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Proposed ethics reforms target lobbyists, city contracting practices for greater transparency

Board President and City Attorney jointly author legislation to enhance disclosure requirements, tighten reporting loopholes, expand accountability and access

SAN FRANCISCO (April 23, 2013)—City Attorney Dennis Herrera and Board President David Chiu announced a wide-ranging set of ethics reform proposals at a news conference this afternoon that will tighten rules and enhance transparency for City Hall lobbyists, permit expediters and influential developers; and improve city contracting, procurement and grant-making practices to promote greater oversight and fiscal accountability. The jointly-authored legislation, which Chiu will formally introduce at the full Board of Supervisors meeting later today, also encourages reporting compliance by public officials, and expands access to ethics information for non-English speakers.

Lobbying reforms
The proposed reforms would expand the definition of a “lobbyist” so that more lobbying activity would be subject to reporting and disclosure requirements. The new definitions would encompass all contacts that outside consultants make with City officials in order to influence administrative or legislative actions, and would include employees who earn more than $1,000 per month to lobby on behalf of their employers.

The legislation would also tighten broad exceptions that currently allow most lobbying activity by lawyers and lobbying about City contracts to go unreported. The proposed changes would restrict the reporting exemption for attorneys to communications about litigation, and limit the contract-related reporting exemption to communications by contractors themselves. Most lobbying activity by attorneys and outside consultants for city contractors would cease to be exempt and would require appropriate public disclosure.
Reporting required for ‘permit expediters’ and certain developers
Apart from ethics reforms governing lobbyists and lobbying activities, the proposed legislation would also establish registration and disclosure requirements for permit consultants or “permit expediters,” requiring them to register with the Ethics Commission and file regular reports about their clients and permit-related contacts with City employees and officials. In addition, developers of major projects in San Francisco that require Environmental Impact Reports would be required to file reports to the Ethics Commission to disclose donations of $5,000 or more to nonprofits active in the City.

Greater accountability and oversight for contracts, procurement and grant-making
The proposed legislation would also amend contracting provisions of the San Francisco Administrative Code to establish greater oversight and accountability for city contracting, including contract modifications. The reforms would similarly apply more rigorous oversight and transparency to grant-making by city agencies, requiring the City Controller and Director of Administrative Services to develop regulations requiring that grants be disbursed solely for public purposes according to terms written in advance into the grant agreement.

Enhanced public information: reporting financial non-filers; publishing a campaign donor guide; and expanding access for non-English speakers
The proposed legislation would additionally require the Ethics Commission to report within ten days of the filing deadline a listing of all city officials who fail to file their Form 700 financial disclosures, together with a supplemental report on persistent non-filers one month later. The Ethics Commission would also be required to publish a guide for campaign donors to explain local laws governing their contributions.

Multilingual services would also be expanded by adding the Ethics Commission to the list of Tier 1 departments required to provide enhanced language access services.

“These wide-ranging good government reforms demonstrate that San Francisco will demand of outside interests nothing less than it demands of itself,” said Herrera. “These proposals intend to increase transparency and accountability across the board—not simply for those who seek to influence city decision-making, but for city decision-makers themselves. I’m proud to join with Board President Chiu in offering this package of worthy reform proposals, and I’m grateful to him for his thoughtful leadership and thorough approach to working with us on these issues.”

“Strengthening San Francisco’s ethics and lobbying laws will increase our public’s confidence in the everyday workings of our local government,” said Chiu. “Shining a brighter light will lead to better and more open decisions by City officials. I appreciate the collaboration with City Attorney Herrera on this crucial effort. I also know that enforcement will be key to making these reforms successful, and I am committed to advocating for additional resources for the Ethics Commission in this year’s budget process.”

# # #
Ordnance amending the Campaign and Governmental Conduct Code to 1) expand the definition of a lobbyist; 2) expand the list of reportable lobbying contacts; 3) enhance lobbyist training, auditing, and record-keeping requirements; 4) require public reports about City Officials who fail to file Statements of Economic Interest; 5) require a public guide to local campaign finance laws; 6) require permit consultants to register with the Ethics Commission and file regular disclosure reports; and 7) require major developers to disclose donations to nonprofits active in the City.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman. Board amendment additions are double-underscored; Board amendment deletions are strikethrough normal.

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

Section 1. The Campaign and Governmental Conduct Code is hereby amended by amending Sections 2.105, 2.116, and 2.135, to read as follows:

SEC. 2.105. DEFINITIONS.

