

January 19, 2022

Chair Yvonne Lee  
Commissioner James Bell  
Commissioner Larry Bush  
Commissioner Daina Chiu  
Commissioner Theis Finlev  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

RE: Proposed Ballot Measure to Amend the Campaign and Governmental Conduct Code

Dear Commissioners:

We are writing to offer insight from the perspective of City departments regarding the proposed ballot measure. We welcome changes to the Code that clarify rules and enable us to better serve San Francisco's residents and visitors both ethically and transparently. There is much to be lauded in the proposed ballot measure, in particular its provisions that strengthen penalties against bribery.

We do have concerns there could be potentially problematic unintended consequences resulting from the proposed changes to the definitions of restricted sources and gifts and hope it will be helpful for us to address those concerns with you in this letter. We would also like to request clarifications regarding some topics of discussion from the Commission meeting of Friday, January 14, 2022.

In that meeting, there was discussion regarding the proposed ballot measure, included as Agenda Item 6, that was confusing and inconsistent with the proposal's actual language as written, leaving on the record misimpressions of the measure's provisions. The proposed ballot measure and accompanying draft regulations (the "measure") is incredibly important to the future of San Francisco and it is vital that information regarding its impacts is presented accurately.

City department staff and community stakeholders remain concerned about the following elements of the measure that are burdensome, vague, and disproportionate to the issues being addressed:

1. The measure is overly broad in that it vastly expands the definition of "restricted source," making thousands of people newly restricted sources, including directors, officers, and other affiliates of department contractors, grantees, and permittees. (Proposed Section 3.203.)
2. These restricted sources cannot provide any item of value to a City employee (or their affiliates, including family members) in the related department, even if that employee has no connection to, or knowledge of, the contract, permit, or grant. Further, the measure has no provision for creating a central reporting system of restricted sources through which a person's status as a restricted source can be confirmed, setting aside the impracticality of such a system.
3. The measure has no *de minimis* exceptions and covers items of any value including, for example, holiday cards, political buttons, flowers, and small items of food (Proposed Sections 3.203, 3.216(a), and 3.216(b).) For instance:
  - a. A City street cleaner would be subject to a restriction on a holiday gift from a neighbor who happened to be a restricted source.
  - b. If the spouse of a City employee were a teacher, they could not accept a gift from a parent of a student if the parent was a restricted source.
4. The measure removes important current exemptions from gift laws enacted by the state Fair Political Practices Commission (FPPC), including the fundraiser exception, the FPPC Form 802 department ticket

distribution reporting exception, and the “drop-in” exception, depriving City partners and stakeholders the opportunity to have City representatives participate in important community and cultural events by making it exceedingly difficult and costly for them. (Proposed Sections 3.203 and 3.216(b)(1)&(2), and Draft Regulations Section 3.216(a).)

5. The measure will have significant equity impacts on smaller nonprofits, arts organizations, and small businesses, which have fewer compliance resources and less familiarity with City processes. These entities will be most impacted by the administrative burden and potential liability created by the measure, which will disparately impact communities of color, the LGBTQ community, and other marginalized groups.
6. The measure will impair the ability of City grantees, permittees, and partners to demonstrate the effectiveness of their work, and provide accountability to taxpayers, because City officials will be inhibited from attending events sponsored by such groups to monitor compliance with grants and permits, proper use of facilities, and appropriate content.
7. Nonprofits, permittees, and other community groups will be deterred from engaging with City officials, inviting them to events, or offering small culturally significant items like food, for fear of being unable to vet compliance. This builds barriers between the City and the community.
8. The measure imposes severe penalties on department heads and other staff under a strict liability standard, including fines up to \$5k, for failure to comply with new requirements, including complex reporting in a 15-day window for even minimal departmental gifts, such as a case of water, with no exceptions for donations for disaster relief efforts or other uncontroversial needs. This will create tremendous compliance burdens and liability risks, potentially impairing the City’s ability to recruit department heads and other staff. (Proposed Sections 3.217(c), 3.415, 3.530 and Section 3.242 of the current Code.)

