends that the Commission vote to adopt the 2017 San Francisco Anti-Corruption and Accountability Ordinance. Staff next recommends that the Commission vote to submit the 2017 San Francisco Anti-Corruption and Accountability Ordinance to the Board of Supervisors for their legislative consideration.

I. Introduction

At its August 28, 2017, meeting, the Commission heard Staff's presentation outlining a comprehensive revision of the Campaign Finance Reform Ordinance ("CRFO") and the Conflict of Interest Code, now entitled the 2017 San Francisco Anti-Corruption and Accountability Ordinance (the "Ordinance") and took public comment. Several members of the public expressed concern regarding the Ordinance's prohibition on City contractors and parties with financial interests in land use decisions making payments at the behest of certain elective officials. Additionally, at August 28 meeting, Chair Keane offered several amendments, which were accepted by the Commission for review and possible implementation into the Ordinance.

As part of the ongoing review and revision of CFRO, and at the request of the Commission, Staff is presenting this memorandum, which evaluates the amendments proposed by Chair Keane at the August 28 meeting, revisits amendments made to previous versions of the Ordinance, and explains the legal concerns and policy objectives behind those amendments.

This memorandum begins with background on the original proposal to revise Proposition J, which was presented to the Commission in March. The memorandum next outlines Staff's proposed Ordinance and explains why Staff is recommending the amendments to the original proposal where necessary. The memorandum concludes with a proposed draft Ordinance for the Commission's consideration.

II. Background

At the Commission's March 2017 meeting, Chair Keane introduced an initial Proposition J revision proposal, which was based on San Francisco's Proposition J from 2000. 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 Staff's analysis and review of those items at the Commission's April meeting (Proposition J) and May meeting (proposals of Supervisors Peskin, Ronen, and Farrell). At the May meeting, the Commission expressed its desire to review an initial draft of an ordinance outlining Staff's proposed amendments to Proposition J after Staff reviewed proposals provided by Supervisors Peskin, Ronen, and Farrell. At the Commission's June and August meetings, Staff presented draft ordinances to the Commission, and the Commission provided guidance for further revisions to the Ordinance. Staff held additional meetings of interested persons after each Commission meeting, reviewed written public comment, processed input from national policy and legal research institutions, reviewed the regulatory approaches taken in other jurisdictions, and sought guidance from multiple City departments on implementation matters. Based on the results of this process, Staff has revised the Ordinance, as discussed in the overview of the Ordinance's amended provision provided in Section III.

III. Overview of Ordinance

Staff has presented the Commission with its analysis of initial drafts of the Ordinance, 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 (the "Board") is strong, effective, and meets the goals of CFRO. What follows is an outline of the Ordinance, which ensures compliance with existing legal precedent and reinforces the anti-corruption and accountability interests promoted by CFRO, the Conflict of Interest Code, and the various proposals recently made to the Commission.

A. Preventing Corruption in San Francisco Politics

The Ordinance creates a series of new rules intended to reduce the incidence of corruption and its appearance by prohibiting individuals attempting to secure City contracts or other beneficial governmental outcomes from directing contributions to City officials, candidates, or third parties that are linked to a City official who has authority to approve the contract. Corruption and its appearance is a practice that is destructive to the fairness, openness, and competitiveness of City government, and its existence or mere appearance can reduce public confidence in governmental processes. It is vital that CFRO contain robust and enforceable rules aimed at reducing or eliminating the ability of individuals to obtain favorable outcomes by making targeted monetary contributions. As such, the Ordinance would amend CFRO to further restrict the ability of City contractors, prospective City contractors, and individuals with a financial interest in a land use matter pending before a City agency to make payments

benefitting certain City officials or other organizations with which these City officials are affiliated. These amendments to CFRO further CFRO's stated objectives and promote the intended effects of the various proposals recently received by the Commission.

1. Restrictions on Solicitations by City Officials

The Ordinance prohibits City officials—elected or appointed—from soliciting or otherwise requesting contributions to third parties from any person with a pending matter before the official.

The August 28 draft ordinance ("August draft") prohibited persons with a City contract, persons who are negotiating a City contract, and persons with a land use decision pending before the City from making contributions to City elected officials who must approve the contract or land use decision, officials who sit on a board that must approve the contract or land use decision, or a candidate for such an office. The August draft also expanded the prohibition to cover payments by a contractor or party to a land use decision made at the behest of an official who must approve the contract or land use decision.¹

After considering public comment, direction from the Commission, and additional Staff review, Staff is now recommending that the Commission remove the behested payment prohibition from Sections 1.126 and 1.127 of CFRO and place the prohibition in the Conflict of Interest Code. The attached draft of the Ordinance implements this recommendation by creating a new restriction in Section 3.207(a)(4) the Conflict of Interest Code that prohibits City officials from soliciting behested payments from individuals who have business before the official. This approach would prohibit any City official, elected or appointed, from using their public position to solicit or otherwise request that a person with business before the official make a donation or give anything else of value for the benefit of a third party. It would no longer penalize a contractor or party to a land use decision for making a behested payment at the behest of an official who has authority over that person's contract or land use matter. Since the newly proposed rules on behested payments would only apply to the conduct of City officials, the Conflict of Interest Code is the most appropriate place to locate the new provisions. The new section, 3.207(a)(4), also simplifies the rules on behested payments by applying it to all City officials and board members.

Staff does not make this recommendation lightly. We understand that the Commission and the public will have questions about the removal of the behested payment prohibition from CFRO, and we are ready to fully address any concerns at the September meeting. Staff made this change in response to public comment from dozens of non-profit organizations and their members, who expressed concern that their organization could be punished if a City contractor/board member accidentally made a behested payment without the organization's consent or knowledge. Under the Ordinance as presented in August, the non-profit organization would have lost City grant funding as a result of their board member's negligence. Staff is sympathetic to this argument and does not believe the Commission or CFRO intended to unjustly punish organizations who are merely associated with a City contractor who commits a violation of law the behested payment prohibition.

¹ See August 28, 2017 Draft Ordinance § 1.126.

Also, prohibiting elected officers from soliciting behested payments from certain parties (but not prohibiting those parties from actually making the behested payments) more fairly allocates the burden and any potential associated penalties, monetary or otherwise, to City officials. Public service is a public trust, requiring officials and employees to place loyalty to the citizens, the laws, and ethical principles above private gain.² Following ethical guidelines and eliminating any improprieties, or even the appearance of potential corruption, is imperative to safeguarding the public's trust in government. Without public trust, government doesn't work. The public is willing to delegate authority and sacrifice some freedoms in exchange for an orderly and civilized society, but only if it believes that government is acting in the public's best interest. With this in mind, it is entirely appropriate to place a restriction on elected officials that prevents them from soliciting payments from certain individuals.

To further respond to public comment and the Commission, the new Section 3.207(a)(4) creates narrow exemptions to the formerly absolute prohibition on behested payments. The new provision permits elected officials to ask anyone to donate to a non-profit, charitable organization if (1) there is a state of emergency, (2) the request is made through a communication to the public, or (3) the official's actions are "otherwise required by law ... necessary to carry out the duties of office". Staff believes these narrow exceptions provide clarity for situations in which the need of organizations to obtain money outweighs the interest of preventing corruption.

B. Allowing Citizen Plaintiffs to Recover a Portion of Civil Penalties

The Ordinance would allow a private plaintiff, after notice to the Commission, to bring a civil action, whereby, that plaintiff could recover 50% of any awarded penalty.

The August draft expanded existing rules on citizen suits to allow citizen plaintiffs to recover 25 percent of the penalties assessed against a defendant when the citizen plaintiff had provided notice that directly resulted in the judgment against the defendant.³ The Commission would have retained control over which alleged violations of CFRO would have been the subject of an enforcement action. If the Commission and the City Attorney declined to pursue an administrative action or a civil proceeding against a defendant, a citizen plaintiff could have pursued a civil action for injunctive relief but could not have pursued monetary penalties.

Based on the Chair's proposal at the August 28 meeting, Staff has revised the Ordinance to allow citizen plaintiffs to recover a share of civil penalties in cases that the Commission and the City Attorney decline

² The concept that government officials have special ethical obligations to the public is actually quite old. In Ancient Greece Plato called for death for public officials who took bribes. ([Laws, 12.955d](#)) In 1215 King John of England signed Magna Carta, which promised among other things, "To no one will we sell, to no one deny or delay right or justice." ([Magna Carta, cl. 40](#)) In 1254 King Louis the IX of France promulgated conflicts of interest rules for provincial governors in the Grande Ordonnance Pour la Réforme du Royaume. (Davies, Leventhal, & Mullaney, 2013)

³ See August 28, 2017 Draft Ordinance at § 1.168(b)(2).

to pursue, incorporating the approach taken by the City of Los Angeles.⁴ The Ordinance would require a resident, before filing a civil action, to provide written notice to the City Attorney and the Ethics Commission at least 60 days in advance of filing an action. The resident may not commence their action if either the Commission has issued a report finding probable cause or if the City Attorney or District Attorney has commenced legal action. If the Commission or City Attorney fail to issue a finding or take legal action, respectively, the citizen plaintiff may file a civil action and, if successful, shall receive 50 percent of the amount recovered in the action, in addition to costs and reasonable attorneys' fees.⁵

C. Restricting Fundraising Activities by City Board and Commission Members

The Ordinance would prevent City board or commission members from engaging in prohibited fundraising activities for any elective official or candidate for such office.

The August draft would have prohibited members of City boards and commissions from engaging in certain fundraising activities that would benefit the elected officer responsible for appointing the board or commission member, a candidate for that office, or a committee controlled by such an officer or candidate.⁶ *Prohibited fundraising* activities included soliciting contributions, inviting individuals to a fundraising event or providing the names of potential invitees, providing one's home as a location for a fundraising event, paying twenty percent of the cost of a fundraising event, or "acting as an agent of intermediary in connection with the making of a contribution."⁷

Based on the Chair's proposal at the August 28 meeting, Staff has revised the Ordinance to reflect the approach to fundraising taken in the City of Los Angeles.⁸ The Ordinance would restrict City Board and Commission members from engaging in prohibited fundraising activities for or on behalf of any City Elective Official, candidate of such office, or committee controlled by such an officer or candidate. The Ordinance expands the prohibited activities proposed in the August draft to include the use of a City Board or Commission members official title in a fundraising communication and expands the prohibited fundraising to or on behalf of any elective official rather than only those elective officials who appointed the board or commission member.⁹

⁴ Los Angeles Municipal Code ("LAMC") § 49.7.38

⁵ To assist in the explanation of the differences proposed in the August draft and that in the LAMC, Staff has prepared a comparative chart on citizen plaintiff suits. See Attachment 1.

⁶ See August 28, 2017 Draft Ordinance at § 3.231.

⁷ *Id.* at § 3.203.

⁸ LAMC § 49.7.11

⁹ To assist in the explanation of the differences proposed in the August draft and that in the LAMC, Staff has prepared a comparative chart on the fundraising prohibition. See Attachment 2.

D. Fraudulent Concealment

The Ordinance would toll the statute of limitations where a person alleged to have violated Article 1, Chapter 1 of the Campaign and Governmental Conduct Code (CFRO) engages in fraudulent concealment of his or her acts or identity.

Based on the Commission's comments at the August 28 meeting, Staff has revised the Ordinance to reflect the tolling standards set for administrative proceedings under the Political Reform Act.¹⁰ Fraudulent concealment occurs when an alleged violator conceals or suppresses their identity or a material fact subject to disclosure. The fraudulent concealment provision is meant to protect the Commission's jurisdiction, notwithstanding the statute of limitations, in cases where alleged violators have acted to deceive or otherwise conceal discoverable information from the Commission.

IV. Procedural Overview

San Francisco Charter Section 15.102 provides authority for the Ethics Commission to place measures on the ballot by a four-fifths vote of all its members:

"Any ordinance which the Supervisors are empowered to pass relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics may be submitted to the electors at the next succeeding general election by the Ethics Commission by a four-fifths vote of all its members."