Whenever used in this Chapter, the following words and phrases shall have the definitions provided in this Section:

(a) "Activity expenses" means any expense incurred or payment made by a lobbyist or a lobbyist's client at the behest of the lobbyist, or arranged by a lobbyist or a lobbyist's client at the behest of the lobbyist, which benefits in whole or in part any: officer of the City and County; candidate for City and County office; aide to a member of the Board of Supervisors; or member of the immediate family or the registered domestic partner of an
officer, candidate, or aide to a member of the Board of Supervisors. An expense or payment is
not an "activity expense" unless it is incurred or made within three months of a contact with
the officer, candidate, or Supervisor's aide who benefits from the expense or payment, or
whose immediate family member or registered domestic partner benefits from the expense or
payment. "Activity expenses" include honoraria, consulting fees, salaries, and any other thing
of value totaling more than $25 in value in a consecutive three-month period, but do not
include political contributions.

(b) "Candidate" shall have the same meaning as set forth in Section 1.104 of this
Code.

(c) "Client" means the person for whom lobbyist services are performed by a
lobbyist.

(d) "Contact" means communication, oral or written, including communication
made through an agent, associate or employee, for the purpose of influencing local legislative
or administrative action.

(1) The following activities are not "contacts" within the meaning of this
Chapter.

(A) A representative of a news media organization gathering news and
information or disseminating the same to the public, even if the organization, in the ordinary
course of business, publishes news items, editorials or other commentary, or paid
advertisements, that urge action upon local legislative or administrative matters;

(B) A person providing oral or written testimony that becomes part of the
record of a public hearing; provided, however, that if the person making the appearance or
providing testimony has already qualified as a lobbyist under this Chapter and is appearing or
testifying on behalf of a client, the lobbyist's testimony shall identify the client on whose behalf
the lobbyist is appearing or testifying;
(C) A person performing a duty or service that can be performed only by an attorney, an architect, or a professional engineer licensed to practice in the State of California;

(D) including any communication by a party or potential party in connection with potential or actual litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq.;

(E) A person making a speech or producing any publication or other material that is distributed and made available to the public, through radio, television, cable television, or other medium of mass communication;

(F) A person providing written information in response to an oral or written request made by an officer of the City and County, provided that the written information is a public record available for public review;

(G) A person providing oral or written information pursuant to a subpoena, or otherwise compelled by law or regulation;

(H) A person submitting a written petition for local legislative or administrative action, provided that the petition is a public record available for public review;

(I) A person making an oral or written request for a meeting, or any other similar administrative request, if the request does not include an attempt to influence local legislative or administrative action;

(J) A person appearing before an officer of the City and County pursuant to any procedure established by law or regulation for levying an assessment against real property for the construction or maintenance of an improvement;
(K) A person providing purely technical data, analysis, or expertise in the presence of a registered lobbyist;

(L) A person distributing to any officer of the City and County any regularly published newsletter or other periodical which is not primarily directed at influencing local legislative or administrative action;

(M) A person disseminating information or material on behalf of an organization or entity to all or a significant segment of the organization's or entity's employees or members;

(N) A person communicating in connection with the administration of an existing contract between the person and the City and County of San Francisco. For purposes of this Subsection, communication, "in connection with the administration of an existing contract" includes, but is not limited to, communication regarding: insurance and bonding; contract performance and/or default; requests for in-scope change orders; legislative mandates imposed on contractors by the City and County; payments and invoicing; personnel changes; prevailing wage verification; liquidated damages and other penalties for breach of contract; audits; assignments; and subcontracting. Communication "in connection with the administration of an existing contract" does not include communication regarding new contracts, or out-of-scope change orders;

(O) A person negotiating the terms of a contract after being selected to enter into a contract with the City and County through a competitive bidding process, or as otherwise permitted under the Administrative Code;

(PN) A person appearing as a party or a representative of a party in an administrative adjudicatory proceeding before a City agency or department; and

(QO) A person communicating, on behalf of a labor union representing City employees, regarding the establishment, amendment, or interpretation of a collective bargaining agreement or memorandum of understanding with the City, or communicating
about a management decision regarding the working conditions of employees represented by
a collective bargaining agreement or a memorandum of understanding with the City.

(P) A party or prospective party to a contract negotiating the terms of the contract
with the City after being selected to enter into the contract, or communicating in connection with the
administration of an existing contract between the party and the City. For the purposes of this
subsection:

(1) A “party or prospective party” includes that party’s officers or employees; a
subcontractor listed in the contract, bid, or proposal; or that subcontractor’s officers or employees. A
“party or prospective party” does not include any other agent or associate, including any outside
consultant or independent contractor.

(2) Communication “in connection with the administration of an existing
contract” includes, but is not limited to, communication regarding: insurance and bonding; contract
performance and/or default; requests for in-scope change orders; legislative mandates imposed on
contractors by the City and County; payments and invoicing; personnel changes; prevailing wage
verification; liquidated damages and other penalties for breach of contract; audits; assignments; and
subcontracting. Communication “in connection with the administration of an existing contract” does
not include communication regarding new contracts, or out-of-scope change orders.

