

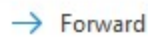
## RE: New Ethics Commission Report on Gifts to City Departments Published



Hazelle Fernandez (AIR)

To Canning, Michael (ETH)

Cc Ford, Patrick (ETH); Kevin Kone (AIR); Ivar Satero (AIR); Chris Arrigale (AIR); BREGMAN, SHERYL (CAT); Cathy Widener (AIR); VEIT, JULIE (CAT)



Fri 10/1/2021 2:42 PM

You replied to this message on 10/1/2021 4:02 PM.



Airport Commission Resolution 19-0090.pdf  
747 KB



BOS Ordinance 267-13.pdf  
98 KB

Hi Michael,

San Francisco International Airport would like to provide a clarification to the findings related to the Airport in the Report on Gifts to City Departments. The Airport received donations for and hosted the Harvey Milk Terminal 1 and Grand Hyatt Opening Celebrations in conformance with Admin Code section 10.100-18, ***Airport Capital Improvement Promotion and Event Fund***. The Board of Supervisors established the Category 6 Fund for the express purpose “of receiving all donations of money, property and personal services...to assist in promotional events and community outreach activities associated with the opening of capital improvements of the San Francisco International Airport.” The Board adopted the ordinance effective November 19, 2013 (File #130799/ Ord # 267-13). Following the event, the Airport complied with all state disclosure requirements for these types of events as provided under SEC. 10-100-18 (AIRPORT CAPITAL IMPROVEMENT PROMOTION AND EVENT FUND) and SEC. 10.100-305 (SAN FRANCISCO GIFT FUNDS) and filed the Annual Promotion and Event Fund with the Board of Supervisors and the Controller’s Office.

Also attached are the two documents that I’ve referred to in our conversation this morning to support our clarification.

Thanks and have a great weekend.



**Hazelle Fernandez**

Acting Airport Controller | Chief Financial Office

San Francisco International Airport | P.O. Box 8097 | San Francisco, CA 94128

Tel 650-821-2881 | [flysfo.com](http://flysfo.com)

Pronouns: she/her/hers

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 19-0090

**RESOLUTION: AUTHORIZING THE ACCEPTANCE OF DONATIONS INTO THE AIRPORT CAPITAL IMPROVEMENT AND PROMOTION FUND AND EXPENDITURE OF THE SAME IN SUPPORT OF OPENING EVENTS RELATING TO THE PHASE OPENINGS OF TERMINAL 1: THE HARVEY MILK TERMINAL, AND THE OPENING OF THE GRAND HYATT AT SFO, PURSUANT TO ADMINISTRATIVE CODE SECTION 10.100-18**

- WHEREAS, on July 23, 2013, by Resolution No. 13-0167, the Commission recommended that the Board of Supervisors adopt an ordinance establishing the Airport Capital Improvement Promotion and Event Fund; and
- WHEREAS, on November 19, 2013, the Board of Supervisors established the Airport Capital Improvement Promotion and Event Fund (Admin. Code, Section 10.100-18) which authorizes the acceptance and expenditures of donated funds by the Airport to support the promotional events and community outreach activities for the opening of new facilities at SFO; and
- WHEREAS, the Airport is planning the phased openings of Terminal 1: The Harvey Milk Terminal in July 2019 and March 2020 and the opening of the Grand Hyatt at SFO in July, 2019 – two significant facilities which offer unique opportunities to market and promote the Airport to the local community, the media, its partners, the aviation industry, and local, regional and international customers; now, therefore, be it
- RESOLVED, that this Commission authorizes the Airport to accept donations into the Airport Capital Improvement and Promotion Fund and expend the same in support of the opening events relating to the phased openings of Terminal 1: The Harvey Milk Terminal, and the Grand Hyatt at SFO.

*I hereby certify that the foregoing resolution was adopted by the Airport Commission  
at its meeting of* APR 16 2019





**MEMORANDUM**

April 16, 2019

19-0090

TO: AIRPORT COMMISSION  
Hon. Larry Mazzola, President  
Hon. Linda S. Crayton, Vice President  
Hon. Eleanor Johns  
Hon. Richard J. Guggenlime  
Hon. Malcolm Yeung

~~APR 16 2019~~ APR 16 2019

FROM: Airport Director

SUBJECT: Authorize the Acceptance and Expenditure of Donations to the Airport Capital Improvement Promotion and Event Fund

DIRECTOR'S RECOMMENDATION: ADOPT RESOLUTION AUTHORIZING THE ACCEPTANCE OF DONATIONS INTO THE AIRPORT CAPITAL IMPROVEMENT AND PROMOTION EVENT FUND, AND EXPENDITURE OF THE SAME IN SUPPORT OF THE PHASED OPENINGS OF TERMINAL 1: THE HARVEY MILK TERMINAL, AND THE OPENING OF THE GRAND HYATT AT SFO AS REQUIRED BY SAN FRANCISCO ADMINISTRATIVE CODE SECTION 10.100-18.