Alternatively, Campaign and Governmental Conduct Code Section 1.103 allows for amendment or repeal of any provision of CFRO by the Board if several conditions are met:

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

Importantly for the Commission to note is that Subsection (c) requires that *"The Ethics Commission approve[] the proposed amendment in advance by at least four-fifths vote of all its members."*

The remaining relevant portions of law, the Commission's By-Laws, require "the act of the majority of the members of the Commission" to reflect an action of the full body.¹¹

¹⁰ California Governmental Code § 91000.5.

¹¹ San Francisco Ethics Commission By-Laws, Article VII, Section 1.

Based on the above, the Commission would only need a quorum-majority (i.e., 3 members of the Commission) to affirmatively vote on a motion to submit the Ordinance to the Board. However, as a practical matter, the Board cannot vote on the matter without a four-fifths vote of the Commission. Therefore, the Commission should evaluate whether and under what circumstances it would vote to submit the Ordinance to the Board if it does not have the four requisite votes for the Board to approve an amendment to CFRO. If the Commission moved forward based on simple majority vote, the Commission would be required to vote again on the Ordinance prior to a final Board vote.

We look forward to answering any remaining questions and to the Commission's discussion on Monday.

Comparison of Enforcement-Related Provisions

San Francisco vs. Los Angeles

Provision	San Francisco (as Code exists currently)	Los Angeles
Civil Actions Generally		
<ul style="list-style-type: none"> General 	<p>Any person who intentionally or negligently violates any of the provisions of this Chapter shall be liable in a civil action brought by the civil prosecutor (1.170(b))</p> <p>The City Attorney, or any voter, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter (1.168(b))</p>	<p>A person who intentionally or negligently violates a provision of this Article is liable in a civil action brought by the City Attorney, the Ethics Commission, or a person residing within the City (49.7.38(B)(1))</p>
<ul style="list-style-type: none"> Penalty 	<p>up to \$5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable (1.170(b))</p>	<p>The amount of liability may not exceed the greater of \$5,000 per violation or three times the amount the person failed to properly report or unlawfully contributed, expended, gave, or received (49.7.38(B)(1))</p>
<ul style="list-style-type: none"> Statute of Limitations 	<p>No civil action alleging a violation in connection with a campaign statement required under this Chapter shall be filed more than four years after an audit could begin, or more than one year after the Executive Director submits to the Commission any report of any audit conducted of the alleged violator, whichever period is less. Any other civil action alleging a violation of any provision of this Chapter shall be filed no more than four years after the date on which the violation occurred (1.168(c)(2))</p>	<p>An action alleging a violation of this Article may not be filed more than four years after the date the violation occurred. (49.7.38(B)(5))</p>
Citizen Suits		
<ul style="list-style-type: none"> General 	<p>Any <u>voter</u>, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter. (1.168(b))</p>	<p>A person who intentionally or negligently violates a provision of this Article is liable in a civil action brought by the City Attorney, the Ethics Commission, <u>or a person residing within the City</u> (49.7.38(B)(1))</p>
<ul style="list-style-type: none"> Notice requirement 	<p>No voter may commence an action under this Subsection without first providing written notice to the <u>City Attorney</u> of intent to commence an</p>	<p>Before filing a civil action pursuant to this Subsection, a person other than the City Attorney shall first file with the <u>Ethics Commission</u> a written request for the</p>

	action ... at least 60 days in advance of filing an action (1.168(b))	Ethics Commission to commence an action. The request shall contain a statement of the grounds for believing a cause of action exists. The Ethics Commission shall respond within 40 days after receiving the request and indicate whether it intends to file a civil action. (49.7.38(B)(3))
• Government action that cuts off citizen suit	No voter may commence an action under this Subsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another voter has filed a civil action against the defendant under this Subsection (1.168(b))	If the Commission indicates in the affirmative and files an action within 40 days after the response, no other action may be brought unless the action brought by the Ethics Commission is dismissed without prejudice. (49.7.38(B)(3))
• Remedies available to citizen plaintiff	Injunction (1.168(b))	Injunction; 50% of penalties recovered If a judgment is entered against the defendant or defendants in an action, a private plaintiff shall receive 50 percent of the amount recovered. The remaining 50 percent shall be deposited into the City's General Fund. (49.7.38(B)(4); (C))
• Fees and Costs awards	A Court may award reasonable attorney's fees and costs to any voter who obtains injunctive relief under this Subsection. If the Court finds that an action brought by a voter under this Subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs (1.168(b))	In a civil action, the court may award to a prevailing party, other than an agency, the party's costs of litigation, including reasonable attorneys' fees (49.7.38(D))
• Factors for Penalty Size	N/A	In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. (49.7.38(B)(4))

Comparison of Fundraising Prohibition for Certain High-Level City Positions		
	Proposed SF Anti-Corruption & Accountability Ordinance (Sec. 3.231 of Draft Ordinance dated 8.28.2017)	LA Fundraising Ban (Los Angeles Municipal Code sec. 49.7.11)
Provision Bans These Offices from Engaging in Prohibited Fundraising	Members of a board or commission who are required to file a statement of economic interests	Members of a City board or commission who are required to file a statement of economic interests or a general manager or chief administrative officer of a City department
Provision Bans Prohibited Fundraising for these Parties	Elective officer (if a board or commission member's appointing authority), any candidate for the office held by the officer's appointing authority; or any committee controlled by the officer's appointing authority.	Any elected City officer, a candidate for elected City office, or a City controlled committee.
Definition of Prohibited Fundraising	<p>"Prohibited fundraising" shall mean:</p> <ol style="list-style-type: none"> 1) requesting that another person make a contribution; 2) inviting a person to a fundraising event; 3) supplying names to be used for invitations to a fundraiser; 4) permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; 5) providing the use of one's home or business for a fundraiser; 6) paying for at least 20% of the costs of a fundraiser; 7) hiring another person to conduct a fundraiser; 8) delivering or otherwise forwarding a contribution, other than one's own, by whatever means either by mail or in person to a City elective officer, a candidate for City elective office, or a City candidate-controlled committee; 9) or acting as an agent or intermediary in connection with the making of a contribution. 	<p>"Prohibited fundraising" means any of the following:</p> <ol style="list-style-type: none"> 1) Requesting that another person make a contribution; 2) Inviting a person to a fundraising event; 3) Supplying names to be used for invitations to a fundraising event; 4) Permitting one's name or signature to appear on a solicitation for contributions or an invitation to a fundraising event; 5) Permitting one's official title to be used on a solicitation for contributions or an invitation to a fundraising event; 6) Providing the use of one's home or business for a fundraising event; 7) Paying for at least 20 percent of the costs of a fundraising event; 8) Hiring another person to conduct a fundraising event; 9) Delivering a contribution, other than one's own, either by mail or in person to an elected City officer, a candidate for elected City office, or a City controlled committee; or 10) Acting as an agent or intermediary in connection with the making of a contribution.
Additional Definitions	<p>"Solicit" shall mean personally requesting a contribution from any candidate or committee, either orally or in writing.</p> <p>"Subordinate employee" shall mean an employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.</p>	<p>"Fundraising event" means an event designed for political fundraising, at which contributions for an elected City officer, a candidate for elected City office, or a City controlled committee are solicited or received.</p>

Kundert, Kyle (ETH)

From: Hickey, Jacqueline (ETH)
Sent: Wednesday, September 20, 2017 8:03 AM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Ford, Patrick (ETH)
Subject: FW: Ethics ordinance - Request to reject ban of behested contributions.

From: lbaf23@aol.com [mailto:lbaf23@aol.com]
Sent: Tuesday, September 19, 2017 8:16 PM
To: Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Ethics ordinance - Request to reject ban of behested contributions.

September 19, 2017

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

Dear Commissioners

We write as a broad coalition of nonprofit arts, service, healthcare, and housing organizations and community supporters to express our deep concern over the present proposal before the San Francisco's Ethics Commission to impose a ban on an essential category of charitable donations – what the proposal describes as 'behested' payments. In the name of fighting vague allegations of 'corruption' and 'pay to play' politics, this proposal would treat all behested contributions alike. As a result, the ban will eliminate millions of dollars of legitimate fundraising and cut essential programs that have long benefited and strengthened San Francisco communities.

Under existing state law, "behested" contributions are contributions which are encouraged by elected officials for public or charitable purposes. Under state law behested contributions over \$5000 must be reported to oversight agencies. The proposal before the Ethics Commission would convert this disclosure requirement into a total ban if the contributor has any contractual relationship with the city. Because many organizations have some form of contract with the city, from the SF Giants to the Opera to Glide Church, banning behested contributions from these organizations (including their executive staff and board members) will significantly narrow the range of eligible donors in the city. Some of the many programs funded by behested contributions over the past few years included: the City's summer jobs program, Free Muni for youth, research on accountability and fairness in law enforcement, parks programs, and the Women's Foundation. We know of no credible allegations of corruption related to any of these contributions.

We support proposals that target corruption and require disclosure of gifts, but the present proposal is misguided and misdirected. Rather than cracking down on bad actors, the proposal imposes a form of collective punishment on our entire sector. As the nationally recognized nonprofit advocacy organization Alliance for Justice warns, the Ethics Commission's proposal would "imped(e) cooperation between charities

and government” and create a “false equivalence” between charitable contributions and campaign contributions.

For all these reasons, we support proposals to expand disclosure requirements but urge the SF Ethics Commission to reject the proposal to ban behested contributions. A ban is an extreme measure which will have a deeply chilling impact on the city’s nonprofit sector, causing far more harm than good.

Sincerely,

Chinatown Community Development Center

Council of Community Housing Organizations

San Francisco Human Services Network

Phoenix Arts Association Theatre

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Kundert, Kyle (ETH)

From: Hickey, Jacqueline (ETH)
Sent: Tuesday, September 19, 2017 8:05 AM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Ford, Patrick (ETH)
Subject: FW: Behested donations

-----Original Message-----

From: Vivian Imperiale [mailto:ZiziVaga@comcast.net]
Sent: Monday, September 18, 2017 7:23 PM
To: Ethics Commission, (ETH) <ethics.commission@sfgov.org>
Subject: Behested donations

Commissioners:

I am opposed to pay-to-play politics. Having groups or individuals give money because they are told to falls blatantly in that category. It plays out as "I did what you wanted, so now I expect you to do what I want."

I came from the non-profit world and know how important donations are. But each non-profit needs their own strategy to find appropriate donors who become involved because they believe in the agency's work. They should be very apprehensive about accepting money from a person who is using them as part of a political game.

I see a need to have such dealings outlawed or closely watched and publicized.

Sincerely,
Vivian Imperiale

Sent from my iPhone

To: San Francisco Ethics Commission and Director LeeAnn Pelham
From: San Francisco Human Services Network
Council of Community Housing Organizations
Date: September 18, 2017
Re: Draft Revised Prop J Ordinance

As coalitions with many member organizations in the broad nonprofit community, we respectfully submit these comments on the draft "Revised Prop J" ordinance, including proposed amendments.

1) Behested payments ban

As we expressed at Interested Persons meetings and in previous written comments, we oppose the proposed ban on behested payments because of the harmful impact on nonprofit fundraising. We instead support an approach that strengthens disclosure laws.

- Remove the prohibition on behested payments.

2) Strong disclosure laws

We support the proposals to increase disclosure requirements (sections 1.114.5(b) and 1.123) in order to increase transparency about public-private philanthropy. We also propose an improvement to strengthen 1.114.5(b)(1): The legislation should impose the reporting requirement on the elected officials soliciting behested contributions, rather than on the donors. That would be consistent with other behested payment disclosure laws, and would be a more effective way to provide transparency around any potential "corruption" related to public officials channeling donations through behests.

- Sec. 1.114.5(b)(1) In addition to the requirement in subsection (a), any City elective officer who solicits contributions that total \$5,000 or more from any person in a single election cycle to a ballot measure committee or committee making independent expenditures must disclose the name of the donor, the amount and the recipient of the contribution.
- We also propose that in two years from the effective date of this Ordinance, Ethics staff prepare a report on behested payments summarizing information gleaned from the disclosure and reporting requirements in Sections 1.114.5 and 1.123.

3) Nonprofit Boards of Directors

We oppose the inclusion of volunteer members of nonprofit Boards of Directors in any disclosure or ban in the Ordinance. Nonprofit directors have no financial interest in the organization, its contracts or the City's funding decisions, its programs and activities, or its land use matters. Therefore, corrupting conflicts of interest don't exist. These provisions

disenfranchise private individuals, and discourage civically engaged people from serving on nonprofit boards.