#### **CIVIL PENALTIES FOR NONPROFIT DIRECTORS AND OTHER INDIVIDUALS**

At the Ethics Commission meeting of January 14, 2022, in response to a question from Commissioner Finlev, staff suggested that the measure does not include potential penalties for officers and board members of nonprofits and members of other community-based organizations. This is not accurate based on the current language in the proposed measure.

In particular, a question was posed as to whether a member of a board of directors for a nonprofit grantee hosting a community fair could be subject to criminal and civil liability, if, at the fair, that person provided a small item of food (such as a free burrito) to a City official who works in a department that made a grant, or issued a permit, to the nonprofit organization hosting the fair.

Per the definitions included in the measure, the burrito would constitute a gift, and the director of the nonprofit grantee would be a “restricted source.” A cursory reading of the Proposed Section 3.216 proposed by the Ethics Commission, and Section 3.242 of the current Code, demonstrate that nonprofit employees and board members would be subject to penalties in such a scenario.

- Proposed Section 3.216(b)(4): “No person may offer to make a gift to any officer or employee, or any of the officer’s or employee’s family members, if the person knows or has reason to know that they are a restricted source for the officer or employee.” (Page 59, Lines 1-3)
- Section 3.242 of the San Francisco Campaign and Governmental Conduct Code states:
  - a) *Criminal Penalties*. Any person who knowingly or willfully violates any of the City's conflict of interest and governmental ethics laws shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000 for each violation or by imprisonment in the County jail for a period of not more than one year in jail or by both such fine and imprisonment.

- b) *Civil Penalties.* Any person who intentionally or negligently violates any City conflict of interest or governmental ethics law shall be liable in a civil action brought by the City Attorney for an amount up to \$5,000 for each violation.

Taken together, Proposed Section 3.216 and current Section 3.242 make clear that potential civil and criminal liabilities will be expanded to nonprofits and community-based organizations. It would also include other individuals, such as small business owners who hold various permits with the City, or who may have received a COVID relief loan or grant.

By expanding the definition of restricted source, as well as eliminating most exceptions and covering items of any value, the measure will produce far-reaching impacts that drastically alter the manner in which the City may interact with its non-profit partners, grantees, and other community stakeholders.

Those are the foundations of the measure. If enacted as currently written, they could criminalize giving a thank you card or a small token item of food and subject City employees and directors of nonprofits to both civil and criminal penalties for interactions that are in no way tantamount to undue influence or bribery. Suggestions that dangers posed by the language of the measure will be mitigated in regulations to be written down the road, or suggestions that actions rendered illegal by the measure would never actually be prosecuted, are cold comfort to the many who could be adversely impacted by the law as it is currently written, and potentially interpreted, in an enforcement or criminal action.

### **EXPANSION OF BRIBERY AND THE “CHILLING EFFECT”**

The measure’s expansion of what could now be considered a bribe is an extremely scary prospect for community members, officers of nonprofits, small businesses, permittees, and City staff alike. It will result in hindered collaboration because most reasonable people will fear:

*expanded restricted sources + gifts are anything of value + strict liability = everything is a bribe.*

The Executive Summary of Agenda Item 7 at the Ethics Commission’s December 10, 2021 meeting states that the recommendations are intended to: “Define ‘bribe’ broadly as ‘anything of value,’ rather than narrowly as a ‘gift.’ (see A.1.) and to: “Standardize penalty provisions to make it clear that all violations of the Code are punishable and that proving a particular mental state is not required.” (see E.1.)

Separating these recommendations, but not showing the effect of them together, is misleading as to the potential effects of the legislation. Currently bribery requires there be a *mens rea* of “attempting to influence” a governmental decision. As a practical matter, the Ethics Commission aims to define a bribe as “anything of value,” which as written includes *de minimis* items such as thank you cards, bottles of water, and other items of low value, but also changes the intent standard, which ultimately means any minimal item given to an official could be considered a bribe even if the official has no reason to believe there is any undue attempt to influence the official.

Similarly, for a City official or employee accepting anything from a restricted source – even if the official or employee did not know the giver was a restricted source and had no influence whatsoever over the matter that made them such – the measure treats this as an act of ‘soft corruption.’ There was discussion at the meeting of January 14, 2022 about the concept of a “chilling effect,” which was introduced in public comment by community-based nonprofits and City department members. Though skepticism was expressed by some Commissioners and staff, the overly broad scope of these provisions is the root cause of that effect.

