Ordinance amending Administrative Code Chapter 28: (1) to add a Contractor’s prohibited provision of gifts or money to a public official as an express ground for debarment and revising debarment procedures; (2) to amend the definition of “Contractor” by expressly including grant applicants and grantees in the defined term; and (3) to add provisions authorizing suspension of a Contractor from participating in the procurement process for entering into City contracts or applying for grants if the Contractor is the subject of a criminal or civil charge brought by a government agency against the Contractor alleging that the Contractor committed a violation of any civil or criminal law or regulation against any government entity relevant to the Contractor’s ability or capacity honestly to perform under or comply with the terms and conditions of a City contract, including but not limited to the grounds for debarment set forth in Chapter 28.

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

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

Section 1. Overview and Background.

(a) Chapter 28 of the Administrative Code provides tools and procedures to protect the integrity of the City’s public contracting process and fight corruption in the procurement of public contracts. Chapter 28 has provided an exemplary list of grounds to debar contractors
found guilty of misconduct; however, a specific type of corruption that is a matter of recent concern has not been included in that exemplary list of grounds for debarment. Existing provisions also have not specified that grants are a part of the public contracting process protected by Chapter 28. In addition, the City has not had Administrative Code authority to protect the City’s public contracting process from contractors or grant applicants charged or accused of misconduct in criminal or civil proceedings prior to resolution of such proceedings.

(b) Chapter 28 of the Administrative Code provides administrative procedures by which the City may debar a Contractor for engaging in willful misconduct relating to the process for procurement of a City contract or entering into a contract with the City. This ordinance adds to the listed examples of grounds for debarment a Contractor’s offer or provision of any gift or money to a public official, if any law or regulation prohibits the public official from accepting the gift or money. This ordinance also includes provisions to make clear that grants are a part of the public contracting process protected by Chapter 28.

(c) In addition, this ordinance establishes procedures empowering the City to suspend a Contractor that is the subject of an indictment or otherwise subject to a criminal or civil charge alleging that the Contractor committed a violation of any civil or criminal law or regulation against any government entity relevant to the Contractor’s ability or capacity honestly to perform under or comply with the terms and conditions of a City contract, including but not limited to the grounds for debarment set forth in Chapter 28.

Section 2. Chapter 28 of the Administrative Code is hereby amended by revising Sections 28.0, 28.1, 28.2, 28.3, 28.4, 28.5, 28.6, 28.7, 28.8, 28.9, and 28.10, renumbering Sections 28.12 and 28.13 as Sections 28.11 and 28.12 respectively, and revising renumbered Sections 28.11 and 28.12, to read as follows:
SEC. 28.0. FINDINGS.

(a) The Board of Supervisors finds that: (1) contracting with the City and County of San Francisco is an important municipal affair, and that the award of contracts to contractors who fail to deal with the City and County in good faith compromises the integrity of the contracting process and results in the improper expenditure of public funds; and (2) the public contracting process is for the benefit of the public, not Contractors, and it serves the public interest to empower the City to Debar or Suspend a Contractor that has engaged in conduct that undermines the integrity of the public contracting process.

(b) The Board of Supervisors recognizes that the City and County must afford Contractors due process in any determination that precludes any individual or business entity from participating in the contracting process. This Chapter 28 does not apply to a determination of nonresponsibility for a single contract or identifiable group of contracts, but rather to the broader determination of irresponsibility of a Contractor for the general purpose of contracting with the City and County of San Francisco for a specified period. The Board of Supervisors therefore adopts this Chapter 28 to prescribe standard procedures for the prosecution, determination, and implementation of administrative Debarments and Suspensions.

SEC. 28.1. DEFINITIONS.

The following definitions apply for only the purposes of this Chapter 28:

(A) Affiliate. Any individual person or business entity related to a Contractor where such individual or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a
business entity organized or following the suspension, debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the contractor.

(B) Charging Official. Any City department head or the President of any Board or Commission authorized to award or execute a contract under the San Francisco Charter or the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services or the City Attorney. All Charging Officials are authorized to act on behalf of the City and County in prosecuting any administrative debarment proceeding and in issuing an Order of Debarment or issuing an Order of Suspension under this Chapter 28.

City. The City and County of San Francisco.

(C) Contractor. Any individual person or business entity, or organization that submits a qualification statement, proposal, bid, or quote, or grant request, or that contracts directly or indirectly with the City and County of San Francisco for the purpose of providing any goods or services or construction work to or for, or applies for or receives a grant from, the City and County of San Francisco including without limitation any Contractor, subcontractor, consultant, subconsultant or supplier at any tier, or grantee. The term "contractor" shall include any responsible managing corporate officer, or responsible managing employee, or other owner or officer of a Contractor who has personal involvement and/or responsibility in seeking or obtaining a contract or grant with the City and County of San Francisco or in supervising and/or performing the work prescribed by the contract or grant.