- Section 1.104 Definitions: "Financial interest" shall mean ... (b) holding the position of ..., or compensated member of Board of Directors..."
- Section 1.126 Definitions: "Person who contract with" includes ... as well as any compensated member of that party's board of directors..."
- Section 1.127(b) "... shall also include any compensated member of such person's board of directors..."

4) **Repeated Recusals**

San Franciscans all benefit when nonprofit leaders share their expertise through public service on City boards and Commissions, and such representation is common in health and human service departments. However, their service sometimes requires them to request recusal, particularly when they work for an organization with contracts that come before that Commission. Many organizations have multiple contracts covering each program or service.

The proposed Ethics Commission review of repeated recusals would deter nonprofit representatives from serving on Commissions, or subject them to enhanced and unnecessary scrutiny for their appropriate response to potential conflicts of interest related to the very outside employment that made them desirable as Commissioners. We urge the Commission to exclude these situations as evidence of a "continuing and significant conflict of interest."

- Section 3.209(b): Recusals. Repeated Recusals. "This section shall not apply to recusals pertaining to City grant or contract approvals for the officer's employer, where that employer is a 501(c)(3) nonprofit organization."

5) **Notification: Prospective Parties to Contracts**

Section 1.126(e)(1) requires prospective parties to contracts to notify the Ethics Commission at the commencement of negotiations. Section 1.126(e)(2) requires prospective parties to notify the Ethics Commission within 30 days of the submission of a proposal – even though this time period may require bidders to disclose sensitive information about their bid when the RFP process is still open. We believe that any such disclosure requirement should fall on City departments to provide the Ethics Commission with a list of bidders after an RFP process has closed, as well as the identity of the bidder with the winning proposal. This section also requires disclosure of the value of the contract. However, for nonprofit contracts, that information is unknown until the conclusion of negotiations.

6) **Citizen Enforcement**

We oppose the proposal to permit citizen plaintiffs to receive 50% of penalties recovered in a civil action because of the incentive for harassment and frivolous lawsuits.



Pillsbury Winthrop Shaw Pittman LLP

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Anita D. Stearns Mayo
tel: 415.983.6477
anita.mayo@pillsburylaw.com

September 18, 2017

Via Email

Ms. LeeAnn Pelham
Mr. Kyle Kundert
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: 2017 Anti-Corruption and Accountability Ordinance: Behested
Payments Provisions**

Dear Ms. Pelham and Mr. Kundert:

Pursuant to your request, I am submitting the following comments regarding the behested payments provisions of the 2017 Anti-Corruption and Accountability Ordinance (the "Ordinance"). Please incorporate these comments into the record of a public hearing convened by the Commission.

General Comments

Proposed language in Section 1.126 will prohibit certain City contractors from making behested payments during specified times at the behest of (a) an elected City officer if the contract must be approved by the elected City officer, the board on which that officer serves, or a state agency on whose board an appointee of that officer serves, and (b) candidates for the elected City office held by the foregoing officer. This Section also prohibits the elected City officer, or a committee controlled by the officer, from soliciting or accepting behested payments.

Similarly, proposed language in Section 1.127 will prohibit persons, including their affiliated entities, with certain financial interests in land use matters from making behested payments during specified times at the behest of the Mayor, a member of the Board of Supervisors, the City Attorney, and candidates for the foregoing offices. This Section also prohibits the Mayor, a member of the Board of Supervisors, the City

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Attorney, candidates for the foregoing offices, and controlled committees of the foregoing, from soliciting or accepting such behested payments.

For purposes of both Sections 1.126 and 1.127, the Ordinance defines the term “behested payments” to include a payment made for a legislative, governmental, or charitable purpose.

If Sections 1.126 and 1.127 are adopted as currently proposed, the sections will have a significant negative impact on the ability of the City to raise charitable funds during emergency situations. These provisions will prohibit the Mayor and other elected City officers and candidates from soliciting, and contractors and persons with financial interests in land use matters from making, behested donations to charities during emergencies created by earthquakes, floods, health epidemics, and other disasters.

In addition, Sections 1.126 and 1.127 will prohibit the Mayor and other elected City officers and candidates from soliciting, and contractors and persons with financial interests in land use matters from making, behested payments to various charitable organizations for sporting events, such as the International Olympics, the Special Olympics, and America’s Cup, to name a few. Such restrictions will hamper the efforts of City officials to successfully compete against other cities for these events.

Extension of Prohibitions Beyond the Contracting Parties or Those with the Financial Interests

The impact of the prohibitions in Sections 1.126 and 1.127 will extend far beyond the City contractor and the person with a financial interest in a land use matter.

Section 1.126 defines a “person who contracts with” to include not only the party or prospective party to a City contract but also any member of that party’s board of directors and principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the party, and any subcontractor listed in the bid or contract. Based on this broad definition, individuals serving in any of the foregoing capacities for business or nonprofit entities would be subject to the prohibition. Individuals serving in such capacities are typically the types of individuals who have the resources to assist the City during emergencies or when funds are needed to attract international sporting events to the City.

Similarly, Section 1.127 applies not only to persons with financial interests in land use matters but also affiliated entities of the person. “Affiliated entities” means business entities directed and controlled by a majority of the same persons, or

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majority-owned by the same person. The pool of potential donors to assist with needed donations is significantly decreased when affiliated entities are subjected to the prohibition.

Conclusion

Section 1.126 was originally enacted to ensure that contractors wishing to obtain City contracts did not have undue influence over the contracting process by making campaign contributions to elected City officers who have, or could have, influence over the contracting process. The language of Section 1.127 appears to be based on similar language in Section 1.126.

The rationale for eliminating undue influence over the contracting process or the approval process for a land use matter does not apply when behested payments are solicited or made for charitable purposes. When payments are made for charitable purposes, they are made for the public good. Accordingly, Sections 1.126 and 1.127 should exempt behested payments made for a charitable purpose.

Thank you for considering my comments.

Very truly yours,


Anita D. Stearns Mayo

Kundert, Kyle (ETH)

From: LARRY BUSH <sfwtrail@mac.com>
Sent: Sunday, September 17, 2017 2:31 PM
To: Kundert, Kyle (ETH); Ford, Patrick (ETH); Pelham, Leeann (ETH); Blome, Jessica (ETH)
Cc: Peter Keane
Subject: Fwd: Response to Ethics 8/21/17 CFRO Draft

Follow Up Flag: Follow up
Flag Status: Flagged

Friends of Ethics appreciates the greater robust outreach for this reform proposal, and the attendance of members of the Commission. It matters.

We have only a few points to add to our earlier submitted comments.

1. We urge the Commission to review and update the "Intent and Purpose" section. No new draft has been submitted, but we believe that it would benefit from acknowledging the need to act in view of changes in court decisions that have significantly increased political spending by corporate entities, that California and San Francisco have enacted provisions that relate to the issue of campaign contribution circumvention, and that the Commission recognizes that over time other changes may be desirable as well as greater flexibility for the Commission to act through regulations. In any change, the change must serve the purposes of the act by creating greater and not lesser disclosure and accountability.

2. The contractor contribution provision needs to add a prohibition on "bundled" contributions. This is standard in other city campaign prohibitions, including for lobbyists contributions and bundling. Bundling contributions has a far greater impact than a single contribution.

3. The provision prohibiting contributions and bundling from those seeking city approvals has been the subject of much discussion on how best to provide a workable while narrow definition. We suggest several alternatives that we believe better meet the realities of San Francisco undue influence than the current limitation to contractors and those involved in land use matters:

a) Apply the definition in California code 84308 which deals with solicitation of campaign contributions:

"A proceeding involves action to grant, deny, revoke, restrict or modify "licenses, permits, or other entitlements for use." (Reg. 18438.2.) Section 84308 defines the phrase "licenses, permits, or other entitlements for use" to mean proceedings on all business, profession, trade and land use licenses and permits, and other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts) and all franchises.

Examples of the types of decisions covered by the law include decisions on professional license revocations, conditional use permits, rezoning of real estate parcels, zoning variances, tentative subdivision and parcel maps, consulting contracts, cable television franchises, building and development permits, public street abandonments, and private development plans."

In effect, this state provision recognizes the actual or perceived conflict in contributions from these sources.

b.) Adopt the language from New York, as modified by the Campaign Law Center proposal to the District of Columbia, as upheld by the US Court of Appeals, Second Circuit, for "doing business". It adds "economic development agreements" and "transactions with lobbyists." The CLC adds "tax abatements" which we would see as changes in tax policy at the urging of one sector of the city's business community (the 2012 elimination of taxes based on number of employees, the

elimination of tax rates for IPO cash-outs, and tax reductions for those in specified locations such as Market Street on a stretch of a few blocks).

We note that the provision “transactions with lobbyists” is similar to the Seattle law, and would effectively capture those who are seeking a city decision and have hired a lobbyist to accomplish that purpose.

c) use the language in the new ordinance mandating disclosures by commissioners, board members, department heads and others of behest payments taking effect on January 1, 2018.

Note that this disclosure applies to behest payments of \$1,000 or cumulative of \$1,000, compared to the state requirement of \$5,000. It also applies to 527 organizations, which the state does not. It refers to “a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use.” It also provides a safe harbor for solicitations when an official acts as an auctioneer at a fundraising event for a 501c3 organization exempt from taxation.

The advantage of these alternatives is that they employ an existing law to a similar situation, while in some cases reaching to new contributions that carry the perception or the reality of pay-to-play.

3. The private right of action based on the Los Angeles law is similar to other San Francisco laws with a private right of action.

The recent law on Owner Move-In Evictions includes a private right of action

(<https://sfgov.legistar.com/View.ashx?M=F&ID=5338074&GUID=1A0126EC-B0A0-4C25-A07E-D16C4D187B52>). It provides for advance notice to the city enforcement agency, a 30 day wait period, action in abeyance if the city acts, and penalties that are two times any excess amounts of rents charges as well as sums reasonable expended to investigate and prosecute the claim. Federal law also not only allows but encourages citizen suits on clean water, clean air and other environmental requirements.

4. Debarments might provide a local version of the federal debarment [policyhttps://www.gsa.gov/node/83970](https://www.gsa.gov/node/83970)

There are two categories with differing standards. Notably, a proposed suspension is immediately made public and can be based on an indictment. A debarment involves a conviction. Consider the recent contract award by MTA to an entity that has been indicted and the rationale that there is not yet a conviction. Under federal rules, an indictment itself is sufficient for a one-year suspension, with appeal rights.

These comments below were submitted earlier:

Section 1.114.5 (b)(1) sets a \$5,000 threshold. Friends of Ethics review indicates a more realistic threshold for mandatory reporting is \$1,000. This more closely aligns with the record of significant contributions to ballot measure committees and committees making independent expenditures. It also more closely signifies that the donor contribution is far above the average donation to ballot measure on independent expenditure committees. The fact that this is tied specifically to a request for the contribution made by an elected official or candidate further underscores the relationship between the donor and the officer is at least as significant as the relationship between the donor and the campaign committee.

Section 1.123 requiring disclosure of behested payments to the Ethics Commission is an improvement and makes the reporting more timely than the current system.

Section 1.125 Bundled Contributions (b)(4) deals with bundling by a member of a city board or commission. Friends of Ethics believes that members of boards, commissions and appointed Department heads should be prohibited from bundling for candidates or elected officials or their controlled committees. If this provision is intended to encompass non-candidate committees such as

ballot measures or independent expenditure committees, there may be some merit but regulations will be needed to ensure this is not a back door to prohibited support for a candidate. For example, in November 2016 ballot measures that backed the mayor's authority, that hired members of the mayor's staff and that used the mayor's consultants would be an example of the pay-to-play activity that this measure is intended to stop.

Section 1.126 (b)(1) We understand this prohibition on behested payments to an official to mean contributions as well to the office of the elected person, or where the funds will be spent under the authority, direction or recommendation of the elected official or the official's office. This must be clearly understood.

We understand Section 1.126 (b)(2) to refer to behested payments made at the request of the official to another entity. This must be clearly understood.