**Executive Summary**

SFO's \$7 billion Capital Improvement Program is marking the achievement of two major milestones over the next year with the completion of the first phase of the newly redeveloped Terminal 1: The Harvey Milk Terminal and the Grand Hyatt at SFO (the Hotel), both in July, 2019; and the opening of the second phase of Terminal 1: The Harvey Milk Terminal, scheduled for March 2020. The completion of these major Capital Improvement Program facilities offers significant and unique promotional opportunities for the Airport. The Airport is planning special opening events celebrating these facilities for the public and key Airport stakeholders. In support of these events, the Airport intends to conduct fundraising and receive donations from stakeholders. The proposed resolution authorizes the acceptance of donations into the Airport Capital Improvement and Promotion Event Fund and expenditure of the same in support of these events.

**Background**

The Airport has previously hosted special opening events as major facilities of the Capital Improvement Program are completed, such as the grand opening of Terminal 3, Boarding Area E in January 2014, and Terminal 2 in 2011.

In connection with the Terminal 3 events, in July, 2013, the Airport Commission (the Commission) recommended that the Board of Supervisors establish a special fund to receive donations to offset the cost of such events. On November 19, 2013, the Board of Supervisors adopted San Francisco Administrative Code 10.100-18, establishing the Capital Improvement Promotion and Event Fund to receive donations

THIS PRINT COVERS CALENDAR ITEM NO. 9

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR    LARRY MAZZOLA PRESIDENT    LINDA S. CRAYTON VICE PRESIDENT    ELEANOR JOHNS    RICHARD J. GUGGENHIME    MALCOLM YEUNG    IVAR C. SATERO AIRPORT DIRECTOR

and approve expenditures for such purposes as determined by the Commission. The authority of the Capital Improvement Promotion and Event Fund expires on December 31, 2023, and any unexpended balances remaining in the fund on that date must be deposited into the City's general fund.

**Recommendation**

I recommend the Commission adopt a resolution to authorize the Airport to accept donations into the Airport Capital Improvement and Promotion Event Fund in order to offset the cost of events related to the completion and grand opening of both phases of the redevelopment of Terminal 1: The Harvey Milk Terminal, and the construction of the Grand



ro  
ector

Prepared by: Jon Ballesteros  
Chief External Affairs Officer

Attachment

1 [Administrative Code - Airport Capital Improvement Promotion and Event Fund]

2

3 **Ordinance amending San Francisco Administrative Code, Section 10.100-18, to**  
4 **establish a special fund to receive donations and authorize expenditures for the**  
5 **purpose of holding events to promote the opening of major capital improvement**  
6 **projects at the San Francisco International Airport; and deleting obsolete provisions.**

7 NOTE: Additions are single-underline italics Times New Roman;  
8 deletions are ~~strike-through italics Times New Roman~~.  
9 Board amendment additions are double-underlined;  
10 Board amendment deletions are ~~strikethrough-normal~~.

11 Be it ordained by the People of the City and County:

12  
13 Section 1. The San Francisco Administrative Code is hereby amended by amending  
14 Section 10.100-18, to read as follows:

15 SEC. 10.100-18. AIRPORT ~~TERMINAL 2~~ CAPITAL IMPROVEMENT PROMOTION AND  
16 EVENT FUND.

17 (a) Establishment of the Airport ~~Terminal 2~~ Capital Improvement Promotion and Event  
18 Fund. Airport ~~Terminal 2~~ Capital Improvement Promotion and Event Fund is hereby  
19 established as a category six fund for the purpose of receiving all donations of money,  
20 property and personal services which may be offered to the City and County of San Francisco  
21 through the Airport for the uses described in subsection (b).

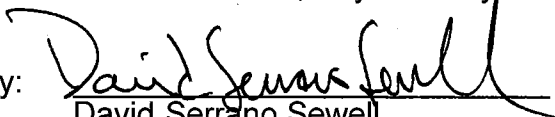
22 (b) Use of the Airport ~~Terminal 2~~ Capital Improvement Promotion and Event Fund.  
23 Money, property and personal services comprising the Fund shall be used and expended for  
24 such purposes as will be determined in the sole discretion of the Airport Commission to assist  
25

1 in promotional events and community outreach activities associated with the opening of ~~the~~  
2 ~~newly renovated Terminal 2~~capital improvements of the San Francisco International Airport.  
3 The Fund shall have a separate accounting for each capital improvement project as  
4 determined by the Airport Commission.

5 (c) Exceptions to Fund Category. Money, property and personal services comprising  
6 the Airport ~~Terminal 2~~Capital Improvement Promotion and Event Fund shall be expended ~~for~~  
7 to promote the capital improvement project for which the donation was made, such purposes  
8 as will be determined in at the sole discretion of the Airport Commission. Any unexpended  
9 balances remaining in the Fund when it expires on December 31, 201123 shall be deposited  
10 in the City's General Fund.