Preventing and punishing bribery is a necessary and important goal. However, defining actions as bribery should be limited to those actions in which one provides a thing of value to a City official with the intent to induce an inappropriate or unlawful *quid pro quo* exchange; not for hospitality or small tokens of appreciation.

## AVAILABILITY TIMELINE OF THE MEASURE FOR PUBLIC INPUT

Ethics Commission staff has stated that the proposed ballot measure has been available for public review and comment for “months,” with some statements made that the proposal was made available as early as August 2021. While reports and surveys were circulated earlier in 2021, the actual proposed ballot measure was not made publicly available until December 7, 2021.

At its meeting of October 8, 2021, the Ethics Commission voted to approve staff’s “Report on Gifts: Gifts to City Departments,” which in its Section IV on page 41 stated: “Staff will collaborate with the City Attorney’s office to produce a single draft ordinance that combines the Commission’s legislative recommendations contained in both reports. Staff will then present this ordinance to the Commission for its consideration and approval.” (Emphasis added.) It’s important to note that as of October 2021, no proposed language had been made available, and that the public was being told staff’s proposals would become an ordinance, which are presumably enacted by the Board of Supervisors.

For the meeting of November 8, 2021, the first draft of the proposed ordinance was posted publicly. It was 11-pages long and included revisions to Sections 2.115, 3.203, 3.216, and 3.217 of the San Francisco Campaign and Governmental Conduct Code.

The newly proposed ballot measure was first posted on Tuesday, December 7, 2021, counted 123-pages, and made revisions to the aforementioned Code in Sections 1.503, 2.100, 2.103, 2.105, 2.106, 2.107, 2.110, 2.115, 2.116, 2.117, 2.120, 2.130, 2.135, 2.136, 2.140, 2.145, 2.150, 2.155, 3.1-102, 3.1-102.5, 3.203, 3.204, 3.205, 3.214, 3.216, 3.217, 3.218, 3.243, 3.300, 3.301, 3.302, 3.303, 3.400A, 3.400, 3.403, 3.405, 3.410, 3.415, 3.420, 3.425, 3.500, 3.505, 3.510, 3.520, 3.525, 3.530, 4.100, 4.103, 4.105, 4.107, 4.110, 4.115, 4.117, 4.120, 4.123, 4.125, 4.130, and 4.135.

It wasn’t until the agenda was posted for the meeting of December 10, 2021, that the proposal was changed from being an ordinance to a ballot measure. This distinction is extremely important, as a draft ordinance would have allowed for continued public participation and input while the language was being finalized, whereas the proposal being made a ballot measure, coupled with the Ethics Commission’s stated intention to pass it immediately, drastically reduced the timeframe and opportunities for public input and a participatory process.

It should be noted that the proposed ballot measure was posted as an action item three days before the December meeting, midway between Thanksgiving and Christmas, at the outset of the Omicron surge.

As of the Ethics Commission’s January 14, 2022 meeting, the proposed ballot measure had been publicly available for only six weeks over the holiday season and during the largest surge of COVID-19 to date.

## ERRORS IN PROPOSED LANGUAGE

The language of the measure contains errors and inconsistencies that indicate it was hastily assembled and not thoroughly reviewed in the rush to qualify it for the June ballot.

Proposed Section 2.155 of the proposed ballot measure states: “The Board of Supervisors hereby declares that it would have adopted this Chapter...” But the measure is being put on the ballot to be adopted by the voters, not adopted by the Board of Supervisors. And Proposed Section 3.420 states: “Between April 1 and April 15, 2016 and between April 1 and April 15, 2017, the Ethics Commission shall provide a report...,” which appears to be an unreviewed cut/paste because both years are in the past.

The language of laws must be clear, correct, and cogent. Law cannot be made in a rushed or reckless manner without proper care taken to create language that ensures its proper affect and interpretation.

## REQUESTS

To address the above-mentioned concerns, and to ensure thorough and robust public participation, we respectfully request prior to the Ethics Commission taking a vote on the measure that:

1. Ethics Commission staff issue a FAQ per the direction of Commissioners at the January 14, 2022 meeting.
2. The Ethics Commission host a Town Hall for community members, nonprofits, permittees, and small businesses to learn about, and provide feedback on, the measure.
3. The Ethics Commission submit the measure to the Office of Racial Equity for an Equity Analysis.
4. Ethics Commission staff present publicly a revised version of the proposed measure that includes corrections, clarifications, and new language reflecting any agreed upon changes.