Section 1.127 (a) Definitions for behested payments must include other city officers, not just those listed. The actual fact record shows behested payments made at the request of the District Attorney, who is not included here. The record also shows that the equivalent of behested payments came at the request of the Community College's chancellor, members of the Board of Trustees, and School Board. Inasmuch as the intent is to draw a line through pay-to-play, this provision should also include the Treasurer, who was intensely lobbied by a corporation and the mayor for a ruling favorable to one company; to the Assessor, for property valuations particularly when transfers take place through stock sales. Any behested payments resulting from requests of those officials while matters are pending or recently were pending raises serious questions in the public mind about pay-to-play.

Section 1.127 (b) lists city agencies where land use matters are involved. This list omits the Airport, which has been immersed in controversy over a land use decision on its property. It also omits the School District and the Community College district where there are critical debates over the use of property owned by those entities. For example, the school board entered into agreement over property that it owned on Market Street that became a major retail center. Other locations are similarly undergoing evaluation for housing, including market-rate housing, or retail or commercial office space. It also omits mention of the Recreation and Parks Department that makes decisions on open space and recreation spaces, notably in areas new to development, as well as the Housing Authority that currently has negotiated the land use of hundreds of acres of property under its control. It also fails to note the record of the Fire Department going to the ballot to require set-aside land use for fire stations over the objection of the city controller and other officials. In short, by listing some agencies and not others, the effect is to create an open back door to land use pay-to-play. It would be preferable at a minimum to state "including but not limited to" in order to allow the Ethics Commission to take appropriate action. This also should apply to other provisions in this draft dealing with prohibited actions.

Section 1.127 (c) see above under (a)

Section 1.127 (d)(2) the phrase "funded in whole or substantial part" needs clarification, as does the phrase "community services." This should not be a back door for entities like the Academy of Art to obtain land use for its educational programs or housing based on a claim that it will serve low income people without a clear demarcation of low income. In the event that this includes programs like the Mexican Museum as part of a market-rate development, this should not become an opportunity to piggy-back developers onto a slim reed that some undefined amount will benefit lower income people.

Section 1.135 Time for filing. The Ethics Commission earlier indicated its desire that reporting not end on the day before the Election but include Election day because of the heavier spending for get-out-the-vote payments. Because reports otherwise are not disclosed until January 31, long after elected officials have been sworn into office and begun voting, there is a significant gap when the public has no information on the donor support. For these reasons, Friends of Ethics believes that the report for the

period ending December 31 should be submitted on January 1 in advance of elected officials taking office.

Section 1.168 (b) Enforcement authorizes ONLY the City Attorney or “any voter” to initiate a civil action. First, it is unclear if this means any “registered voter” or any person who actually voted in the election. It is also unclear if this means a San Francisco voter or a person who is a voter in another jurisdiction. Second, San Francisco generally supports the right of all those affected by decisions, including decisions to enforce laws, to have the ability to participate. Friends of Ethics believes that this provision should allow for a San Francisco resident regardless of whether they are a voter to act to initiative a civil action.

Section 1.168 (e) Debarment. This provision should require that the charging official notify the Ethics Commission and file a public disclosure on what action was taken and the reasons for those action. Otherwise the Ethics Commission hearing results go into a black hole with no public transparency or accountability.

Section 1.170 Penalties. This needs to clarify that the Ethics Commission has the authority to apply penalties when Behested Payment disclosures are not filed within the prescribed time, with an option for increased penalties based on such circumstances as to whether the official took an action that benefited the donor during a period when the reports were due but not filed. The Ethics Commission should have the authority to either increase the penalty above \$5,000 or make it cumulative based on the multiple failures of an extended failure to file as required.

Section 3.203 Definitions. This specifically excludes “anything of value” as “gifts of travel.” This is diametrically the opposite of the overwhelming vote of San Franciscans in November when they prohibited lobbyists from paying for “gifts of travel” in recognition that this is influence peddling. This exemption must be struck from the final version of this pay-to-play reform. The list of donors for official travel is heavily weighted toward businesses seeking city approvals for their private interests. There can be no justification for this exemption.

Section 3.207 (1) This provision must add Department Heads to the list of member of board of commission. In a charter revision more than a decade ago, the authority to appoint a department head was transferred from the commissions to the mayor. In addition, Department heads have strong reasons for seeking contributions to bond measures that benefit their department’s programs as well as to request “behested payments” to “Friends” groups that support the work of the Department. Prohibiting the appointed commissioners but not the appointed department head lacks a compelling justification. The Department Head must be included in all the provisions in this section. This provision also must include all agencies in San Francisco such as the San Francisco Housing Authority that are quasi-state agency but whose Executive Director and commissioners are appointed by the mayor and/or the Board of Supervisors.

Section 3.209 Recusals. (a) This provision calls for recusal of any appointee or elected official who has a conflict of interest. This should be amended to add “or who has failed to timely file a Statement of Economic Interest.” Without a public disclosure of economic interests, the public can not if there is a conflict of interest. This recusal for failure to file a Statement of Economic Interest shall apply to every vote at every commission meeting until the Form is filed or the number of recusals results in removal from office.

Section 3.231 (a) and (b) This provision needs to add Department Heads who also are appointed, serve at the pleasure of the mayor, and who the fact record shows do make contributions.

(b) This provision must apply to fundraising for any elected official or candidate and not be limited to the “appointing authority.” City commissioners and board members are appointed by the mayor but in most

cases are also confirmed (or not confirmed and vetoed) by the Board of Supervisors. By stating “the appointing authority” the Ethics Commission will have created an unenforceable provision or, at a minimum, a back door to contributions that support or oppose officials or candidates at the express or implied request of the appointing authority. The public will see this provision as falling far short of ending the pay-to-play activity they see as impacting City Hall. It should be noted that no such limitation exists in Los Angeles, which was the model for this provision, nor was it suggested by the Board of Supervisors Budget and Legislative Analyst in his June 2012 report to the Board, nor was it included in the San Francisco Civil Grand Jury June 2014 report.

Kundert, Kyle (ETH)

From: LARRY BUSH <sfwtrail@mac.com>
Sent: Friday, September 15, 2017 9:35 AM
To: Ford, Patrick (ETH); Kundert, Kyle (ETH); Blome, Jessica (ETH); Pelham, Leeann (ETH)
Cc: rennepar85@gmail.com; Peter Keane
Subject: Fact analysis on Behest Payments, Commissioners
Attachments: Behest.xlsx; BehestNPO.xlsx; SF_CommissionerContribs_20170626.xlsx; SanFranciscoResults.pdf

I created excel spread sheets on the most recent five years of Behest payments (since mid-2012), and then provided subsets to examine how many Behest donors went to nonprofits and how many of those went to the types of nonprofits represented by the recent opponents to a prohibition who expressed the belief their fundraising would be significantly harmed.

I am attaching my research results and spreadsheets.

The commissioner spreadsheet was developed for us by Maplight.

The errors if any in Behest are mine.

Total Behest Donors: 258 donors totalling \$23,136,141
 Total Behest donors to NPO's providing direct services for housing or homeless: Zero
 Total Behest donors to Mayor for housing: 2 totaling \$4,976,000
 Total Behest Donors to Nonprofits: 70 totaling \$2,680,239 (Parks Alliance, Women's Foundation, SPUR, Salvation Army, United Way)
 Total Behest Donors to Mayor for America's Cup, City Hall Centennial: 62 totaling \$3,412,902

1. All Behest donors

2. All Nonprofit recipients of Behest

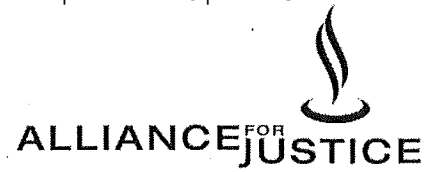
3. All nonprofit recipients providing direct human services, e.g., housing, homeless — zero

total 2 contributions \$4,976,000 to Mayor's Homeless Fund paying for specific housing developments, not to nonprofits

4. Commissioner contribution record 2015/2016

5. State law on officials soliciting contributions for other candidates

<http://www.fppc.ca.gov/learn/public-officials-and-employees-rules->



PRESIDENT
NAN ARON
CHAIR
KEN GROSSINGER

August 23, 2017

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
Sent via e-mail to leann.pelham@sfgov.org

Re: "Prop. J" and Campaign Finance Revision Project

Dear Ms. Pelham:

I am writing on behalf of Alliance for Justice (AFJ) to share our concerns regarding the Commission's draft "Revised Prop. J" ordinance. AFJ is a national association of more than 120 civil rights, environmental, and other social and economic justice organizations. Through AFJ's Bolder Advocacy program, we provide training, educational resources, and free technical assistance to nonprofits so that they can confidently advocate for community change. Many of the groups with whom we work will be affected if this ordinance were to be enacted in its current form.

We agree with many of the recommendations proposed by the San Francisco Human Services Network and Council of Community Housing Organizations-led coalition in their letter dated August 18, 2017. Given Bolder Advocacy's unique focus, we would like to highlight some specific concerns about the proposed ordinance's potential impact on nonprofit advocacy.

Behested Payment Ban for City Contractors

AFJ supports reasonable campaign contribution limits and disclosure at the state and local levels. We also recognize that Section 1.1.26 of the Campaign Reform Ordinance already prohibits city contractors from making campaign contributions to city officials with power over their contracts. But expanding Section 1.126(b) to also prohibit behested payments by city contractors—the organizations, principal officers, and board members—would negatively impact nonprofits in three ways.

First, the behested payments ban would make it more difficult for bona fide charities, including organizations that provide vital services to San Francisco residents and those that support important governmental functions, to raise money with the help of government officials. By

imposing an outright ban on top of existing disclosure requirements, the proposed ordinance would blur the distinction between a behested payment, a gift, and a campaign contribution as it is commonly understood by charities in California.

Aside from impeding cooperation between charities and government, this false equivalence between behested payments, gifts, and campaign contributions is at odds with state law. When the California Legislature amended the Political Reform Act in 1997 to distinguish behested payments from campaign contributions, it explicitly recognized that “payments made by others to assist in the conduct of such governmental, legislative, or charitable activities, even ‘at the behest of’ an elected officeholder are neither ‘gifts’ nor ‘contributions’ and should not be subject to limits.”¹

Second, the proposed ban on behested payments by city contractors risks infringing on the right of unpaid nonprofit board members to participate in the political process. Like all other San Franciscans, nonprofit board members in San Francisco have the constitutional right to political expression in their capacity as private citizens. Yet proposed changes to Section 1.126(b) would even ban unpaid board members of nonprofit organizations that contract with the city from making contributions and other payments at the behest of public officials, even if the board member has no financial interest in the organization’s city contract and does not participate in its negotiation.

Once again, this extreme restriction is at odds with analogous provisions of state law. State pay-to-play rules prohibit a party seeking a state contract, license, permit, or other entitlement for use from making a contribution of more than \$250 to an officer of the agency awarding the contract, license, or permit.² However, these rules apply only to a person who is either a party in the proceeding,³ a participant in the proceeding,⁴ or to an agent of the party/participant.⁵ Moreover, the official soliciting or accepting a contribution must know or have reason to know that the party, participant, or agent has a financial interest in the proceeding.⁶ The FPPC has advised that under state law, for example, a Planning Commissioner may accept a campaign contribution from a board member of an organization that applied for an entitlement from the Planning Commission, as long as the board member was not a party, participant, or agent in the proceeding, and did not have a financial interest in the proceeding.⁷ As currently written,

¹ Senate Rules Committee Senate Floor Analysis of SB 124 (4/30/97) (emphasis added).

² Government Code Section 84308.

³ Section 84308(a)(1) (defined as “any person who files an application for, or is the subject of, a proceeding involve a license, permit, or other entitlement for use”).

⁴ Section 84308(a)(2). (defined as “any person who is not a party who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision”).

⁵ FPPC Regulation 18438.3(a) (“agent” is defined as a person who “represents the party [...] in connection with the proceeding”).

⁶ FPPC Regulation 18438.7(a).

⁷ Petzold Advice Letter, No. A-03-094.

1.126(b) does not distinguish between unpaid nonprofit board members and financially interested parties who actually participate in city contract negotiations.

Third, the behested payments ban could cause nonprofits with city contracts to violate the ordinance at no fault of their own because of the private political activities of their board members. This danger, in turn, may lead some nonprofits to avoid recruiting engaged members of their communities to serve on their boards.