11 (d) Administration of Fund. The Airport Director shall submit to the Board of  
12 Supervisors and the Budget Analyst on an bi-monthly~~quarterly~~ annual basis written reports of  
13 revenues to and expenditures from the Airport ~~Terminal 2~~ Capital Improvement Promotion and  
14 Event Fund during the bi-monthly ~~quarterly~~ annual period covered by the report. This fund  
15 shall expire on December 31, 201123. Acceptance of donations of \$100,000 or greater shall  
16 require Board of Supervisors approval by resolution.

17 APPROVED AS TO FORM:  
18 DENNIS J. HERRERA, City Attorney

19 By:   
20 David Serrano Sewell  
21 Deputy City Attorney

22 n:\airlas2013\9690155\00882873.doc



City and County of San Francisco  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 130799

**Date Passed:** November 19, 2013

Ordinance amending the Administrative Code, Section 10.100-18, to establish a special fund to receive donations and authorize expenditures for the purpose of holding events to promote the opening of major capital improvement projects at the San Francisco International Airport; and deleting obsolete provisions.

October 30, 2013 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 30, 2013 Budget and Finance Committee - RECOMMENDED AS AMENDED

November 05, 2013 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

November 19, 2013 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 130799

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 11/19/2013 by the Board of Supervisors of the City and County of San Francisco.

for Angela Calvillo  
Clerk of the Board

Mayor

11/27/13

Date Approved

To: Supervisors Melgar, Ronen, Peskin, Preston  
 Cc: Ms. Pelham, Mr. Rosenfield,  
 From: Jerry Dratler  
 Subject: Ethics Commission Gifts report- comments and recommendations  
 Date: October 6, 2021

The Ethics Commission *Report on Gifts: Gifts to City Departments* documents the City's failure to enforce **four existing policies** regarding the administration of City-received gifts. The report also identified five City parties funded by City vendors. The largest party funded by City vendors was the \$1,018,000 Airport Terminal and Grand Hyatt Opening Celebrations.

I strongly disagree with the Ethics Commission's staff recommendation to strengthen the City's four existing reporting requirements which are largely ignored. **I propose that the best solution is to centralize the administration of gifts to the City under the Board of Supervisors.** Two of the four existing disclosure requirements currently reside with the BOS.

**The four existing policies regarding city received gifts.**

- 1. Disclosure to the Controller's Office** - The Administrative Code requires all 60 city departments to promptly report all City gifts to the Controller. The report found the Controller was unable provide significant gift data and the limited information was only available to certain public officials. The report would have been more useful if the report included the number of City departments that submitted reports. The failure of the City's chief compliance officer to enforce existing gift reporting requirements demonstrates the need to put all gift compliance reporting under the BOS.
- 2. City Department Website gift disclosure**- The Sunshine Ordinance requires that anytime a department accepts a payment "for the purpose of carrying out or assisting any City function," the amount and source of the payment must be disclosed on the department's website. **62% of the city departments did not report gift data on their website.** This is why gift reporting needs to be centralized at the BOS.

# of depts.	% total	
7	12%	Gift data could be easily found on the dept. website.
16	27%	Gift data was difficult to find on the dept. website
<u>37</u>	<u>62%</u>	Did not report gift data.
60	100%	

- 3. Annual reporting of gifts to the Board of Supervisors** - The Administrative Code requires each of the 60 City departments to submit a report in July to the Clerk of the BOS disclosing the amount, the nature and the disposition of gifts received. The Administrative Code does not specify a reporting format, content, or require the posting of the disclosures. The Ethics Commission did not report on the number of city



departments that submitted their annual report to the BOS. The report concluded the current reporting is ineffective and does not provide useful data to the public. How does the BOS plan to fix this problem?

4. **Board of Supervisors approval of gifts over \$10,000** – the BOS is required to approve any City gift in excess of \$10,000. The approval process is called “accept and expend.” There is no published list of BOS approved gifts. The report does not explain why the Administrative Code exempts 200 statutory gift funds from public disclosure. Why are the exceptions necessary and when will the BOS publish a complete list of BOS approved gifts?