(2) The following activities are not "contacts" for the purpose of determining
whether a person qualifies as a "lobbyist," but are "contacts" for purpose of disclosures
required by this Chapter:

(A) A person providing oral information to an officer of the City and County
in response to an oral or written request made by that officer;

(B) A person making an oral or written request for the status of an action;

and
(C) A person participating in a public interested persons meeting, workshop, or other forum convened by a City agency or department for the purpose of soliciting public input.

(e) "Economic consideration" means any payments, fees, reimbursement for expenses, gifts, or anything else of value, provided that "economic consideration" does not include salary, wages or benefits furnished by a federal, state or local government agency.

(f) "Employee" means any person who receives an Internal Revenue Service Form W-2 wage and tax statement.

(g) "Gift" shall be defined as set forth in the Political Reform Act, Government Code Section 81000 et seq., and the regulations adopted thereunder.

(h) "Lobbyist" means any individual who:

(1) receives or is promised economic consideration of $3,000 or more within three consecutive calendar months for lobbyist services; and

(2) on behalf of the persons providing the economic consideration, makes any contact with an officer of the City and County; makes contact with an officer of the City and County on behalf of any person who pays the individual or the individual's employer for lobbyist services. For contacts made on behalf of an individual's employer, an individual is a "lobbyist" only if $1000 or more of the individual's monthly salary is attributable to time spent on lobbyist services.

(i) "Lobbyist services" means services rendered for the purpose of influencing local legislative or administrative action, including but not limited to contacts with officers of the City and County of San Francisco.

(ii) "Local legislative or administrative action" includes, but is not limited to, the drafting, introduction, consideration, modification, enactment, defeat, approval, veto, granting or denial by any officer of the City and County of any resolution, motion, appeal, application,
petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement to
use or contract.

(i) "Measure" shall have the same meaning as set forth in Section 1.104 of this
Code.

(k) "Officer of the City and County" means any officer identified in San Francisco
Administrative Code Section 1.50, Section 3.203 of this Code, as well as any official body composed
of such officers. In addition, for purposes of this Chapter, "officer of the City and County"
includes (1) members of the Board of Education, Community College Board, Housing
Authority, Redevelopment Agency, and Transportation Authority, as well as any official body
composed of such officers, (2) The Zoning Administrator, (3) the City Engineer, (4) the County
Surveyor, and (5) the Bureau Chief of the Department of Public Works' Bureau of Street Use
and Mapping.

(lm) "Person" means an individual, partnership, corporation, association, firm,
labor union or other organization or entity, however organized.

(mn) "Public hearing" means any open, noticed proceeding.

SEC. 2.116. LOBBYIST TRAINING.

(a) Each lobbyist must complete a lobbyist training session offered by the Ethics
Commission within one year of the lobbyist's initial registration. Thereafter, lobbyists shall
attend additional training sessions as required by the Executive Director, at his or her
discretion.

(b) The Ethics Commission shall make lobbyist training sessions available on its website.

(c) On or before the deadline for completing any required lobbyist training session, each
lobbyist must file a signed declaration with the Ethics Commission stating, under penalty of perjury,
that the lobbyist has completed the required training session.
SEC. 2.135. FILING UNDER PENALTY OF PERJURY; RETENTION OF DOCUMENTS, AUDITS.

(a) All information required under this Chapter shall be submitted to the Ethics Commission, in the format designated by the Commission. The lobbyist shall verify, under penalty of perjury, the accuracy and completeness of the information provided under this Chapter.

(b) The lobbyist shall retain for a period of five years all books, papers and documents necessary to substantiate the registration and disclosure reports required by this Chapter. These records shall include, but not be limited to, copies of all invitations sent by the lobbyist for fundraising events for an officer of the City and County, a candidate for such office, a committee controlled by such officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco.

(c) On an annual basis, the Executive Director shall initiate audits of one or more lobbyists selected at random. At the request of the Executive Director, the Controller may assist in conducting these audits. This requirement shall not restrict the authority of the Executive Director or the Ethics Commission to undertake any other audits or investigations of a lobbyist authorized by law or regulation.

Section 2. The Campaign and Governmental Conduct Code is hereby amended by amending Section 3.1-104 to read as follows:

SEC. 3.1-104. FILING OFFICER REPORTS.

(a) On or before April 10th of each year, every filing officer shall submit a written report to the Ethics Commission setting forth the names of those persons who are required to
file an annual statement with that filing officer under this Chapter but have failed to do so, or a report stating that all such persons have filed.

(b) On or before April 10th of each year, the Ethics Commission shall prepare a report setting forth the names of those persons who are required to file an annual statement with the Ethics Commission under this Chapter but have failed to do so, or a report stating that all such persons have filed. On or before May 10th of each year, the Ethics Commission shall prepare a supplemental report setting forth the names of any persons who are required to file an annual statement with the Ethics Commission under this Chapter but have failed to do so by May 1st, or a report stating that all such persons have filed. The Ethics Commission shall make these reports publicly available, including by posting the reports on its website.