Putting the measure on the ballot, with provisions that have not been presented fully and consistently, would not serve the goals of ethics reform; nor does failing to fully and fairly address the legitimate concerns raised by community stakeholders and City staff about the potential impacts of the measure.

Ethics, honesty, and transparency matter to us all. They matter to Ethics Commissioners. They matter to Ethics Commission staff. They matter to the overwhelming majority of public servants who work for the City. They matter to the public. And they matter to us. It would be unfortunate if these necessary efforts to improve ethics within the City fell prey to the binary thinking of “us versus them.”


If the pandemic has taught us nothing else, it has taught us that we are smarter together, we are stronger together, and collaboration is the only way forward. We support much of what is contained in this measure and hope we will be heard on the areas that bring us concern.

Thank you for your time and consideration.


Sincerely,


  
Maria Su  
*Executive Director*  
Department of Children, Youth  
and Families


  
Kate Sofis  
*Director*  
Office of Economic and  
Workforce Development

  
Ivar Satero  
*Airport Director*  
San Francisco  
International Airport

  
Kelly Dearman  
*Executive Director*  
Department of Disability and  
Aging Services

  
Phil Ginsburg  
*General Manager*  
Recreation and Park  
Department

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

  
Trent Rhorer  
*Executive Director*  
Human Services Agency

  
Ralph Remington  
*Director of Cultural Affairs*  
San Francisco Arts Commission

CC: LeeAnn Pelham, Executive Director; Michael Canning, Policy Analyst; Patrick Ford, Senior Policy and Legislative Affairs Counsel

To: San Francisco Ethics Commission  
Cc: Executive Director LeeAnn Pelham, Patrick Ford, Michael Canning  
From: San Francisco Human Services Network  
Re: Proposed ballot measure: Gift Laws to Individuals  
Date: January 20, 2022

The San Francisco Human Services Network (HSN), a public policy association of about 80 health and human service nonprofits that contract with the City and County to provide services for vulnerable residents, supports the good government review of the City's gift laws in response to recent corruption scandals. However, we urge you to take a careful and balanced approach that focuses on actions that carry a real threat of corruptive influence, while protecting beneficial activities such as attendance at nonprofit fundraisers and allowing nominal gifts that don't rise to the level of bribery and are unlikely to cause undue influence.

While we appreciate the urgency in submitting a measure for the voters' approval, the deadline for the June ballot is still six weeks away. We ask that the Commission continue reviewing the measure and seeking input from the community to prevent unintended consequences and sharpen the focus on gifts that create real risks.

(1) Attendance at nonprofit fundraisers:

We support an exemption to the restricted source rule allowing City officials to accept free tickets to nonprofit fundraisers. Ethics staff have proposed language that would permit free attendance **if necessary for the public official to carry out their City duties**. This seems to cover situations where the official would attend to monitor compliance or evaluate content but does not clearly allow City department representatives to attend in support of the organizations they fund.

In health and human services, the City underfunds the true cost of programs, and expects nonprofits to raise substantial additional funds to support their organizations. As with behested contributions, it's crucial that our nonprofits have the support and assistance of City officials in raising the necessary private funds that ensure the sustainability and effectiveness of nonprofits on which the City relies.

City participation and support is important for all nonprofits, particularly for smaller, under-resourced, and neighborhood-based organizations, often led by people of color and other marginalized groups, and serving communities most impacted by inequities.

By their very presence at fundraisers for nonprofits that receive City support, City officials build relationships with nonprofit staff, donors and community. They provide credibility, sending the message to donors that this organization is a good City partner. They are available to answer donors' questions about the programs, and about how they fit into the big picture of City strategies that address homelessness and behavioral health treatment. These events also provide opportunities for City officials to learn more about the programs that receive funding and the needs they address.

Suggested language: We suggest expanding this language to allow public officials to accept free tickets where it is **beneficial to the City** (beyond any personal benefit for the official).