Repeated Recusals

Finally, we recognize the need for robust conflict of interest laws to prevent corruption and the appearance of impropriety in government decision-making. However, Sections 87100 et seq. of the California Political Reform Act, California Government Code Section 1090, and California Government Code Section 84308 already provide for robust recusal mechanisms in the event that a government official has a conflict of interest—as well as stiff penalties for noncompliance. Section 3.209 of the proposed ordinance would empower the Commission to also suggest the removal of board and commission members who recuse themselves repeatedly in accordance with current law. We fear that the specter of being removed from office simply for complying with ethics laws could deter paid nonprofit staff and executives from lending their valuable expertise and the voices of the communities they serve to governmental boards and commissions. We therefore oppose this provision.

For the foregoing reasons, we respectfully request that the Commission consider changes to the aforementioned sections of the draft Prop. J ordinance.

Sincerely,

Toren Lewis,

Northern California Counsel
Bolder Advocacy Program
Alliance for Justice
(510) 444-6070

436 14th Street| Suite 425 | Oakland, CA 94612

Ethics Commission/Behest ltr

Friends of Ethics reviewed the posted disclosures on Behest payments from 2011 to the present. We note the following information that we believe is relevant now that the Commission is reviewing changes.

San Francisco officials have solicited more than \$25 million in Behest payments since 2012.

Mayor Lee's has obtained more than Governor Jerry Brown in Behest payments during this same period, amounting to more than \$20 million.

Contributions from business entities seeking city approvals show correlations between the Behest payment donation and a subsequent city approval.

There is a public perception that such payments may be a circumvention of established campaign contribution limits and prohibitions that already apply to corporations, provide an unfair advantage that distorts the integrity of city funding, and harms dissenting shareholder interest in protecting investments from being used to support candidates the individual may oppose.

We recommend two sources to provide a narrow category of prohibited sources for Behest payments.

The US Court of Appeals, Second Circuit definition of "doing business" 1) contracts greater than or equal to \$100,000 for the procurement of goods, services, or construction; (2) real property acquisitions or dispositions; (3) applications for approval of transactions involving office space, land use, or zoning changes; (4) certain concessions and franchises greater than or equal to \$100,000; (5) grants greater than or equal to \$100,000; (6) economic development agreements; (7) contracts for investment of pension funds; and (8) transactions with lobbyists.⁷

<http://caselaw.findlaw.com/us-2nd-circuit/1589171.html>

The Campaign Legal Center, in their advice letter of July 8 2017 to the District of Columbia, also includes tax abatements.

<http://www.campaignlegalcenter.org/sites/default/files/CLC%20Testimony%20in%20Support%20of%20Pay%20to%20Play%20Bills.pdf>

Consider these examples:

Kilroy Realty contributed \$500,000 on June 24, 2013 at Mayor Lee's request. Six weeks later, on August 15, 2013, City Planning approved Kilroy's request to add six stories to its building at 350 Mission Street. As the city moved forward with other elements of Kilroy's requirements, Kilroy contributed a second \$500,000 on January 31, 2014.

San Francisco Waterfront, sponsor of 8 Washington, contributed \$10,000 on June 12, 2013. During this period, signatures were gathered to put 8 Washington on the ballot, which qualified on July 12, 2013. During the election, Mayor Lee frequently appeared on behalf of San Francisco Waterfront in mailers and on television ads. The measure lost overwhelmingly in November 2013.

Google contributed \$6.8 million on June 13, 2014 to MTA for free Muni for two years for city school children. At the time Google was seeking city approval for a pilot program to allow Google to use city bus stops at minimal cost to transport its employees. Six weeks prior to the Behest payment, on May 1, 2014, Google was sued over its use of city bus stops by a coalition of housing and community organizations.

Coca Cola contributed \$10,000 on July 10, 2014 at Mayor Lee's request. At that time, the company was spending millions to defeat a November ballot measure on sugary soft drinks and wanted Mayor Lee to remain neutral. Mayor Lee remained neutral.

An informal count indicates that approximately 120 separate Behest payments were made from 2012 to the current date. About two-thirds of these came from business entities or associations, with the remaining one-third from private individuals or foundations, including family foundations.

The business entities making Behest payments were primarily developers, regulated companies like Recology, PG&E, AT&T, banks, and realtors associations.

This may represent only a partial disclosure because many city officials are not required to disclose Behest payments and disclosures are legally only required for those exceeding \$5,000.

There is currently no reporting requirement for city commissioners, department heads, and others who have an influence on city awards of business agreements.

Consider as an example the Rate Setting Board for Recology that includes the Public Utilities Commission Director, the City Administrator and the City Controller. None are required to disclose Behest payments. Recology is among the donors making Behest payments, but if they make donation at the request of these officials it will not be disclosed.

The city officials who made requests for Behest payments include the mayor, the city attorney, and the district attorney, Supervisors. The proposed reform omits required disclosures by members of the school board, Community College trustees, the assessor, the treasurer and the sheriff.

We recommend that the current draft include all elected city candidates as well as all city appointees including commissioners, department heads and officials who must file a Statement of Economic Interest.

We also recommend that the public file the disclosures electronically and in a format of open data searchable.

We further recommend that the law provide these features:

- An exemption during times of declared State of Emergency such as an earthquake or other public danger
- An exemption in cases where a city agreement results from a sealed, competitive bid that is publicly advertised
- An exemption in cases of a declared emergency such as the HIV/AIDS epidemic response, homelessness, and the current opioid crisis. The emergency would have to be officially declared by the Health Department or other city agency or the Board of Supervisors, and would be of a specific duration but could be renewed. There will still be a disclosure and it will require a statement invoking the emergency and the office making the emergency determination.
- An exemption for affordable housing for low-income residents that is funded primarily by public funds from the city, state or federal government. There would still be a disclosure invoking the exemption and identifying the public funding sources.
- A requirement that Behest payments paying for costs under the control of a city official, such as the Mayor's hosting of the US Conference of Mayors of the City Hall Centennial, specify a budget

for how the funds are spent under the same approval procedures for any gift to the city requiring a vote of the Board of Supervisors.

- Authorization for Ethics to impose a penalty and fine for any city official who fails to file disclosures as required by law. This should be based on the amount of the behest payment, whether a decision was made in favor of the donor during the period when the Behest payment was not disclosed, and the length that the report was untimely.

Kundert, Kyle (ETH)

From: LARRY BUSH <sfwtrail@me.com>
Sent: Sunday, September 10, 2017 3:11 PM
To: Blome, Jessica (ETH); Kundert, Kyle (ETH); Pelham, Leeann (ETH)
Cc: Oliver Luby
Subject: Forwarding Campaign Legal Center advice letter re: contribution prohibition

<http://www.campaignlegalcenter.org/sites/default/files/CLC%20Testimony%20in%20Support%20of%20Pay%20to%20Play%20Bills.pdf>

Note in particular:

"A broader conception of "business dealings": In addition to contracts, the Attorney General's bill would cover grants, tax abatements, and the sale or lease of buildings or land.⁶ Covering tax abatements and the sale and use of land and real estate is a more comprehensive approach that reflects the numerous ways the District can engage in business dealings and, accordingly, the individuals and entities on the other side of the business dealing that should be covered by a pay-to-play law."

"The Second Circuit has upheld similar laws, including New York City's regulation of contributions from entities "doing business" with the city.¹⁶ That upheld law is expansive, covering persons who have received or are seeking contracts, franchises, concessions, grants, pension fund investment contracts, economic development agreements, or land use actions with the city.¹⁷"

Ognibene v. Parkes, 671 F.3d 174 (2d Cir. 2011); see also Green Party of Conn. v. Garfield, 616 F. 3d 189 (2d Cir. 2010) (upholding Connecticut's ban on contributions by contractors and their principals). ¹⁷ Ognibene, 671 F.3d at 179.

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

Ordinance amending the Campaign and Governmental Conduct Code to 1) prohibit earmarking of contributions and false identification of contributors; 2) modify contributor card requirements; 3) require disclosure of contributions solicited by City elective officers for ballot measure and independent expenditure committees; 4) establish local behested payment reporting requirements; 5) require additional disclosures for campaign contributions from business entities to political committees; 6) require disclosure of bundled campaign contributions; 7) extend the prohibition on campaign contributions to candidates for City elective offices and City elective officers who must approve certain City contracts; 8) prohibit campaign contributions to members of the Board of Supervisors, candidates for the Board, the Mayor, candidates for Mayor, City Attorney, candidates for City Attorney, and their controlled committees, from any person with pending or recently resolved land use matters; 9) require committees to file a third pre-election statement prior to an election; 10) remove the prohibition against distribution of campaign advertisements containing false endorsements; 11) allow members of the public to receive a portion of penalties collected in certain enforcement actions; 12) permit the Ethics Commission to recommend contract debarment as a penalty for campaign finance violations; 13) create new conflict of interest and political activity rules for elected officials and members of boards and commissions; 14) specify recusal procedures for members of boards and commissions; and 15) appropriate \$230,000 to the Ethics Commission to fund administrative and enforcement costs for this ordinance.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in strikethrough Arial font.
Asterisks (* * * *) indicate the omission of unchanged Code
subsections or parts of tables.

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

Section 1. The Campaign and Governmental Conduct Code, Article I, Chapter 1, is hereby amended by revising Sections 1.104, 1.114, 1.126, 1.135, 1.168, 1.170, adding Sections 1.114.5, 1.123, 1.124, 1.125, 1.127, and deleting Section 1.163.5, to read as follows:

SEC. 1.104. DEFINITIONS.

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

* * * *

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

* * * *

"Developer" shall mean the individual or entity that is the project sponsor responsible for filing a completed Environmental Evaluation Application with the Planning Department (or other lead agency) under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for a project. For any project sponsor that is an entity, "developer" shall include all of its constituent individuals or entities that have decision-making authority regarding any of the entity's major decisions or actions. By way of example and without limitation, if the project sponsor is a limited liability company, each of its members is considered a developer for purposes of the requirements of this Chapter, and similarly if the project sponsor is a partnership, each of its general partners is considered a developer for purposes of the requirements of this Chapter. If the owner or agent that signs and submits the Environmental Evaluation Application will not be responsible for obtaining the entitlements or developing the project, then for purposes of the requirements of this Chapter 1 the developer shall be instead the individual or entity that is responsible for obtaining the entitlements for the project.

1 * * * *

2 “Financial interest” shall mean (a) an ownership interest of at least 10% or \$1,000,000 in the
3 project or property that is the subject of the land use matter; (b) holding the position of director or
4 principal officer, including President, Vice-President, Chief Executive Officer, Chief Financial Officer,
5 Chief Operating Officer, Executive Director, Deputy Director, or member of Board of Directors, in an
6 entity with at least 10% ownership interest in that project or property; or (c) being the developer of
7 that project or property.

8 * * * *

9 “Land use matter” shall mean (a) any request to a City elective officer for a Planning Code or
10 Zoning Map amendment, or (b) any application for an entitlement that requires a discretionary
11 determination at a public hearing before a board or commission under the San Francisco Building
12 Code, the Planning Code, or the California Environmental Quality Act (California Public Resources
13 Code Section 21000 et seq.). “Land use matter” shall not include discretionary review hearings before
14 the Planning Commission.

15 * * * *

16 “Prohibited source contribution” shall mean a contribution made (a) in violation of Section
17 1.114, (b) in an assumed name as defined in Section 1.114.5(c), (c) from a person prohibited from
18 contributing under Section 1.126, (d) from a person prohibited from contributing under Section 1.127,
19 or (e) from a lobbyist prohibited from contributing under Section 2.115(e).

20 * * * *

21 “Resident” shall mean a resident of the City and County of San Francisco.

22 “Solicit” shall mean personally request a contribution from any candidate or committee, either
23 orally or in writing.

24 * * * *

1 **SEC. 1.114. CONTRIBUTIONS - LIMITS AND PROHIBITIONS.**

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

6 (b) ~~LIMITS~~ PROHIBITION ON CONTRIBUTIONS FROM CORPORATIONS. No
7 corporation organized pursuant to the laws of the State of California, the United States, or any
8 other state, territory, or foreign country, whether for profit or not, shall make a contribution to a
9 candidate committee, provided that nothing in this subsection (b) shall prohibit such a
10 corporation from establishing, administering, and soliciting contributions to a separate
11 segregated fund to be utilized for political purposes by the corporation, provided that the
12 separate segregated fund complies with the requirements of Federal law including Sections
13 432(e) and 441b of Title 2 of the United States Code and any subsequent amendments to
14 those Sections.