Section 3. The Campaign and Governmental Conduct Code is hereby amended by adding Section 3.302 to read as follows:

SEC. 3.302. PUBLIC GUIDE FOR CONTRIBUTORS.

The Ethics Commission shall prepare and distribute a public guide regarding campaign contributions. The guide shall include a summary of local law regarding contribution limits, required reporting by contributors and committees, and rules regarding who may contribute to committees. The guide shall be for informational purposes only, and shall not have the force or effect of law or regulation.

Section 4. The Campaign and Governmental Conduct Code is hereby amended by adding Sections 3.405 and 3.410 to read as follows:

SEC. 3.405. DEFINITIONS.

"Contact" means any communication, oral or written, including communication made through an agent, associate or employee.
“Client” means the person for whom permit consulting services are performed by a permit consultant.

“Permit consultant” is any individual who receives or is promised compensation to provide permit consulting services. This includes any employee who receives salary attributable to time spent on permit consulting services. This does not include:

(1) The licensed architect or engineer of record for construction activity allowed or contemplated by the permit, or an employee of the architect or engineer; or

(2) The contractor who will be responsible for all construction activity associated with the requested permit.

“Permit consulting services” means any contact with the Department of Building Inspection, the Entertainment Commission, the Planning Department, or the Department of Public Works to help a permit applicant obtain a permit.

SEC. 3.410. PERMIT CONSULTANT REGISTRATION AND DISCLOSURES.

(a) REGISTRATION OF PERMIT CONSULTANTS REQUIRED. Permit consultants shall register with the Ethics Commission and comply with the disclosure requirements imposed by this Chapter. Such registration shall occur no later than five business days after providing permit consulting services, but the permit consultant shall register prior to providing any further permit consulting services.

(b) REGISTRATION. At the time of initial registration each permit consultant shall report to the Ethics Commission the following information:

(1) The name, business address, e-mail address, and business telephone number of the permit consultant;

(2) The name, business address, e-mail address, and business telephone number of each client for whom the permit consultant is performing permit consulting services:
(3) The name, business address, e-mail address, and business telephone number of the permit consultant's employer, firm or business affiliation; and

(4) Any other information required by the Ethics Commission consistent with the purposes and provisions of this Chapter.

(c) PERMIT CONSULTANT DISCLOSURES. For each calendar month, each permit consultant shall submit the following information no later than the fifteenth calendar day following the end of the month:

(1) The name, business address, e-mail address, and business telephone number of each person from whom the permit consultant or the permit consultant's employer received or expected to receive economic consideration for permit consulting services during the reporting period, and the amount of economic consideration the permit consultant received or expected to receive;

(2) For each contact with the Department of Building Inspection, the Entertainment Commission, the Planning Department, or the Department of Public Works in the course of providing permit consulting services during the reporting period:

(A) The name of each officer or employee of the City and County of San Francisco with whom the permit consultant made contact;

(B) The date of each contact;

(C) A description of the permit sought or obtained, including the application number for the permit; and

(D) The client on whose behalf the contact was made.

(3) All political contributions of $100 or more made by the permit consultant or the permit consultant's employer during the reporting period to an officer of the City and County, a candidate for such office, a committee controlled by such officer or candidate, a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco.
(4) Any amendments to the permit consultant's registration information required by Subsection (b).

(5) Any other information required by the Ethics Commission consistent with the purposes and provisions of this Chapter.

Section 5. The Campaign and Governmental Conduct Code is hereby amended by adding Article 3, Chapter 5, consisting of Sections 3.500, 3.510, and 3.520, to read as follows:

CHAPTER 5. DEVELOPER DISCLOSURES

Sec. 3.500  Findings
Sec. 3.510  Definitions
Sec. 3.520  Required Disclosure

SEC 3.500. FINDINGS.
The Board of Supervisors finds that public disclosure of the donations that developers make to nonprofit organizations that may communicate with the City regarding development projects is essential to protect public confidence in the fairness and impartiality of City land use decisions. The Board further finds that disclosure is essential to allow the public to fully and fairly evaluate the City's land use decisions. It is the purpose and intent of this Chapter to impose reasonable disclosure requirements to provide the public with information about these donations.

SEC 3.510. DEFINITIONS
“Developer” shall mean any entity responsible for developing the project.
“Donation” shall mean any gift of money, property, goods or services.
"Nonprofit organization" shall mean any corporation formed pursuant to California Corporations Code Sections 5000 et seq., for any public or charitable purpose, and/or any organization described within 26 United States Code Section 501(c), that within the past two years has attempted to influence City legislative or administrative action.