(2) Definition of restricted source:

The measure would dramatically expand the definition of restricted source, including thousands of people who present a negligible threat of corruptive influence.

- The increase in the number of persons categorized as restricted sources would create significant challenges in enforcement while diluting the ability of ethics staff to focus on egregious cases.
- The measure creates civil and criminal liability for restricted sources who offer or make a prohibited gift, creating a “gotcha” potential for small violations by members of the general public who do not receive the kind of ethics training available to City employees.

The proposed definition includes two provisions of concern. Both proposals were rejected by the Board of Supervisors in recent legislation regulating behested contributions, and we urge the Commission to mirror those changes in the gifts proposal.

(a) Nonprofit boards of directors:

The definition of restricted source would include affiliates of any City contractor, including boards of directors. As volunteers, uncompensated nonprofit board members have no economic interest in the organization or contract, and their actions are unlikely to be motivated by corruptive influence. The legislation will apply to thousands of altruistic community leaders merely because they serve on nonprofit boards. Because the measure would expose them to civil or criminal liability, the measure would have a chilling effect on the ability of nonprofits to recruit board members.

In addition, public officials have no easy mechanism to track their identities and would face a formidable challenge in determining whether they may accept a gift. San Francisco does business with over 600 nonprofits. The Ethics Commission maintains a database of affiliates and subcontractors who are defined as doing business with the City, which currently contains 33,582 entries (<https://sfethics.org/disclosures/campaign-finance-disclosure/contracts-campaign-finance-disclosure>).

Suggested language: Amend the restricted source definition to be consistent with the definition of “interested party” in the behested contributions legislation (Campaign and Government Code Sec. 3.600): **Restricted source shall not include an individual, solely because the individual is an uncompensated board member of a nonprofit organization that is a restricted source.**

(b) Attempt to influence:

The restricted source definition would include any person who knowingly attempted to influence the officer or employee in any legislative or administrative action. This broad language will redefine “restricted sources” beyond those with economic interest in a matter to include involvement in civic affairs and grassroots advocacy activities by those who have no self-interest in an issue and little risk of a corrupting influence. The law would apply to anybody who has *contacted or appeared before the employee or officer with an intent to influence a decision of the employee or officer, or otherwise has attempted to influence the officer or employee*. In many cases, the public official may not even be aware that the gift-giver attempted to influence them (e.g., signed a petition, attended a rally), which makes

no sense in the context of prohibited gifts. The definition is overly broad, and a list of restricted sources would be impossible to maintain.

Ethics staff argues that enforcement would be unlikely in these situations. However, the existence of the law would create a chilling effect on permissible activities and create liability for members of the public. The law could be enforced selectively against those whose views are unpopular.

**Suggested language:** Adopt the clarifying language in the behested contributions legislation: **Provided that “attempt to influence” shall be defined as set forth in Section 3.216(b)(1) of this Code and the Ethics Commission's regulations implementing Section 3.216(b)(1), and shall not include (1) oral or written public comment that becomes part of the record of a public hearing; (2) speaking at a public forum or rally, or (3) communications made via email, petition or social media.**

(3) Local and state gift exceptions:

The proposed ballot measure would eliminate many local and state gift exemptions. Some of these changes would create potential liability for providing gifts of nominal value that are unlikely to present a corrupting influence, such as a small amount of food or a nonprofit t-shirt.

We urge the Commission to retain the following exceptions:

- Personalized plaques and trophies (less than \$250 in value): Nonprofits often honor public officials who show leadership on issues such as homelessness, health care and behavioral health. Officials do not show leadership with the receipt of a plaque as the motivating force. These forms of recognition do not provide officials with any monetary benefit and occur long after the legislative or administrative action has been taken.
- Non-cash gifts of \$25 or less per occasion, up to four times per calendar year: Ethics staff proposes to limit this exception to nominal and routine office courtesies in a restricted source's place of business, if they are available to any person who visits, and with a limit of \$10 per visit. The current limit of \$25 is a minimal amount unlikely to create a corrupting influence. The exception allows nonprofits to provide hospitality such as an inexpensive meal or promotional items when public officials visit to review a program, attend a meeting, or show support at small events at program sites. The proposed \$10 limit is unreasonable in San Francisco, where it barely covers the cost of a bagel and a cup of coffee. In addition, any threshold amount should be adjusted automatically for inflation.