**Vendor funded city department events are out of control and the current environment promotes illicit behavior. Five examples are listed below.**

1. **Planning Commission/Department** June 29, 2019, retirement party with 220 attendees, 100 city officials and 120 people from outside government. Party cost estimated to be between \$17,000 and \$21,000. Tickets were priced at \$25 for city officials and \$125 for non-city officials. The observations below are from the Ethics Commission’s report.
  - “The Planning Department reported the non-city officials often seek project approvals from the Planning Commission and seek to influence the outcome of Planning Department processes. Some are large real estate development firms, and others are law firms that work on land use issues. These include real estate developers Tishman Speyer, One Vassar, and Associate Capital and law firms Rueben, Junius, & Rose, J. Abrams Law PC, and Gibson, Dunn, & Crutcher LLP. Other event supports included advocacy organizations Ground Floor Public Affairs and the Residential Builders Association.
  - “Andrew Junius is a partner at the firm and lobbied 31 different Planning officials a total of 126 times in the 12 months before the party. James Reuben, another partner, lobbied 18 different Planning officials a total of 193 times in the 12 months before the party. Tuija Catalano is another lobbyist with Reuben, Junius & Rose. In the year before the retirement party, Catalano had 47 lobbying contacts with 15 different Planning officials. All of Catalano’s contacts involved a project at 2300 Harrison Street. This property was discussed at the Planning Commission meeting on June 6, 2019 (three weeks before the party). These reported attempts by Rueben, Junius, & Rose to influence the actions of Planning officials almost certainly make the firm a restricted source for the officials who were contacted”.
  - “Many individuals at Rueben, Junius, & Rose are also registered permit consultants—or permit expeditors—meaning that they contact City employees to urge the approval of permits. In the year leading up to the party, seven individuals from the firm contacted 40 separate Planning Department employees a total of 102 times regarding permits. These attempts to influence likely make the firm a restricted source for each Planning employee who was contacted”.

- “Perhaps most strikingly, four lobbyists with Rueben, Junius, & Rose reported lobbying seven high level Planning Department employees on the day of the party (emphasis added). It is not clear whether these communications took place at the party itself or earlier in the day. The Planning Department was unable to confirm which department officials attended the event, and Staff were unable to obtain details from Rueben, Junius, & Rose as to which lobbyists from the firm attended. But, the fact that four lobbyists from the firm lobbied Planning staff on the same day as the party underscores the closeness between the firm’s business with the Planning Department and its funding of a Planning Department event at which department officials who attended received a personal benefit” (emphasis added).
- “Similarly, real estate developer Tishman Speyer was reported by the Planning Department as a major funder of the party. The firm regularly attempts to influence Planning officials on major real estate projects. For example, at the Planning Commission’s June 6, 2019, meeting (three weeks prior to the party), the Commission discussed and approved a Large Project Authorization for 598 Brannan Street, a Tishman Speyer Project. In the 12 months prior to the party, Tishman Speyer had paid for lobbyists to contact 19 separate Planning Officials a total of 113 times regarding the project at 598 Brannan (emphasis added). These attempts to influence the actions of Planning officials likely make the company a restricted source for all who were contacted by the lobbyists. If any of these officials attended the party, the personal benefits they received run counter to the purposes of the restricted source rule”.
- “Because of their dealings with Planning officials, each of the companies that helped fund the party was likely a restricted source for many of the department officers and employees who received discounted tickets to the party. These individual officials would clearly have been prohibited from accepting free food or drinks from these restricted sources had they accepted them directly (emphasis added). However, the department helped arrange a party at which the same basic outcome resulted. The involvement of the department in the party arrangement does little to mitigate the potential corrupting influence that gifts from a restricted source can have. This type of activity undermines the restricted source rule and creates a risk, and the appearance, that the officials may give preferential treatment to the entities because of gifts received.”

## 2. **Airport Commission - \$1,018,000 Airport Terminal and Grand Hyatt Opening Celebrations.**

- “In 2019, the Airport held three events celebrating the opening of the Harvey Milk Terminal 1 and the Grand Hyatt at SFO; a fourth event (a gala dinner) was planned for 2020 but was cancelled due to the COVID-19 pandemic. Of the events that occurred, two of the three were private celebrations for people who worked on the terminal and hotel projects, along with their guests. The events were attended by City employees, Airport Commissioners, Arts Commissioners, and elected officials. These private, invitation-only events featured live entertainment, food, and cocktails.”
- “To cover the cost of the four scheduled events, the Airport reported accepting \$1,018,000 in gifts from non-City sources. This includes \$845,000 in cash gifts and

\$173,000 of in-kind gifts. Most of this funding came from entities that would likely be restricted sources for Airport officials because they do business with the Airport. Of the \$1,018,000 given for the events, 86% came from Airport contractors or tenants. For example, Hensel Phelps Construction was the single largest donor funding the events, giving \$99,000. Hensel Phelps was a party to a \$1.1 billion construction contract with the Airport, which the Airport Commission had voted as recently as September 2018 to increase. Because of this contract, Hensel Phelps was a restricted source for all officers and employees of the Airport. Likewise, Austin Webcor Joint Venture, the second largest supporter of the events at \$75,000, was a party to a \$768 million contract with the Airport. Austin Webcor Joint venture was thus a restricted source for all Airport officials at the time of the parties.”