SEC 3.520. REQUIRED DISCLOSURE

(a) Any developer of a project for which the Planning Commission has certified an Environmental Impact Report shall, within 30 days of the date of certification, report the following information to the Ethics Commission:

(1) The developer's name, business address, e-mail address and business telephone number.

(2) The Environmental Impact Report case number and a description of the project.

(3) The date the Planning Commission certified the Environmental Impact Report.

(4) The name, business address, business telephone number and website of any nonprofit organization to whom the developer has made cumulative donations of $5,000 or more since the date one year before the application for environmental review of the project was filed with the Planning Department.

(5) For each nonprofit organization reported pursuant to Subsection (a)(4), the date and amount of each donation the developer made to the nonprofit during the reporting period.

(6) Any other information required by the Ethics Commission consistent with the purposes and provisions of this Chapter.

(b) After a developer files a report required by Subsection (a), the developer shall file four quarterly reports, according to the following schedule: The developer shall file a report on April 15 for the period starting January 1 and ending March 31; on July 15 for the period starting April 1 and

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ending June 30; on October 15 for the period starting July 1 and ending September 30; and on January
15 for the period starting October 1 and ending December 31. Each quarterly report shall include:

(1) The developer's name, business address, and business telephone number.
(2) The Environmental Impact Report case number and a description of the project.
(3) The date the Planning Commission certified the Environmental Impact Report.
(4) The name, business address, business telephone number and website of any nonprofit
organization to whom the developer has made cumulative donations of $5,000 or more since the date
one year before the application for environmental review of the project was filed with the Planning
Department.
(5) For each nonprofit organization reported pursuant to Subsection (b)(4), the date and
amount of each donation the developer made to the nonprofit during the reporting period.
(6) Any other information required by the Ethics Commission consistent with the
purposes and provisions of this Chapter.

Section 6. Effective Date. This ordinance shall become effective 30 days from the
date of passage.

Section 7. In enacting this ordinance, the Board intends to amend only those words,
phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams,
or any other constituent part of the Campaign and Governmental Conduct Code that are
explicitly shown in this ordinance as additions, deletions, Board amendment additions, and
Board amendment deletions in accordance with the "Note" that appears under the official title
of the ordinance.

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4/23/2013
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:  
Morlee Lee  
Deputy City Attorney
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[City Contracting Reform – Amending Chapter 21 and Adding Chapter 21A]

Ordinance amending the San Francisco Administrative Code, Chapter 21, by
1) amending sections 21.4 and 21.05, adding 21.43 and, 2) adding Chapter 21A: Grants.

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

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

Section 1. The Administrative Code is hereby amended by amending Section 21.05, Section 21.4, and adding Section 21.43 to read as follows:

SEC. 21.05. POWERS OF DEPARTMENTS.

(a) Estimates of Requirements. All departments shall file estimates of required Commodities and services at such time and in such manner as shall be determined by the Purchaser.

(b) Procurement of Professional Services. Departments shall be responsible for defining the scope of a project for contracting purposes, establishing fair evaluation criteria and selection processes for Solicitations, and for the negotiation and award of contracts for Professional Services, with the assistance of the Purchaser and the City Attorney, provided, however, that:

(1) If a proposed contract for Professional Services includes the procurement of Commodities, then the department shall seek prior Purchasing approval of the Solicitation document; and
The Director of Purchasing shall be the Contracting Officer for Professional Service contracts unless a Contracting Officer other than the Purchaser is authorized to enter into the contract directly.

(c) As-Needed Contracts.

Departments authorized to enter into Professional Service contracts may procure as-needed Professional Service contracts as follows:

(1) As-Needed Contracts Generally. As-needed contracts are intended to provide temporary services on a task order basis. Departments may solicit bids and/or proposals for services on an as-needed basis, with definite and/or indefinite quantities of work. The RFQ and/or RFP for an as-needed contract shall include a description of the anticipated projects or matters (or category or type of projects or matters) and the anticipated scope and possible range of services to be performed. As-needed contracts shall provide for a not-to-exceed price and include a schedule of the hourly rates that shall be charged throughout the term of the contract. As-needed contracts shall include a provision stating there is no guarantee that any tasks shall be issued. None of the requirements otherwise applicable to Professional Service contracts is waived for as-needed contracts.

(2) As-Needed Contract Task Orders. The department shall assign work under an as-needed contract on a task order basis. Each task order shall specify the scope of work to be performed and identify the associated fee and time to perform such services as mutually agreed by the parties and may contain a not-to-exceed price. Before any item of work is commenced under an as-needed contract, the cost of such work must be certified by the Controller as to the availability of funds.