Day. A calendar day unless otherwise specified.

(D) Debarment. The administrative determination against a potential bidder, or contractor declaring such potential bidder or contractor irresponsible and disqualified from participating in the competitive procurement process for contracts with the City and County of San Francisco, or from entering into contracts, directly or indirectly, with, or applying for or receiving
Debarment order.

Suspension. Ineligibility of a Contractor that is the subject of an arrest, indictment, or other criminal or civil charge by a governmental entity (federal, state or local), as specified in greater detail in Section 28.3(b) from participating in the procurement process for contracts or from entering into contracts directly or indirectly with, or applying for or receiving grants from, the City.

SEC. 28.2. DEBARMENT AND SUSPENSION AUTHORITY.

Notwithstanding any other provision of the Administrative Code, any Charging Officer shall have authority to issue Orders of Debarment or Suspension against any Contractor in accordance with the procedures set forth in this Chapter 28.

SEC. 28.3. GROUNDS FOR DEBARMENT AND SUSPENSION.

(a) Debarment. A Charging Officer shall issue an Order of Debarment for any Contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, grant request, purchase order and/or contract, or grant award. Such willful misconduct may include, but need not be limited to the following: (a1) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications, or a request for proposals; (b2) failure to comply with the terms of a contract or with provisions of this Administrative Code; (c3) a pattern and practice of disregarding or repudiating terms or conditions of City contracts or grants, including without limitation repeated unexcused delays and poor performance; (d4) failure to abide by any rules and/or regulations adopted pursuant to the San Francisco Municipal Codes; (e5) submission of false claims as defined in this Administrative Code, Chapter 6, Article V, or Chapter 21, Section...
21.35, or other applicable federal, state, or municipal false claims laws; (6f) a verdict, judgment, settlement, stipulation, or plea agreement establishing the Contractor’s violation of any civil or criminal law or regulation against any government entity relevant to the Contractor’s ability or capacity honestly to perform under or comply with the terms and conditions of a City contract or grant; and/or (g) collusion in obtaining award of any City contract or grant, or payment or approval thereunder; and/or (8) the offer or provision of any gift or money to a public official, if that public official is prohibited from accepting the gift or money by any law or regulation.

(b) Suspension. Any Charging Official may issue an Order of Suspension to a Contractor on the basis that the Contractor has been arrested or indicted, or become the subject of a criminal, civil or administrative complaint issued by a government entity, where the arrest or indictment, criminal, civil, or administrative complaint alleges that the Contractor has violated a civil or criminal law or regulation against any government entity relevant to the Contractor’s ability or capacity honestly to perform under or comply with the terms and conditions of a City contract or grant including, but not limited to, the grounds for Debarment set forth in Section 28.3(a).

SEC. 28.4. INITIATING THE DEBARMENT PROCEEDINGS; COUNTS AND ALLEGATIONS.

(a) Any Charging Official may initiate an administrative Debarment proceeding by issuing Counts and Allegations. A Charging Official may issue Counts and Allegations against any Contractor relating to any matter consistent with the foregoing grounds for debarment as stated in Section 28.3(a). A Charging Official may issue Counts and Allegations regardless whether such Charging Official awarded, was responsible for, or was involved in any way with the underlying contract or circumstances leading to the Counts and Allegations.
(b) The Charging Official shall append to the Counts and Allegations a photocopy of this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or validity of the Counts and Allegations.

SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS OR SUSPENSION ORDER.

(a) Debarment Counts and Allegations. The Charging Official shall serve the Counts and Allegations on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, the Charging Officer may achieve service by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service), or other commercial delivery service that provides written confirmation of delivery.

The Charging Official shall also serve the Counts and Allegations on the Controller, City Administrator and the City Attorney.

(b) Suspension Order. The Charging Official shall serve the Suspension Order on the named Contractor in a manner ensuring confirmation of delivery. For example, the Charging Officer may achieve service by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service), or other commercial delivery service that provides written confirmation of delivery.

The Charging Official shall also serve the Suspension Order on the Controller, City Administrator and the City Attorney.

SEC. 28.6. REQUEST FOR A HEARING.

(a) Debarment Counts and Allegations. Within 15 business days after receipt of the Counts and Allegations, the Contractor may submit a written request for an administrative
hearing. The Contractor may make such request through counsel or other authorized representative. The Contractor shall file any such request with the Controller with copies to the Charging Official, the City Attorney, and the City Administrator.