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

18 (d) PROHIBITION ON CONTRIBUTIONS FOR OFFICIAL ACTION. No candidate may,
19 directly or by means of an agent, give, offer, promise to give, withhold, or offer or promise to withhold
20 his or her vote or influence, or promise to take or refrain from taking official action with respect to any
21 proposed or pending matter in consideration of, or upon condition that, any other person make or
22 refrain from making a contribution.

23 ~~(e)~~ (e) AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.

24 (1) General Rule. For purposes of the contribution limits imposed by this
25 Section 1.114 and Section 1.120, the contributions of an entity whose contributions are

1 directed and controlled by any individual shall be aggregated with contributions made by that
2 individual and any other entity whose contributions are directed and controlled by the same
3 individual.

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

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

11 (4) Definition. For purposes of this Section 1.114, the term "entity" means any
12 person other than an individual and "majority-owned" means a direct or indirect ownership of
13 more than 50% percent.

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

22 ~~(e) (f)~~ FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other
23 penalty, each committee that receives a contribution which exceeds the limits imposed by this
24 Section 1.114 or which does not comply with the requirements of this Section shall pay
25 promptly the amount received or deposited in excess of the permitted amount ~~permitted by this~~

1 ~~Section~~ to the City and County of San Francisco ~~and~~ by delivering the payment to the Ethics
2 Commission for deposit in the General Fund of the City and County; provided that the Ethics
3 Commission may provide for the waiver or reduction of the forfeiture.

4 ~~(f)~~ (g) RECEIPT OF CONTRIBUTIONS. A contribution to a candidate committee or
5 committee making expenditures to support or oppose a candidate shall not be considered
6 received if it is not cashed, negotiated, or deposited, and in addition ~~#~~ is returned to the donor
7 before the closing date of the campaign statement on which the contribution would otherwise
8 be reported, except that a contribution to a candidate committee or committee making
9 expenditures to support or oppose a candidate made before an election at which the
10 candidate is to be voted on but after the closing date of the last campaign statement required
11 to be filed before the election shall not be considered to be deemed received if it is not
12 cashed, negotiated, or deposited, and is returned to the contributor within 48 hours of receipt.
13 For all committees not addressed by this Section 1.114, the determination of when
14 contributions are considered to be received shall be made in accordance with the California
15 Political Reform Act, ~~California Government Code Section 81000, et seq.~~

16
17 **SEC. 1.114.5. CONTRIBUTIONS - DISCLOSURES.**

18 (a) CONTRIBUTOR INFORMATION REQUIRED. If the cumulative amount of contributions
19 received from a contributor is \$100 or more, the committee shall not deposit any contribution that
20 causes the total amount contributed by a person to equal or exceed \$100 unless the committee has the
21 following information: the contributor's full name; the contributor's street address; the contributor's
22 occupation; the name of the contributor's employer or, if the contributor is self-employed, the name of
23 the contributor's business; and a signed attestation from the contributor that the contribution does not
24 constitute a prohibited source contribution.

1 (1) A committee will be deemed not to have had the required contributor information at
2 the time the contribution was deposited if the required contributor information is not reported on the
3 first campaign statement on which the contribution is required to be reported.

4 (2) If a committee that collects the information required under this subsection (a) and
5 collects a signed attestation, or its electronic equivalent, that the contributor has not made a prohibited
6 source contribution, there shall be a rebuttable presumption that the committee has not accepted a
7 prohibited source contribution.

8 (b) DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS TO BALLOT MEASURE
9 COMMITTEES AND COMMITTEES MAKING INDEPENDENT EXPENDITURES.

10 (1) In addition to the requirements in subsection (a), any person making contributions
11 that total \$5,000 or more in a single calendar year, to a ballot measure committee or committee making
12 independent expenditures at the behest of a City elective officer must disclose the name of the City
13 elective officer who requested the contribution.

14 (2) Committees receiving contributions subject to subsection (b)(1) must report the
15 names of the City elective officers who requested those contributions at the same time that the
16 committees are required to file campaign statements with the Ethics Commission disclosing the
17 contributions.

18 (c) ASSUMED NAME CONTRIBUTIONS.

19 (1) No contribution may be made, directly or indirectly, by any person or combination
20 of persons, in a name other than the name by which they are identified for legal purposes, or in the
21 name of another person or combination of persons.

22 (2) No person may make a contribution to a candidate or committee in his, her, or its
23 name when using any payment received from another person on the condition that it be contributed to a
24 specific candidate or committee.

1 (d) FORFEITURE OF UNLAWFUL CONTRIBUTIONS. In addition to any other penalty, each
2 committee that receives a contribution which does not comply with the requirements of this Section
3 1.114.5 shall pay promptly the amount received or deposited to the City and County of San Francisco
4 by delivering the payment to the Ethics Commission for deposit in the General Fund of the City and
5 County; provided that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

6
7 **SEC. 1.123. REPORTING OF BEHESTED PAYMENTS.** In addition to the disclosure
8 requirements imposed by the California Political Reform Act, City elective officers required to disclose
9 behested payments of \$5,000 or more from a single source shall file their disclosure statements with the
10 Ethics Commission within 30 days of the date on which the payment(s) total \$5,000 or more.

11
12 **SEC. 1.124. ADDITIONAL DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS**
13 **MADE BY BUSINESS ENTITIES.**

14 (a) Additional Disclosures. In addition to the campaign disclosure requirements imposed by
15 the California Political Reform Act and other provisions of this Chapter 1, any committee required to
16 file campaign statements with the Ethics Commission must disclose the following information for
17 contribution(s) that, in aggregate, total \$10,000 or more that it receives in a single election cycle from
18 a single business entity:

19 (1) the business entity's principal officers, including, but not limited to, the Chairperson
20 of the Board of Directors, President, Vice-President, Chief Executive Officer, Chief Financial Officer,
21 Chief Operating Officer, Executive Director, Deputy Director, or equivalent positions; and

22 (2) whether the business entity has received funds through a contract or grant from any
23 City agency within the last 24 months for a project within the jurisdiction of the City and County of San
24 Francisco, and if so, the name of the agency that provided the funding, and the value of the contract or
25 grant.

1 **(b) Filing Requirements.** *Committees shall provide this information for contributions received*
2 *from business entities at the same time that they are required to file semiannual or preelection*
3 *campaign statements with the Ethics Commission.*

4
5 **SEC. 1.125. ADDITIONAL DISCLOSURE REQUIREMENTS FOR BUNDLED**
6 **CONTRIBUTIONS.**

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

9 *“Bundle” shall mean delivering or transmitting contributions, other than one’s own or one’s*
10 *spouse’s, except for campaign administrative activities and any actions by the candidate that a*
11 *candidate committee is supporting.*

12 *“Campaign administrative activity” shall mean administrative functions performed by paid or*
13 *volunteer campaign staff, a campaign consultant whose payment is disclosed on the committee’s*
14 *campaign statements, or such campaign consultant’s paid employees.*

15 **(b) Additional Disclosure Requirements.** *Any committee controlled by a City elective officer*
16 *or candidate for City elective office that receives contributions totaling \$5,000 or more that have been*
17 *bundled by a single individual shall disclose the following information:*

18 *(1) the name, occupation, employer, and mailing address of the person who bundled the*
19 *contributions;*

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

22 *(3) if the individual who bundled the contributions is a member of a City board or*
23 *commission, the name of the board or commission on which that person serves, and the names of any*
24 *City officers who appointed or nominated that person to the board or commission; and*
25

1 (4) whether, during the 12 months prior to the date of the final contribution that makes
2 the cumulative amount of contributions bundled by a single individual total \$5,000 or more, the person
3 who bundled the contributions attempted to influence the City elective officer who controls the
4 committee in any legislative or administrative action and if so, the legislative or administrative action
5 that the contributor sought to influence and the outcome sought.

6 (c) **Filing Requirements.** Committees shall provide the information for bundled contributions
7 required by subsection (b) at the same time that they are required to file semiannual or preelection
8 campaign statements with the Ethics Commission. Committees shall be required to provide this
9 information following the receipt of the final contribution that makes the cumulative amount of
10 contributions bundled by a single individual total \$5,000 or more.

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

13
14 **SEC. 1.126. CONTRIBUTION ~~LIMITS~~ PROHIBITION – CONTRACTORS DOING**
15 **BUSINESS WITH THE CITY.**

16 (a) **Definitions.** For purposes of this Section 1.126, the following words and phrases
17 shall mean:

18 "Board on which an individual serves" means the board to which the officer was elected and
19 any other board on which the elected officer serves.

20 "City Contractor" means any person who contracts with the City and County of San Francisco,
21 a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified
22 School District or the San Francisco Community College District, including any party or prospective
23 party to a contract, as well as any member of that party's board of directors or any of that party's
24 principal officers, including its chairperson, chief executive officer, chief financial officer, chief
25

1 operating officer, any person with an ownership interest of more than 10% in the party, and any
2 subcontractor listed in the party's bid or contract.

3 "Contract" means any agreement or contract, including any amendment or modification to an
4 agreement or contract, with the City and County of San Francisco, a state agency on whose board an
5 appointee of a City elective officer serves, the San Francisco Unified School District, or the San
6 Francisco Community College District for:

7 (1) the rendition of personal services,

8 (2) the furnishing of any material, supplies or equipment,

9 (3) the sale or lease of any land or building,

10 (4) a grant, loan, or loan guarantee, or

11 (5) a development agreement.

12 "Contract" shall not mean a collective bargaining agreement or memorandum of understanding
13 between the City and a labor union representing City employees regarding the terms and conditions of
14 those employees' City employment.

15 ~~(1) "Person who contracts with" includes any party or prospective party to a contract,~~
16 ~~as well any member of that party's board of directors, its chairperson, chief executive officer, chief~~
17 ~~financial officer, chief operating officer, any person with an ownership interest of more than 20 percent~~
18 ~~in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this~~
19 ~~Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of~~
20 ~~this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or~~
21 ~~prospective party to the contract.~~

22 ~~(2) "Contract" means any agreement or contract, including any amendment or~~
23 ~~modification to an agreement or contract, with the City and County of San Francisco, a state agency on~~
24 ~~whose board an appointee of a City elective officer serves, the San Francisco Unified School District,~~
25 ~~or the San Francisco Community College District for:~~

1 ~~(A) the rendition of personal services,~~

2 ~~(B) the furnishing of any material, supplies or equipment,~~

3 ~~(C) the sale or lease of any land or building, or~~

4 ~~(D) a grant, loan or loan guarantee.~~

5 ~~(3) "Board on which an individual serves" means the board to which the officer was~~
6 ~~elected and any other board on which the elected officer serves.~~

7 (b) **Prohibition on Contributions.** No City Contractor who is party to or is seeking a
8 contract that has a total anticipated or actual value of \$100,000 or more, or a combination or series of
9 contracts with a value of \$100,000 or more from a single City agency, may make any contribution to:
10 ~~person who contracts with the City and County of San Francisco, a state agency on whose board an~~
11 ~~appointee of a City elective officer serves, the San Francisco Unified School District, or the San~~
12 ~~Francisco Community College District,~~

13 ~~(1) Shall make any contribution to:~~

14 ~~(A) (1)~~ An individual holding a City elective office if the contract or contracts
15 must be approved by such individual, the board on which that individual serves, or a state
16 agency on whose board an appointee of that individual serves;

17 ~~(B) (2)~~ A candidate for the office held by such individual; or

18 ~~(C) (3)~~ A committee controlled by such individual or candidate.

19 ~~(2) Whenever the agreement or contract has a total anticipated or actual value of~~
20 ~~\$50,000.00 or more, or a combination or series of such agreements or contracts approved by that same~~
21 ~~individual or board have a value of \$50,000.00 or more in a fiscal year of the City and County~~

22 ~~(3) (c) **Term of Prohibitions.** The prohibitions set forth in subsection (b) shall apply from the~~
23 ~~submission of a proposal for a contract until: At any time from the commencement of negotiations for~~
24 ~~such contract until.;~~

25 ~~(A) (1)~~ The termination of negotiations for such contract; or

1 ~~(B)~~ (2) ~~Six~~ 12 months ~~have elapsed~~ from the date the contract is approved.