- “The payments for these celebrations bestowed personal benefits on Airport officials in the form of free food, drinks, and entertainment. Nearly all of the reported funding for these gifts came from entities that do business with the Airport and would thus be restricted sources for Airport officials. An airport official would clearly have violated the restricted source rule by accepting a free meal or other gift directly from one of these contractors. Yet, the department organized over \$1 million in funding for events that accomplished the same result.”

### 3. **The Port of San Francisco engaged in a similar practice when it hosted its \$97,000, 150<sup>th</sup> Anniversary Gala.**

- “The cost of the Port gala event was approximately \$97,000 and was free to the roughly 295 individuals who attended, roughly 65 of whom were City officials. Companies that funded the event include Princess Cruises (\$10,000), Recology (\$10,000), AECOM (\$10,000), AMB/Prologis (\$10,000), and Hornblower Yachts (\$5,000).”
- “Many of the companies that funded the event appear to do business with the Port and would therefore be restricted sources for all Port officials. This type of gift giving through a city department undermines the restricted source rule by creating a pathway—intended or not—for City officials to receive gifts that can create the appearance of pay-to-play and an opportunity for undue influence.”

### 4. **Entertainment Commission Holiday Party Funded by Permittees:**

- “On December 3<sup>rd</sup>, 2019, the Entertainment Commission hosted a holiday party that was attended by City officials from Entertainment and other departments as well as non-City individuals. According to the Entertainment Commission, roughly 200-250 people attended the event. Twenty-two of the attendees were City officials, and the majority of the non-City individuals were industry stakeholders. **Four of the six sitting members of the Entertainment Commission attended the event.** According to Entertainment Commission disclosures, the party was largely funded by companies holding permits issued by the Entertainment Commission. The Entertainment Commission’s website discloses seven gifts associated with the Commission’s holiday party. Of the seven gifts associated with the holiday party, four

of the gift sources (representing \$9,443 of the \$10,979, or 86%, given for the event) were entities that had been issued entertainment permits, which are issued by the Entertainment Commission. The largest single funder of the party, Mezzanine SF, provided the venue for the event, valued at \$7,500. The company was at that time the holder of an entertainment permit issued by the department in 2016. The application for this permit and communications pertaining to it would likely make the company a restricted source for many officials within the Entertainment Commission.”

## 5. Office of the Mayor - Holiday Party Funding Not Publicly Disclosed

- “As part of its Sunshine Ordinance disclosures, the Office of the Mayor reported receiving \$3,800 in funding for a staff holiday party in December of 2019. Staff learned from the mayor’s office that the party was held at the Emporium SF, an arcade bar in San Francisco. **Roughly 80-100 people attended, the majority of whom were City officers or employees, including the mayor. Attendees were provided with free food and drinks** (emphasis added).”
- “According to the Mayor’s website disclosures, the funding for the party was provided by the “San Francisco Special Events Committee,” which according to the mayor’s staff is a 501(c)(3) organization that funds special events involving the City and County of San Francisco. Mayor’s office staff were initially unable to provide further information about where the San Francisco Special Events Committee obtained the funds it used to pay for the party. Information about the organization that is readily available online is limited to what is provided on the organization’s tax documents and includes the group’s name, mission, and principal officer. It does not appear that the organization has publicly disclosed its funding sources, as is required by the Sunshine Ordinance for entities that provide funding to City departments. The principal officer of the organization is Charlotte Maillard Shultz, who is the Chief of Protocol within the Mayor’s Office of Protocol and a member of the War Memorial Board of Trustees. In a September 23, 2021, letter, Ms. Shultz explained to the mayor’s office that the funding had been provided by a member of the War Memorial Board of Trustees.”
- “The lack of public transparency into the ultimate source of funding for this event is problematic. Since the event provided free personal benefits to City officials, it is vital to know who paid for it. Without public disclosure, it is possible that such an event could be funded by restricted sources and that this fact would not come to light. This arrangement is similar to the DPW holiday parties in that a non-City organization funded a free holiday party for City officials using money collected from undisclosed private sources. In the case of DPW, the Department of Justice found that the use of the nonprofit intermediaries constituted a deliberate attempt to conceal the true source of the funds (which was Recology) and charged multiple individuals with money laundering. In the case of the mayor’s holiday party and the nonprofit that paid for it, neither the Mayor’s Office website nor the nonprofit disclosed to the public who the source of the funding was or why the source was not identified (emphasis added).”

The report also disclosed \$1.3 million of free event tickets provided to city officials by city vendors in the table below.