(4) Process to amend ethics laws:

The measure would require a supermajority of both the Board of Supervisors and the Ethics Commission to amend ethics laws. Because many ethics laws have implications for First Amendment rights and the potential for unintended consequences, this proposal sets too high a bar through which a very small minority can block reasonable changes to the law.

If this provision remains, then at minimum, the measure should require a 2/3 supermajority of the Ethics Commission rather than 4/5 in case the size of the Ethics Commission changes in the future. The requirement should have the same threshold for both policy bodies.



**From:** [Bob Planthold](#)  
**To:** [ethics.commisson@sfgov.org](mailto:ethics.commisson@sfgov.org)  
**Cc:** [Lee, Yvonne \(ETH\)](#); [daina/chiu@sfgov.org](mailto:daina/chiu@sfgov.org); [sfwtrail@mac.com](mailto:sfwtrail@mac.com); [Pelham, Leeann \(ETH\)](#); [Bob Planthold](#); [Canning, Michael \(ETH\)](#); [Ford, Patrick \(ETH\)](#)  
**Subject:** Ethics ?Potential ? ballot measure for June, 2022 ballot?  
**Date:** Wednesday, January 19, 2022 3:22:51 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Folks,

I encourage Ethics to move ahead with plans to put on the June, 2022 ballot your prepared ballot measure.

City admin. agencies are claiming you CANNOT act, until "meet & confer" is completed.

These bureaucrats' public comments have cited NO citation or text that an ADMINISTRATIVE agency can stop the functioning of a quasi-judicial agency.

Further, these same city employees provide no info. as to how long "meet & confer" can last,

nor what criteria can/ MUST be used to decide when this process has reached its limit.

IF you defer now to these demands, what is to prevent the various complaining agencies to

draw out this "meet & confer" process until the deadline for placing this "good government" measure

on the NOVEMBER, 2022 ballot?

Delay now cedes Ethics' power over enforcement and ballot measures to local administrative agencies

that lacks Ethics power to act on violations and on ballot measures.

Further, as to the concerns raised by a representative of a coalition of non-profits

that this ballot measure would place an undue reporting and paperwork burden,

this comes from a viewpoint of "my agency only" and not from a good government perspective.

Non-profits were turned to by SF city gov't. to handle various tasks & programs that city agencies;

but, that essentially means those non-profits stand in the place of city agencies.

Since city agencies would need to carefully & fully document both

its spending and what these city employees are doing,

then so should non-profits also be required to similarly so document.

Non-profits should be held to the same high standards of ethics behavior as city agencies and city staff.

So, the arguments AGAINST placing the proposed ballot measure on the June ballot lack substance and fairness,

and are anathema to long-standing SF principles of "open government".

ACT to put this measure on the June, 2022 ballot.

Bob Planthold

[ former Ethics officer, 2001-2003;

4-time Civil Grand Jury member;]

Sunshine Ordinance Task Force member and officer, 1993-2001]



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January 20, 2022

LeeAnn Pelham, Executive Director  
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RE: Proposed Ballot Measure to Amend the Campaign and Governmental  
Conduct Code

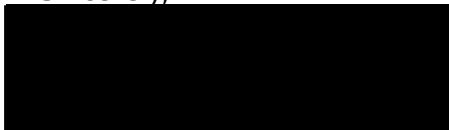
Dear LeeAnn, Patrick, Michael, and other Commissioners of the San  
Francisco Ethics Commission,

PRC stands by the San Francisco department heads and others who have  
already brought forth their concerns in a jointly signed letter and echoes  
concern over the Ethics Commission's proposed ballot measure's potential  
negative impact on nonprofits' fundraising ability.

Restrictions on City officials attending nonprofit fundraising events for  
example, even with the consideration of the very narrow and difficult to  
prove exemption, "so long as attendance at the event is a necessary part of  
the official's City duties," prohibits public acknowledgement of the valuable  
partnership between the City and San Francisco's nonprofit sector that is  
such an integral part of these events. It is critically important that our  
nonprofits' stakeholders have visibility to and assurance of the strength and  
mutual benefit of this partnership.

Thank you.

Sincerely,



Randi Paul  
Chief Development Officer