(3) Multiple or Single Project As-Needed Contracts. The department shall specify in the solicitation and in any resulting as-needed contract whether the as-needed contract is for multiple projects or a single project. Multiple project as-needed contracts are intended to provide temporary services for multiple projects or matters on a task order basis. Single project as-needed contracts are intended to provide temporary services for a single project or matter on a task order basis.
(4) Limitations for Multiple Project As-Needed Contracts. Multiple project as-needed contracts shall provide for an expiration term of not more than five years, including all modifications, with all task orders issued within three years from the date of award. The cumulative modifications to a multiple project as-needed contract shall result in a contract sum not to exceed one hundred-fifty percent of the original contract amount. No task order or multiple task orders for any single project or matter, whether in one phase or multiple phases, shall cumulatively exceed $400,000, including all modifications. A department may issue or modify any task order to exceed the foregoing $400,000 limitation only upon the department head’s written determination establishing the urgency of the work and the justification for proceeding under this Section 21.05(c) rather than by formal competitive process.

(e)(d) Cancellation of Purchase Contracts. The Contracting Officer shall be the only person authorized to terminate a contract for cause or convenience.

(d)(e) Inspection of Purchases. Departments shall make adequate inspection of all purchases.

(f) Use of Purchase Orders for Professional Services. A department may not issue Purchase Orders for the purchase of Professional Services unless it has the approval of the Director of Administrative Services and the total cost of such Services is less than the Minimum Competitive Amount.

SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.

(a) Authorization; Evaluation Criteria. A Contracting Officer may issue a request for Proposals, or request for qualifications, for the selection of Professional Service Contractors following consideration of the evaluation factors set forth in the request for Proposals, which may include cost, except as prohibited by law. If a department determines that it would be in the best interests of the City to acquire combined Commodities and Services or General...
Services by means of a request for Proposals or qualifications, rather than an invitation for Bids, such request for Proposals or qualifications shall be issued by the Purchaser. A request for Proposals or qualifications for Professional Services **may** be issued directly by the department.

(b) Selection of Highest Ranked Professional Services Contractor. The evaluation of either Proposals or responses to a request for qualifications shall be performed by a selection panel consisting of at least three panel members. The Contracting Officer shall designate the members to serve on the selection panel, and must endeavor to include among the panel members at least one individual who is not employed by the City, and among any panel members who are City employees, at least one individual who is not employed by the same department conducting the Solicitation. The designation of any selection panel member who is not employed by the City, as required herein, is subject to approval of the board or commission to whom the department head reports and if the department head does not report to a board or commission, then the approval of the Director of Administrative Services.

(b)(c) Negotiation. The Contracting Officer is authorized to negotiate terms and conditions, including price, with the highest ranked Proposer. If the Contracting Officer cannot conclude a contract that, in the opinion of the Contracting Officer is in the City's best interest, the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the event that the Contracting Officer cannot conclude negotiations with the next highest ranked Proposer on terms acceptable to the City, then the Contracting Officer may negotiate with each successively ranked proposer.

(e)(d) Requests for Qualifications. A department may issue a request for qualifications to determine the qualifications of prospective Contractors for particular types of Commodities and/or Services to be provided to that department. Prequalification may be for the purpose of issuing a further Solicitation to select from among the prequalified entities for a
particular contract, or it may be for the purpose of maintaining a list from which Contractors will be selected for future contracts as needed by the department, or the department may select Contractor(s) based on ranking of responses to the request for qualifications. For the procurement of Commodities and Services for which lists of prequalified entities are created by a department, selection of a Contractor for a particular contract may be made without the use of a further Solicitation if the list is maintained by issuing a new request for qualifications at least once every two years. The Purchaser may also maintain City-wide lists of prequalified contractors. The prequalified status of any entity or any prequalified list may remain in effect no longer than two years and may not be renewed except in response to a new request for qualifications issued by the department.

(d)(e) Content of Requests for Proposals. A request for Proposals shall specify evaluation criteria for selection, and shall reserve the right to reject or cancel the request for Proposals in whole or in part.

(e)(f) Mass-transit Vehicles. Notwithstanding any other provision of the charter or laws of the City, the Public Transportation Department, through its department head and through the Purchaser is authorized to include among its purchasing specifications the use of negotiated procurement procedures for the purchase of mass-transit vehicles.

SEC. 21.43. MODIFICATIONS TO THOSE PROFESSIONAL SERVICES CONTRACTS OVER THE MINIMUM COMPETITIVE AMOUNT – REQUIREMENTS.

(a) Required Approvals. For Professional Services contracts in excess of the Minimum Competitive Amount, whether as awarded or as modified, necessary modifications shall be made only on written recommendation of the department head responsible for the supervision of the contract, together with the approval of the Director of Administrative Services, and also the approval of the Controller, except as provided in this Section 21.43. The Director of Administrative Services may
delegate in writing the authority to approve such alterations, modifications or extras to the department head, except as provided below. The Controller may delegate in writing the authority to encumber funds from prior appropriations for such modifications to the department head prior to the certification for payment. Such authority, when granted, will clearly state the limitations of the type or category of modifications to be encompassed.