*Table 3: Summary of Reported Ticket Distributions (2009-2021)*

Department	# of Form 802s Reviewed	# of Tickets	Value of Tickets	Percentage of Total Value
Recreation & Parks	23	3,605	\$643,569	49.99%
War Memorial	80	3,392	\$516,031	40.09%
TIDA	16	607	\$92,012	7.15%
Arts Commission	12	413	\$30,975	2.41%
Film Commission	4	63	\$2,504	0.19%
Port Commission	4	6	\$1,725	0.13%
Fine Arts Museums	1	14	\$490	0.04%
Asian Art Museum	0	0	\$0	0.00%
Total	140	8,100	\$1,287,30	100.00%

I am asking current appointed and elected city officials to implement managerial changes to ensure proper disclosure of city gifts. Tweaking the existing rules will not fix the problem. City gift reporting needs to be centralized.



October 7, 2021

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

RE: Ethics Commission Staff Report on Gift Laws Part B – Gifts to City Departments

Dear Commissioners:

Thank you for the important work the Ethics Commission is undertaking to ensure the commitment of City departments to the highest-level of ethical standards. It is imperative that City departments and officials rebuild and maintain public trust following the recent discoveries of corruption brought to light in the Nuru investigation.

This letter is intended to correct and clarify elements of the Ethics Commission Staff Report regarding Gifts to City Departments (the “Report”), but only as the Report pertains to the three Charitable Trust Departments (“CTD”) established in Article 5 of the City Charter: Asian Art Museum (“AAM”), Fine Arts Museums of San Francisco (“FAMSF”), and the San Francisco War Memorial & Performing Arts Center (the “War Memorial”). As City-owned charitable trust and arts and culture departments, CTDs are unique agencies charged with responsibility for departments that are distinct in important ways from other City departments.

The Report states in its first paragraph: “The purpose of the project is to assess whether current law adequately identifies and prohibits conduct that could give rise to a conflict of interest or otherwise undermine fair and objective government decision-making.” Though this is a worthy and necessary objective, in its assessment of CTDs, the Report fails to recognize the unique nature of our departments, including our missions, purposes, and operational processes.

## **CHARITABLE TRUST DEPARTMENTS**

The CTDs oversee assets that were given in trust to the City, including the AAM and FAMSF museums and the War Memorial performing arts center facilities. Their governing boards (as established in Sections 5.102, 5.104, 5.105 and 5.106 of the Charter) are charged with a fiduciary duty for the oversight and management of these assets to benefit the City and County of San Francisco.

For this reason, Charter Section 5.101 grants to the CTDs “...exclusive charge of the trusts and all other assets under their jurisdiction, which may be acquired by loan, purchase, gift, devise, bequest, or otherwise, including any land or buildings set aside for their use. They shall have the authority to maintain, operate, manage, repair or reconstruct existing buildings and construct new buildings, and to make and enter into contracts relating thereto, subject, insofar as City funds are to be used, to the budgetary and fiscal provisions of this Charter.”

As noted above, the governing boards of the CTDs have a fiduciary duty to ensure the proper function, maintenance, and operation of departmental facilities and all other Trust assets. For the AAM and FAMSF, this means the oversight and management of active exhibit galleries, art collections, and concessions services, and for the War Memorial, in addition to grounds, office space, and concessions services, it means the oversight and management of performance and event venues rented for use by Lessees (San Francisco Ballet, San Francisco Opera, San Francisco Symphony, and others).

In addition to their fiduciary duties over Trust assets, the Charter grants CTDs (and the San Francisco Arts Commission) the exclusive right to accept gifts made to their respective departments.

### **ACCEPTANCE OF GIFTS**

Regarding the CTD's acceptance of gifts to their respective departments, the Charter in Section 5.100 allows CTDs and the San Francisco Arts Commission to accept gifts without action by the Board of Supervisors, which contradicts the findings in the Report.

In Section A.3. the Report states: "Anytime a City department wishes to accept any gift valued at over \$10,000, approval by the Board of Supervisors is required... The only exception to the Board approval requirement is if a gift is accepted under the terms of a statutory gift fund." But this is inconsistent with Charter Section 5.100, which states: "The governing boards of the arts and culture departments may accept and shall comply with the terms and conditions of loans, gifts, devises, bequests or agreements donating works of art or other assets to their department without action of the Board of Supervisors so long as acceptance of the same entails no expense for the City and County beyond ordinary care and maintenance." [emphasis added]

### **TICKET DISTRIBUTION**

The Report correctly states in Section II.A.1. that: "...no single definition exists in state or local law that defines what constitutes a gift to a City department..." However, in the Fair Political Practice Commission's (FPPC) Regulation 18944.1, the state does clearly say that tickets are not a gift if the distribution of tickets meets certain criteria, including that: the distribution of the ticket is made in accordance with a policy adopted by the agency; the distribution is reported appropriately; the ticket is not earmarked; the agency determines who uses the ticket; and the distribution is made to accomplish a stated public purpose of the agency.