2 ~~(e)~~ (d) **Prohibition on ~~Receipt of Contribution~~ Soliciting or Accepting Contributions.** No
3 individual holding City elective office, candidate for such office, or committee controlled by such
4 an individual shall: ~~solicit or~~

5 (1) accept any contribution prohibited by subsection (b); or

6 (2) solicit any contribution prohibited by subsection (b) from a person who the
7 individual knows or has reason to know to be a City Contractor.

8 ~~at any time from the formal submission of the contract to the individual until the termination of~~
9 ~~negotiations for the contract or six months have elapsed from the date the contract is approved. For~~
10 ~~the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time~~
11 ~~of the introduction of a resolution to approve the contract.~~

12 ~~(d)~~ (e) **Forfeiture of ~~Dontribution~~ Contribution.** In addition to any other penalty, each
13 committee that ~~receives~~ accepts a contribution prohibited by subsection ~~(e)~~ (b)(1) shall pay
14 promptly the amount received or deposited to the City and County of San Francisco and
15 deliver the payment to the Ethics Commission for deposit in the General Fund of the City and
16 County; provided that the Commission may provide for the waiver or reduction of the forfeiture.

17 ~~(e)~~ (f) **Notification.**

18 (1) Prospective Parties to Contracts. The agency responsible for the initial
19 review of any contract proposal subject to subsection (b) shall inform ~~Any~~ any prospective party to ~~a~~
20 the contract ~~with the City and County of San Francisco, a state agency on whose board an appointee~~
21 ~~of a City elective officer serves, the San Francisco Unified School District, or the San Francisco~~
22 ~~Community College District shall inform each person described in Subsection (a)(1) of the prohibition~~
23 ~~in~~ Subsection (b) and of the duty to notify the Ethics Commission, as described in subsection (f)(2),
24 ~~by the commencement of negotiations~~ submission of a proposal for such contract.

1 (2) **Notification of Ethics Commission.** Every prospective party to a contract subject
2 to subsection (b) must notify the Ethics Commission, within 30 days of the submission of a proposal, on
3 a form or in a format adopted by the Commission, of the value of the desired contract, the parties to the
4 contract, and any subcontractor listed as part of the proposal

5 ~~(2)~~ (3) **Individuals Who Hold City Elective Office.** Every individual who holds
6 a City elective office shall, within five business days of the approval of a contract by the
7 officer, a board on which the officer sits, or a board of a state agency on which an appointee
8 of the officer sits, notify the Ethics Commission, on a form or in a format adopted by the
9 Commission, of each contract approved by the individual, the board on which the individual
10 serves, or the board of a state agency on which an appointee of the officer sits. An individual
11 who holds a City elective office need not file the form required by this subsection ~~(f)~~(3) if the
12 Clerk or Secretary of a Board on which the individual serves or a Board of a State agency on
13 which an appointee of the officer serves has filed the form on behalf of the board.

14
15 **SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE MATTERS**
16 **BEFORE A DECISION-MAKING BODY.**

17 (a) **Definitions.** For purposes of this Section 1.127, the following phrases shall mean:
18 “Affiliated entities” means business entities directed and controlled by a majority of the same
19 persons, or majority-owned by the same person.

20 “Prohibited contribution” is a contribution to (1) a member of the Board of Supervisors, (2) a
21 candidate for member of the Board of Supervisors, (3) the Mayor, (4) a candidate for Mayor, (5) the
22 City Attorney, (6) a candidate for City Attorney, or (7) a controlled committee of a member of the
23 Board of Supervisors, the Mayor, the City Attorney, or a candidate for any of these offices.

24 (b) **Prohibition on Contributions.** No person, or the person’s affiliated entities, with a
25 financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building

1 Inspection Commission, Commission on Community Investment and Infrastructure, Historic
2 Preservation Commission, Planning Commission, Port Commission, or the Treasure Island
3 Development Authority Board of Directors shall make any prohibited contribution at any time from a
4 request or application regarding a land use matter until 12 months have elapsed from the date that the
5 board or commission renders a final decision or ruling or any appeals from that decision or ruling
6 have been finally resolved.

7 (c) **Prohibition on Soliciting or Accepting Contributions.** No member of the Board of
8 Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for Mayor, the
9 City Attorney, candidate for City Attorney, or controlled committees of such officers and candidates
10 shall:

11 (1) accept any contribution prohibited by subsection (b); or
12 (2) solicit any contribution prohibited by subsection (b) from a person who the
13 individual knows or has reason to know has a financial interest in land use matter.

14 (d) **Exceptions.** The prohibitions set forth in subsections (b) and (c) shall not apply if:
15 (1) the land use matter concerns only the person's primary residence;
16 (2) the person with a financial interest in the land use matter is a nonprofit organization
17 with tax exempt status under 26 United States Code Section 501(c)(3), and the land use matter solely
18 concerns the provision of health care services, social welfare services, permanently affordable housing,
19 or other community services funded, in whole or in substantial part, by the City to serve low-income
20 San Francisco residents; or

21 (e) **Forfeiture of Prohibited Contributions.** In addition to any other penalty, each member of
22 the Board of Supervisors, candidate for member of the Board of Supervisors, the Mayor, candidate for
23 Mayor, City Attorney, candidate for City Attorney, or controlled committees of such officers and
24 candidates, who solicits or accepts any contribution prohibited by subsection (b) shall pay promptly the
25 amount received or deposited to the City and County of San Francisco by delivering the payment to the

1 Ethics Commission for deposit in the General Fund of the City and County; provided, that the
2 Commission may provide for the waiver or reduction of the forfeiture.

3 **(f) Notification.**

4 **(1) Prospective Parties to Land Use Matters.** The agency responsible for the initial
5 review of any land use matter shall inform any person with a financial interest in a land use matter
6 before the Board of Appeals, Board of Supervisors, Building Inspection Commission, Commission on
7 Community Investment and Infrastructure, Historic Preservation Commission, Planning Commission,
8 Port Commission, or the Treasure Island Development Authority Board of Directors, of the prohibition
9 in subsection (b) and of the duty to notify the Ethics Commission, described in subsection (f)(2), upon
10 the submission of a request or application regarding a land use matter.

11 **(2) Persons with a Financial Interest in a Land Use Matter.** Any person with a
12 financial interest in a land use matter before the Board of Appeals, Board of Supervisors, Building
13 Inspection Commission, Commission on Community Investment and Infrastructure, Historic
14 Preservation Commission, Planning Commission, Port Commission, or the Treasure Island
15 Development Authority Board of Directors, within 30 days of submitting a request or application, shall
16 file with the Ethics Commission a report including the following information:

17 (A) the board, commission, or department considering the land use matter;
18 (B) the location of the property that is the subject of the land use matter;
19 (C) if applicable, the file number for the land use matter; and
20 (D) if applicable, the names of the individuals who serve as the person's
21 chairperson, chief executive officer, chief financial officer, and chief operating officer, or as a member
22 of the person's board of directors.

23
24 **SEC. 1.135. SUPPLEMENTAL PRE-ELECTION STATEMENTS.**
25

1 (a) **Supplemental Preelection Statements - General Purpose Committees**. In addition
2 to the campaign disclosure requirements imposed by the California Political Reform Act and
3 other provisions of this Chapter I, a San Francisco general purpose committee that makes
4 contributions or expenditures totaling \$500 or more during the period covered by the
5 preelection statement, other than expenditures for the establishment and administration of
6 that committee, shall file a preelection statement before any election held in the City and
7 County of San Francisco at which a candidate for City elective office or City measure is on the
8 ballot.

9 (b) **Time for Filing Supplemental Preelection Statements - General Purpose**
10 **Committees**.

11 (1) Even-Numbered Years. In even-numbered years, preelection statements
12 required by ~~this Section~~ subsection (a) shall be filed pursuant to the preelection statement filing
13 schedule established by the Fair Political Practices Commission for county general purpose
14 recipient committees. In addition to these deadlines, preelection statements shall also be filed, for
15 the period ending six days before the election, no later than four days before the election.

16 (2) Odd-Numbered Years. In odd-numbered years, the filing schedule for
17 preelection statements is as follows:

18 ~~(1)~~ (A) For the period ending 45 days before the election, the statement
19 shall be filed no later than 40 days before the election;

20 ~~(2)~~ (B) For the period ending 17 days before the election, the statement
21 shall be filed no later than 12 days before the election; and

22 (C) For the period ending six days before the election, the statement shall be
23 filed no later than four days before the election.

24 (c) **Time for Filing Supplemental Preelection Statements - Ballot Measure Committees and**
25 **Candidate Committees**. In addition to the deadlines established by the Fair Political Practices

1 Commission, ballot measure committees and candidate committees required to file preelection
2 statements with the Ethics Commission shall file a third preelection statement before any election held
3 in the City and County of San Francisco at which a candidate for City elective office or City measure is
4 on the ballot, for the period ending six days before the election, no later than four days before the
5 election.

6 (e) (d) The Ethics Commission may require that these statements be filed electronically.
7

8 **~~SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING~~**
9 **~~FALSE ENDORSEMENTS.~~**

10 (a) ~~**Prohibition.** No person may sponsor any campaign advertisement that is distributed~~
11 ~~within 90 days prior to an election and that contains a false endorsement, where the person acts with~~
12 ~~knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the~~
13 ~~endorsement. A false endorsement is a statement, signature, photograph, or image representing that a~~
14 ~~person expressly endorses or conveys support for or opposition to a candidate or measure when in fact~~
15 ~~the person does not expressly endorse or convey support for or opposition to the candidate or measure~~
16 ~~as stated or implied in the campaign communication.~~

17 (b) ~~**Definitions.** Whenever in this Section the following words or phrases are used, they shall~~
18 ~~mean:~~

19 (1) ~~"Campaign Advertisement" is any mailing, flyer, door hanger, pamphlet, brochure,~~
20 ~~card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or~~
21 ~~recorded telephone advertisement that refers to one or more clearly identified candidates or ballot~~
22 ~~measures. The term "campaign advertisement" does not include:~~

23 (A) ~~bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar~~
24 ~~campaign memorabilia;~~
25

1 ~~(B) news stories, commentaries or editorials distributed through any newspaper,~~
2 ~~radio, station, television station or other recognized news medium unless such news medium is owned~~
3 ~~or controlled by any political party, political committee or candidate; or~~

4 ~~(C) material distributed to all members, employees and shareholders of an~~
5 ~~organization, other than a political party;~~

6 ~~(2) "Internet Advertisement" includes paid internet advertisements such as "banner"~~
7 ~~and "popup" advertisements, paid emails, or emails sent to addresses purchased from another person,~~
8 ~~and similar types of internet advertisements as defined by the Ethics Commission by regulation, but~~
9 ~~shall not include web blogs, listserves sent to persons who have contacted the sender, discussion~~
10 ~~forums, or general postings on web pages.~~

11 ~~(3) "Sponsor" means to pay for, direct, supervise or authorize the production of~~
12 ~~campaign advertisement.~~

13 ~~(c) **Enforcement and Penalties.** The penalties under Section 1.170(a) of this Chapter do not~~
14 ~~apply to violations of this Section. Notwithstanding the 60-day waiting period in Section 1.168 of this~~
15 ~~Chapter, a voter may bring an action to enjoin a violation of this Section immediately upon providing~~
16 ~~written notice to the City Attorney. A court may enjoin a violation of this section only upon a showing~~
17 ~~of clear and convincing evidence of a violation.~~

18 19 **SEC. 1.168. ENFORCEMENT; ADVICE.**

20 (a) ENFORCEMENT – GENERAL PROVISIONS. Any person who believes that a
21 violation of this Chapter 1 has occurred may file a complaint with the Ethics Commission, City
22 Attorney, or District Attorney. The Ethics Commission shall investigate such complaints
23 pursuant to Charter Section C3.699-13 and its implementing regulations. The City Attorney
24 and District Attorney shall investigate, and shall have such investigative powers as are
25 necessary for the performance of their duties under this Chapter.