(b) Increasing or Decreasing Price. For any cumulative increase or decrease in price in excess of fifteen percent of the original contract price or scope, the department head shall obtain the approval of the board or commission to whom the department head reports or, if the department head does not report to a board or commission, then the approval of the Director of Administrative Services.

(c) Extensions of Time. Except when exercising options to extend the contract term as provided in the original contract, modifications under this Section 21.43 that provide for cumulative extensions of time in excess of fifty percent of the original contract duration require the written approval of the department head responsible for the supervision of the contract stating the time extension and basis for such extension and the approval of the board or commission to whom the department head reports or, if the department head does not report to a board or commission, then the approval of the Director of Administrative Services.

Section 2. The Administrative Code is hereby amended by adding Chapter 21A: GRANTS, to read as follows:

21A: GRANTS

SEC. 21A.1. SCOPE OF CHAPTER.

Chapter 21A governs Grants made by departments, boards, or commissions from monies in the City Treasury. Chapter 21A shall not apply to (1) contracts for public works or improvements; (2) contracts for the purchase, sale, lease, or use of real property, or the development of real property; (3)
contracts for the procurement of Commodities or Services under Administrative Code Chapter 21; or
(4) contracts to provide financial assistance such as a loan or loan guarantee, an interest rate subsidy,
tax relief or tax credit.

SEC. 21A.2. DEFINITIONS.

As used in this Chapter the following words shall have the following respective meanings:

(a) "Grant" shall mean an award of funds from the City Treasury, which is not expected to be
repaid, to a recipient for a Public Purpose.

(b) "Grant-in-aid" shall mean an award of funds from the City Treasury, which is not expected
to be repaid, to or on behalf of an individual who is entitled to the award as an aid payment for which
he or she is eligible pursuant to a social service benefit program established by local, State, or federal
law and administered by the City and County of San Francisco.

(c) "Public Purpose" shall mean a benefit in the interests of the citizenry, the community, the
natural or built environment, or for the general good of the City and County of San Francisco, as
determined by a City department, board or commission. "Public Purpose" shall not include the
procurement of commodities or services for the benefit of the granting agency.

SEC. 21A.3. REQUIREMENTS FOR GRANTS.

(a) Use of Grant Funds. A department, board, or commission may issue a Grant to a recipient
only for a Public Purpose. Nothing in this Section shall limit or affect any acceptance or expenditure
of Grant funds in accordance with Administrative Code section 10.170-1.

(b) Grant Regulations. Grants funded solely by the City must satisfy all applicable
requirements set forth in the Municipal Code. Grants funded in whole or in part by local agency, State,
or federal funds must satisfy all applicable requirements set forth in the Municipal Code to the extent
that such requirements are not inconsistent with any restrictions or conditions placed by the funding
source on any portion of the Grant funds. Grants funded in whole or in part by other funding sources, such as donations made to the City, or other funds received by the City from third parties, that are designated for or restricted to a specific purpose must satisfy all applicable requirements set forth in the Municipal Code except to the extent exempted by the Board of Supervisors in the governing accept and expend legislation. In addition, the Controller shall, in consultation with the Director of the Department of Administrative Services and those departments that disburse Grants, promulgate regulations under which departments, boards, and commissions may issue Grants. Such regulations shall include, at a minimum, the following requirements: (i) Grants must be disbursed according to the terms of a written Grant agreement approved as to form by the City Attorney and subject to appropriation and certification of funds by the Controller’s Office; (ii) the recipient must use the funds for, or in furtherance of, a Public Purpose, and the Public Purpose must be stated in the applicable Grant agreement; (iii) the Grant agreement shall specify performance requirements, eligible expenses, and appropriate City remedies if the recipient violates the terms of the Grant agreement; and (iv) for Grants under $15,000 the Grant agreement must be approved by the department head issuing the Grant, and for Grants of $15,000 or more, must be approved by the department head and, where applicable, approved by the Board or Commission to whom the department head reports.

The Controller’s regulations may include conditions and limitations on the issuance of Grants to for-profit corporations to ensure that the use of funds is limited to a Public Purpose.


SEC. 21A.4. GRANTS-IN-AID.

Grants-in-aid are exempt from the requirements of Section 21A.3 and other provisions of City law applicable to Grants and shall be governed instead by regulations promulgated by the Controller in
consultation with the department issuing the Grants-in-aid and approved by the board or commission to which the head of that department reports.

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Administrative Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: ROBERT S. MAERZ
Deputy City Attorney

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Ordinance amending the Administrative Code to add the Ethics Commission to the list of City departments required to provide enhanced language access services.