Thus, the Fair Political Practices Act through the FPPC has clearly contemplated that in specific instances, when it is necessary for public officials to attend exhibits, performances, and events to fulfill their official obligations, tickets are often required for them to attend, and that when such tickets are distributed to serve a public purpose in accordance with a written policy duly adopted by the governing body of the agency, such tickets are "...not a gift."

Further, in the case of the War Memorial, Lessees are not giving free tickets to the department, but rather the War Memorial is reserving for its use a small number of seats necessary for officials to discharge their duties. The War Memorial's Short-Term License Agreement (STLA) states: "Licensee shall not sell tickets or issue passes for the following seats: *[Lists the five (5) pairs of seats to be reserved specific to the venue]*. The above seats are reserved for use by the War Memorial..."

Thus, Lessees are not providing a gift to officials through the department, but rather the department is holding aside space it needs to fulfill its obligations, much as it holds aside storage areas, office space, engineering shops, machine rooms, and concessions areas – all of which are spaces excluded from Lessee STLAs and rental fees.

Lessees are relied upon to print tickets for the seats held aside in War Memorial STLAs not because Lessees have a right to them and are giving them to the department, but as a simple matter of practicality. Officials using War Memorial seats need an access credential compatible with Lessee scanning devices and the department must ensure that Lessees do not mistakenly sell the seats, which would result in an inconvenience to patrons.

All seats reserved for use by the War Memorial that are not assigned by the department for use by officials are in turn donated to the Lessee by the War Memorial so that the Lessee may sell them to generate additional revenue to benefit the Lessee.

## **UTILIZATION OF TICKETS**

The Report correctly states in Section B.1. that City officials do not need tickets to perform "administrative functions" in CTD facilities, which includes activities such as cleaning, maintenance, planning, executing capital projects, and installing or removing exhibits, displays, and performance or concessions related equipment. However, tickets are needed to perform management and oversight functions, as well as to educate staff and other officials on the function of the CTDs in the public uses for which they were created.

Officials are charged with monitoring how CTD spaces function and how the public moves through them; ensuring that spaces are kept clean and maintained throughout public use periods; reviewing how security, concessions and other service staff interact with patrons; understanding how set-ups and arrangements function in the spaces so as to adequately advise Lessees and staff on how to best utilize them for future events; assessing patron satisfaction and behavior; assuring the proper function of exhibit equipment and technology, stage systems, and patron-oriented equipment and furnishings; and verifying that all COVID-19 mandated safety protocols are being followed.

For an official or staff member to understand these functions and operations, the officials must attend as a patron or audience member during public use. This is neither a luxury nor an employee appreciation program, but rather a necessary method used to educate and inform officials and employees who have responsibilities to the CTDs, and who attend exhibits and performances during their personal time so they may better understand the operations and function of the facilities and act accordingly in their official capacity.



To perform these required functions, officials require tickets that allow them to access CTD spaces in the form of a patron during periods of public use. That is a unique aspect of CTDs. Any individual, including City officials, may enter a library, park, or other public space to perform his or her duties without a ticket because – with a few limited exceptions – no ticket is required for access. This is – with a few limited exceptions – rarely true for CTDs.

Though other City departments occasionally host ticketed events and performances, it is not the primary role of any non-CTD City agency. CTDs are the only City departments for which managing venues that present ticketed arts and culture events is the sole reason for the departments' existence. The inherent distinction is that the terms of access to CTD facilities during regularly scheduled periods of public use is by ticketed entry. This is especially true for the War Memorial, in which an attendee requires an assigned seat in the auditorium to fully monitor the operations and functions of the spaces.

To require officials to manage a museum or performing arts center, and then to deprive them of the mechanism through which they may actively monitor them, would be akin to charging the Library Commission with oversight of public libraries and then forbidding its Commissioners from checking out books. It is for this very reason that CTDs provide tickets in an open and transparent manner consistent with the Fair Political Practices Act.

To deprive CTDs of the ability to utilize tickets provided under the guidance of current state regulations deprives officials of their ability to fulfill their responsibilities to the department; to expect that officials expend their own financial resources on tickets so they may fulfill the obligations required of them by the City creates an undue personal burden; and to require (as Ethics Commission staff suggested to War Memorial staff in a virtual meeting on October 5, 2021) that CTDs purchase tickets from Lessees so that officials may discharge their duties would be fiscally irresponsible and an affront to taxpayers.

## **UNDUE INFLUENCE**

In its Section II.A.3. the Report states: “The purposes of the restricted source rule include preventing people from seeking to unduly influence City officials by giving gifts, preventing officials from seeking gifts in a manner that creates a pay-to-play system, and avoiding the appearance of undue influence or pay-to-play in the eyes of the public.” The CTDs agree with this purpose and our policies and procedures are designed precisely to accomplish that.