(b) ENFORCEMENT – CIVIL ACTIONS. The City Attorney, or any ~~voter~~ resident, may bring a civil action to enjoin violations of or compel compliance with the provisions of this Chapter 1.

(1) No ~~voter~~ resident may commence an action under this ~~S~~subsection (b) without first providing written notice to the City Attorney of intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The ~~voter~~ resident shall deliver the notice to the City Attorney and the Ethics Commission at least 60 days in advance of filing an action. No ~~voter~~ resident may commence an action under this ~~S~~subsection if the Ethics Commission has issued a finding of probable cause that the defendant violated the provisions of this Chapter, or if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another ~~voter~~ resident has filed a civil action against the defendant under this ~~S~~subsection.

(2) A Court may award reasonable attorney's fees and costs to any ~~voter~~ resident who obtains injunctive relief under this ~~S~~subsection (b). If the Court finds that an action brought by a ~~voter~~ resident under this ~~S~~subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(c) STATUTE OF LIMITATIONS.

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

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

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 (A) **Fraudulent Concealment.** If the person alleged to have violated this
8 Chapter engages in the fraudulent concealment of his or her acts or identity, this four-year statute of
9 limitations shall be tolled for the period of concealment. For purposes of this subsection, “fraudulent
10 concealment” means the person knows of material facts related to his or her duties under this Chapter
11 and knowingly conceals them in performing or omitting to perform those duties.

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

22 * * * *

23 (e) **DEBARMENT.**

24 The Ethics Commission may, after a hearing on the merits or pursuant to a stipulation among
25 all parties, recommend that a Charging Official authorized to issue Orders of Debarment under

1 Administrative Code Chapter 28 initiate debarment proceedings against any person in conformance
2 with the procedures set forth in that Chapter.

3
4 **SEC. 1.170. PENALTIES.**

5 (a) CRIMINAL. Any person who knowingly or willfully violates any provision of this
6 Chapter 1 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by
7 a fine of not more than \$5,000 for each violation or by imprisonment in the County jail for a
8 period of not more than six months or by both such fine and imprisonment; provided, however,
9 that any willful or knowing failure to report contributions or expenditures done with intent to
10 mislead or deceive or any willful or knowing violation of the provisions of Sections 1.114, 1.126,
11 or 1.127 of this Chapter shall be punishable by a fine of not less than \$5,000 for each violation
12 or three times the amount not reported or the amount received in excess of the amount
13 allowable pursuant to Sections 1.114, 1.126, and 1.127 of this Chapter, or three times the
14 amount expended in excess of the amount allowable pursuant to Section 1.130 or 1.140-5,
15 whichever is greater.

16 (b) CIVIL. Any person who intentionally or negligently violates any of the provisions of
17 this Chapter 1 shall be liable in a civil action brought by the ~~civil prosecutor~~ City Attorney, or a
18 resident who has filed suit in compliance with Section 1.168(b), for an amount up to \$5,000 for
19 each violation or three times the amount not reported or the amount received in excess of the
20 amount allowable pursuant to Sections 1.114, 1.126, and 1.127 or three times the amount
21 expended in excess of the amount allowable pursuant to Section 1.130 or 1.140-5, whichever
22 is greater. In determining the amount of liability, the court may take into account the seriousness of
23 the violation, the degree of culpability of the defendant, and the ability of the defendant to pay. In an
24 action brought by a resident, if a court enters judgment against the defendant(s), the resident shall
25 receive 50 percent of the amount recovered and the remaining 50 percent shall be deposited into the

1 City's General Fund. In an action brought by the City Attorney, the entire amount recovered from the
2 defendant(s) shall be deposited into the City's General Fund.

3 (c) ADMINISTRATIVE. Any person who ~~intentionally or negligently~~ violates any of the
4 provisions of this Chapter 1 shall be liable in an administrative proceeding before the Ethics
5 Commission held pursuant to the Charter for any penalties authorized therein.

6 * * * *

7
8 Section 2. The Campaign and Governmental Conduct Code, Article III, Chapter 2, is
9 hereby amended by revising Section 3.203 and adding Sections 3.207, 3.209, and 3.231 to
10 read as follows:

11 **SEC. 3.203. DEFINITIONS.**

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

13 "Anything of value" shall mean any money or property, favor, service, payment, advance,
14 forbearance, loan, or promise of future employment, but does not include compensation and expenses
15 paid by the City, contributions as defined herein, or gifts that qualify for gift exceptions established by
16 State or local law.

17 "Associated," when used in reference to an organization, shall mean any organization in which
18 an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or
19 controls, directly or indirectly, and severally or in the aggregate, at least 10% of the equity, or of which
20 an individual or a member of his or her immediate family is an authorized representative or agent.

21 "City elective officer" shall mean a person who holds the office of Mayor, Member of the Board
22 of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

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

1
2 ~~(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors,~~
3 ~~City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.~~

4 "Fundraising" shall mean:

5 (a) requesting that another person make a contribution;

6 (b) inviting a person to a fundraising event;

7 (c) supplying names to be used for invitations to a fundraiser;

8 (d) permitting one's name or signature to appear on a solicitation for contributions or an
9 invitation to a fundraising event;

10 (e) permitting one's official title to be used on a solicitation for contributions or an invitation to
11 a fundraising event;

12 (f) providing the use of one's home or business for a fundraising event;

13 (g) paying for at least 20% of the costs of a fundraising event;

14 (h) hiring another person to conduct a fundraising event;

15 (i) delivering a contribution, other than one's own, by whatever means to a City elective
16 officer, a candidate for City elective office, or a candidate-controlled committee; or

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

18 "Immediate family" shall mean spouse, registered domestic partner, and dependent children.

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

23 "Solicit" shall mean personally requesting a contribution from any candidate or committee,
24 either orally or in writing.

1 “Subordinate employee” shall mean an employee of any person whose official City
2 responsibilities include directing or evaluating the performance of the employee or any of the
3 employee’s supervisors.

4
5 **SEC. 3.207. ADDITIONAL CONFLICTS OF INTEREST FOR CITY ELECTIVE**
6 **OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.**

7 (a) **Prohibitions.** In addition to the restrictions set forth in Section 3.206 and other provisions
8 of this Chapter 2, the following shall also constitute conflicts of interest for City elective officers and
9 members of boards and commissions:

10 (1) No City elective officer or member of a board or commission may use his or her
11 public position or office to seek or obtain anything of value for the private or professional benefit of
12 himself or herself, his or her immediate family, or for an organization with which he or she is
13 associated.

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

19 (3) No person may offer or give to an officer, directly or indirectly, and no City elective
20 officer or member of a board or commission may solicit or accept from any person, directly or
21 indirectly, anything of value if it could reasonably be expected to influence the officer’s vote, official
22 actions, or judgment, or could reasonably be considered as a reward for any official action or inaction
23 on the part of the officer. This subsection (a)(3) does not prohibit a City elective officer or member of a
24 board or commission from engaging in outside employment.

1 (4) No City elective officer or member of a board or commission may, directly or by
2 means of an agent, solicit or otherwise request that a person give anything of value to a third party if:

3 (A) the person who is the subject of the request has a matter pending before the
4 official, his or her agency, or the official has final approval authority over the matter, or

5 (B) the person who is the subject of the request had a matter before the official
6 or his or her agency within the last 12 months.

7 (5) notwithstanding the prohibitions contained in subsection (a)(4), a City elective
8 officer or member of a board or commission may solicit or otherwise request that a person give
9 anything of value to a third party if:

10 (A) The solicitation is made in a communication to the public.

11 (B) The solicitation is made at an event where 20 or more persons are in
12 attendance.

13 (C) The solicitation is made to respond to an emergency, as defined in San
14 Francisco Administrative Code Section 7.1.

15 (b) **Exception: public generally.** The prohibitions set forth in subsection (a)(1)-(2) shall not
16 apply if the resulting benefit, advantage, or privilege also affects a significant segment of the public
17 and the effect is not unique. For purposes of this subsection (b):

18 (1) A significant segment of the public is at least 25% of:

19 (A) all businesses or non-profit entities within the official's jurisdiction;

20 (B) all real property, commercial real property, or residential real property
21 within the official's jurisdiction; or

22 (C) all individuals within the official's jurisdiction.

23 (2) A unique effect on a public official's financial interest includes a disproportionate
24 effect on:

1 (A) the development potential or use of the official's real property or on the
2 income producing potential of the official's real property or business entity;

3 (B) an official's business entity or real property resulting from the proximity of
4 a project that is the subject of a decision;

5 (C) an official's interests in business entities or real properties resulting from
6 the cumulative effect of the official's multiple interests in similar entities or properties that is
7 substantially greater than the effect on a single interest;

8 (D) an official's interest in a business entity or real property resulting from the
9 official's substantially greater business volume or larger real property size when a decision affects all
10 interests by the same or similar rate or percentage;

11 (E) a person's income, investments, assets or liabilities, or real property if the
12 person is a source of income or gifts to the official; or

13 (F) an official's personal finances or those of his or her immediate family.

14
15 **SEC. 3.209. RECUSALS.**

16 (a) **Recusal Procedures.** Any member of a City board or commission, including a member of
17 the Board of Supervisors, who has a conflict of interest under Sections 3.206 or 3.207, or who must
18 recuse himself or herself from a proceeding under California Government Code Section 84308, shall,
19 in the public meeting of the board or commission, upon identifying a conflict of interest immediately
20 prior to the consideration of the matter, do all of the following:

21 (1) publicly identify the circumstances that give rise to the conflict of interest in detail
22 sufficient to be understood by the public, provided that disclosure of the exact street address of a
23 residence is not required;

24 (2) recuse himself or herself from discussing or acting on the matter; and
25

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

3 (b) **Repeated Recusals.** If a member of a City board or commission, including a member of the
4 Board of Supervisors, recuses himself or herself, as required by subsection (a), in any 12-month period
5 from discussing or acting on:

6 (1) three or more separate matters; or

7 (2) 1% or more of the matters pending before the officer's board or commission,
8 the Commission shall determine whether the official has a significant and continuing conflict of
9 interest. The Commission shall publish its written determination, including any discussion of the
10 official's factual circumstances and applicable law, on its website. Thereafter, if the Commission
11 determines that the official has a significant and continuing conflict of interest, the official shall
12 provide the Commission with written notification of subsequent recusals resulting from the same
13 conflicts of interest identified in the written determination. With respect to such officials, the
14 Commission may recommend to the official's appointing authority that the official divest or otherwise
15 remove the conflicting interest, and, if the official fails to divest or otherwise remove the conflicting
16 interest, the Commission may recommend to the official's appointing authority that the official should
17 be removed from office under Charter Section 15.105 or by other means.

18
19 **SEC. 3.231. PROHIBITIONS ON POLITICAL ACTIVITY FOR CITY ELECTIVE**
20 **OFFICERS AND MEMBERS OF BOARDS AND COMMISSIONS.**

21 (a) **Solicitation of Campaign Volunteers.** No City elective officer or member of a board or
22 commission shall solicit uncompensated volunteer services from any subordinate employee for a
23 campaign for or against any ballot measure or candidate.

24 (b) **Fundraising Prohibition.** No member of a board or commission may engage in
25 fundraising on behalf of any City elective officer, candidate for such office, or committee controlled by

1 such individual. For the purposes of this subsection, “member of a board or commission” shall not
2 include a member of the Board of Supervisors.

3
4 Section 3. Effective and Operative Dates. This ordinance shall become effective 30
5 days after enactment. This ordinance shall become operative on January 1, 2019.
6 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
7 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
8 Supervisors overrides the Mayor’s veto of the ordinance.

9
10 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
11 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
12 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
13 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
14 additions, and Board amendment deletions in accordance with the “Note” that appears under
15 the official title of the ordinance.

16
17 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
18 of this ordinance, or any application thereof to any person or circumstance, is held to be
19 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
20 shall not affect the validity of the remaining portions or applications of the ordinance. The
21 Board of Supervisors hereby declares that it would have passed this ordinance and each and
22 every section, subsection, sentence, clause, phrase, and word not declared invalid or
23 unconstitutional without regard to whether any other portion of this ordinance or application
24 thereof would be subsequently declared invalid or unconstitutional.