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

Section 1. The Administrative Code is hereby amended by amending Section 91.2 to read as follows:

SEC. 91.2. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the following meanings:

(a) "Annual Compliance Plan" is set forth in Section 91.10 of this Chapter.

(b) "Bilingual Employee" shall mean a City employee who is proficient in the English language and in one or more non-English language.

(c) "City" shall mean the City and County of San Francisco.

(d) "Commission" shall mean the Immigrant Rights Commission.

(e) "Concentrated Number of Limited English Speaking Persons" shall mean either 5 percent of the population of the District in which a Covered Department Facility is located or 5 percent of those persons who use the services provided by the Covered Department Facility. The Office of Civic Engagement and Immigrant Affairs shall determine annually whether 5 percent or more of the population of any District in which a Covered
Department Facility is located are Limited English Speaking Persons who speak a shared language other than English. The Office of Civic Engagement and Immigrant Affairs shall make this determination by referring to the best available data from the United States Census Bureau or other reliable source and shall certify its determination to all City Departments and the Commission no later than December 1 of each year. Each Department shall determine annually whether 5 percent or more of those persons who use the Department's services at a Covered Department Facility are Limited English Speaking Persons who speak a shared language other than English using either of the following methods specified in Section 91.2(k) of this Chapter.

(f) "Covered Department Facility" shall mean any Department building, office, or location that provides direct services to the public and serves as the workplace for 5 or more full-time City employees.

(g) "Department(s)" shall mean both Tier 1 Departments and Tier 2 Departments.

(h) "Districts" shall refer to the 11 geographical districts by which the people of the City elect the members of the City's Board of Supervisors. If the City should abandon the district election system, the Commission shall have the authority to draw 11 district boundaries for the purposes of this Chapter that are approximately equal in population.

(i) "Limited English Speaking Person" shall mean an individual who does not speak English well or is otherwise unable to communicate effectively in English because English is not the individual's primary language.

(j) "Public Contact Position" shall mean a position, a primary job responsibility of which, consists of meeting, contacting, and dealing with the public in the performance of the duties of that position.

(k) "Substantial Number of Limited English Speaking Persons" shall mean either 10,000 City residents, or 5 percent of those persons who use the Department's services. The
Office of Civic Engagement and Immigrant Affairs shall determine annually whether at least 10,000 limited English speaking City residents speak a shared language other than English. The Office of Civic Engagement and Immigrant Affairs shall make this determination by referring to the best available data from the United States Census Bureau or other reliable source and shall certify its determination to Departments and the Commission no later than December 1 of each year. Each Department shall determine annually whether 5 percent or more of those Limited English Speaking Persons who use the Department's services Citywide speak a shared language other than English. Departments shall make this determination using one of the following methods:

1. Conducting an annual survey of all contacts with the public made by the Department during a period of at least two weeks, at a time of year in which the Department's public contacts are to the extent possible typical or representative of its contacts during the rest of the year, but before developing its Annual Compliance Plan required by Section 91.10 of this Chapter; or

2. Analyzing information collected during the Department's intake process. The information gathered using either method shall also be broken down by Covered Department Facility to determine whether 5 percent or more of those persons who use the Department's services at a Covered Department Facility are Limited English Speaking Persons who speak a shared language other than English for purposes of Section 91.2(e) of this Chapter; or

3. Analyzing and calculating the total annual number of requests for telephonic language translation services categorized by language that Limited English Speaking Persons make to the Department garnered from monthly bills generated by telephonic translation services vendors contracted by Department.
(l) "Tier 1 Departments" shall mean the following City departments: Adult Probation Department, Department of Elections, Department of Human Services, Department of Public Health, District Attorney's Office, Department of Emergency Management, Ethics Commission, Fire Department, Human Services Agency, Juvenile Probation Department, Municipal Transportation Agency, Police Department, Public Defender's Office, Residential Rent Stabilization and Arbitration Board, Sheriff's Office. Beginning July 1, 2010, the following departments shall be added to the list of Tier 1 Departments: San Francisco International Airport, Office of the Assessor Recorder, City Hall Building Management, Department of Building Inspection, Department of the Environment, San Francisco Public Library, Mayor's Office of Economic and Workforce Development, Planning Department, Department of Public Works, Public Utilities Commission, Recreation and Park Department, Office of the Treasurer and Tax Collector, and the San Francisco Zoo.

(m) "Tier 2 Departments" shall mean all City departments not specified as Tier 1 Departments that furnish information or provide services directly to the public.

Section 2. Effective and Operative Dates. This ordinance shall become effective 30 days from the date of passage and shall become operative on January 1, 2014.

Section 3. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Administrative Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

Supervisor Chiu, City Attorney
BOARD OF SUPERVISORS
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: [Signature]
Molke Lee
Deputy City Attorney

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