Section II.B.1. of the Report suggests that: “The free ticket practices observed on the part of War Memorial jeopardize this important policy objective and may undermine public confidence in the impartiality of trustee decisions affecting the lessees.” Though directed at the War Memorial, this argument could be applied to each of the CTDs and is illogical.

Eliminating the existing ticket distribution process would, for the CTDs, create the very conditions the Report incorrectly claims already exist. CTD Ticket Distribution Policies, which have a clear legal basis and are executed transparently, provide the most effective process through which officials can execute their duties without the possible undue influence of unscrupulous Lessee's that might offer tickets as gifts in exchange for preferential treatment.

The provision of tickets to officials through enacted Ticket Distribution Policies is a key method for reducing the influence of Lessees over decisionmakers and maintaining transparency respecting who receives tickets. The ability of officials to receive directly from the CTDs any tickets necessary for them to discharge their duties obviates the need for them to form individual relationships with Lessees to obtain tickets, because one cannot illicitly bribe a person with that which they can acquire through legitimate means.

As an example of how the Report incorrectly insinuates that the distribution of tickets may “undermine public confidence in the impartiality of trustee decisions,” Section B.1. of the Report, which regards the War Memorial, references a 30-year lease agreement enacted by and between the War Memorial and the San Francisco Opera Association for use of space in the Veterans Building, which is under jurisdiction of the War Memorial. The Report implies something untoward about the approval of the lease agreement because a Trustee involved in approving said agreement later used War Memorial seats to attend performances given by the San Francisco Opera in conducting his oversight role of the War Memorial Opera House. However, the Report fails to acknowledge that the San Francisco Opera raised and invested more than \$18 million in funds to fully renovate the spaces covered in the lease agreement, including constructing a new performance space, the Taube Atrium Theatre, which is now available for the War Memorial to rent out. The Report also fails to mention that the spaces, once fully renovated, became property of the War Memorial, and currently generate approximately \$500,000 in annual revenue from the San Francisco Opera to the benefit of the City.

The San Francisco Ballet, San Francisco Opera, and San Francisco Symphony regularly make significant capital investments in War Memorial facilities. In 2021 alone, the San Francisco Ballet and San Francisco Opera made an investment of \$3.5 million for new seating in the War Memorial Opera House and the San Francisco Symphony made an investment of \$1.5 million in LED lighting upgrades to Davies Symphony Hall. The Report alleges that the distribution of tickets may “give rise to an appearance of undue influence,” but it is the omission of pertinent information regarding the lease agreement in the Report itself that may give rise to such.

## **EQUITY**

If enacted, the legislative proposal could have the unintended consequence of creating inequity among officials with responsibilities to the CTDs. The Ticket Distribution Policies allow officials with an identified public purpose to attend exhibits, performances, and events without having to expend their own financial resources, which it cannot be assumed is possible for all to do.

If disallowed, the resulting situation could be one of inequity in which officials with greater financial means could still attend exhibits, performances, and events by purchasing their own tickets, whereas officials with less financial means might be unable to do so.

That situation, if it came to be, would put officials on an uneven field in which, when discharging their duties, wealthier officials would have more access to first-hand information and experience when making decisions than officials of more modest means.

## **INDUSTRY PRACTICE**

The provision of tickets by museums and performing arts venues is a standard industry practice that accomplishes many goals. In addition to the needs and objectives outlined herein, the ability of CTDs to invite officials, employees, and staff from other agencies and venues of similar type allows for the formation of mutually beneficial relationships with organizations and entities that can provide helpful insight into best practices and areas of concern to the CTDs. Eliminating this benevolent and benign mutual reciprocity would diminish the ability of CTDs to form and maintain relationships within our respective industries, causing us to isolate during a historically unparalleled period in which we should be collaborating and freely sharing knowledge.

## **SUMMARY**

CTDs are unique departments established by the City Charter with rights, roles, and responsibilities that are distinct from other City departments.

As established in the Charter, CTDs may accept gifts of any amount without approval from the Board of Supervisors.

To fulfill our Charter-mandated responsibilities in a manner that respects and retains the trust of taxpayers, CTDs require access to exhibits, performances, and events that allow Commissioners, Trustees, staff, and other officials to participate as a patron or audience member so they may fully discharge their duties.

The ticket practices followed by the CTDs in accordance with FPPC regulations are ethical and transparent, and the Report's Legislative Recommendations, if enacted as written and applied to CTDs, could result in creating the very problems they purport to solve.

For the above reasons, we respectfully request the Ethics Commission include an exemption for CTDs in the Legislative Recommendations outlined in its Report.

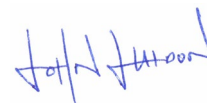
Sincerely,



Jay Xu  
*Director and CEO*  
Asian Art Museum



Thomas P. Campbell  
*Director and CEO*  
Fine Arts Museums  
of San Francisco



John Caldon  
*Managing Director*  
San Francisco War Memorial  
& Performing Arts Center