(b) Order of Suspension. At any time during a period of Suspension, a suspended Contractor may submit a written request to the Charging Official requesting the official to lift the Order of Suspension on the grounds that the Contractor’s alleged conduct does not meet the legal requirement for Suspension, or based on facts or circumstances unknown to the Charging Official, or based on new facts, circumstances, or law. The Charging Official shall provide a written response within 14 Days. If the Charging Official’s written response declines to lift the Order of Suspension, or the Charging Official fails to provide a written response within 14 Days, the suspended Contractor may submit in writing within 7 Days a request for an administrative hearing. The suspended Contractor may make such request through counsel or other authorized representative. The suspended Contractor shall file any such request with the Controller with copies to the Charging Official, the City Administrator, and the City Attorney.

SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS

REQUEST A HEARING OR TO APPEAR.

Failure of the Contractor to submit to the City a written request to be heard within the time required by this Chapter 28, or failure of the Contractor or the Contractor’s representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the Contractor to the Counts and Allegations. In accordance with the procedures set forth below, the charging official shall present evidence in support of the debarment to the appointed hearing officer and the hearing officer shall make a determination on such evidence.
SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

(a) A Charging Officer shall request either the Controller or the City Administrator Director of Administrative Services (“City Representative”) to appoint a hearing officer for any Debarment or Suspension proceeding. If either the Controller or the City Administrator Director of Administrative Services is the Charging Officer, then that City Representative he or she shall request the other to appoint the hearing officer.

(b) Within 145 days of the Charging Official’s request, the City Representative Controller or the Director of Administrative Services shall appoint a hearing officer and notify the Contractor and the Charging Officer of the appointment. The notice of appointment shall include the name of the hearing officer. The Contractor or the Charging Officer may object to the appointed hearing officer within five business days of the notification. If the City Representative Controller or the Director of Administrative Services, at the City Representative’s sole discretion, appoints a new hearing officer, then the City Representative he/she shall notify the Contractor and the Charging Officer as soon as practicable, but not more than 145 days after receipt of the objection.

SEC. 28.9. PRE-HEARING PROCEDURE.

(a) Within 145 calendar days of his/her appointment, the hearing officer shall notify each Contractor named in the Counts and Allegations or Suspension Order and the Charging department Official, the Controller, the City Administrator and the City Attorney of the scheduled hearing date. The hearing date shall be set at the hearing officer’s sole discretion, except, for a Debarment hearing, the hearing must commence within 120 days of the date the Charging Official served the Counts and Allegations; a Suspension hearing must commence within 30 Days of the date the Suspended Contractor requested a hearing pursuant to Section 28.6(b). The hearing
officer may extend the \textit{deadline for holding a hearing} 120-day period only upon good cause shown; proceeding as expeditiously as possible is in the public's best interests.

(b) Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment or suspension procedure.

(c) The hearing officer may, in his/her sole discretion, \textit{shall have the sole discretionary authority to} direct any named eContractor and the eCharging eOfficial to submit in advance of the hearing: statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope, or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

(d) If the hearing officer determines, with the written agreement of each named eContractor and the eCharging eOfficial, that the hearing shall be by written presentation, all final writings shall be due no later than 120 \textit{Days of the date the eCharging eOfficial served the Counts and Allegations or Order of Suspension}.

\section*{SEC. 28.10. HEARINGS AND DETERMINATIONS.}

(a) Hearings may occur in person, \textit{on an electronic meeting platform if deemed necessary by the hearing officer}, or in writing, as set forth in the foregoing Section 28.09. If the hearing is to occur in person or on an electronic meeting platform, the hearing officer shall specify the time and place for the eCharging eOfficial to present the case and for the eContractor to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations, and limit the scope of evidence presented based on relevancy.
(b) The Charging Official shall present evidence in support of the Debarment or Suspension to the hearing officer. The Contractor may present evidence in defense and/or mitigation. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.

(c) The hearing officer shall consider the evidence submitted by the Charging department Official and the Contractor. Within 145 days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Findings and a Recommendation. The hearing officer shall serve the Findings and Recommendation on the Charging Official, the named Contractor(s), and/or their respective counsels or authorized representatives, and shall submit the same to the Controller, City Administrator, and City Attorney.

(d) If the hearing officer finds that the named Contractor has committed willful misconduct as described in the foregoing Section 28.3 and orders a term of Debarment, the Charging Official shall issue an Order of Debarment consistent with the hearing officer’s decision. The Charging Official shall serve the Order on each named Contractor, his/her counsel or authorized representative, if any, the City Attorney, the City Administrator, and the Controller. An Order of Debarment under this Chapter 28 shall be the final administrative determination by the City in the matter.

(e) For a Suspended Contractor, the hearing officer may consider evidence and argument by the Contractor to support its assertion that the City should terminate the Order of Suspension, provided that the Charging Official shall be entitled to offer evidence and argument in opposition to the Contractor’s assertion. If the Contractor establishes that the underlying basis of the Order of Suspension has been finally resolved without a verdict, judgment, settlement agreement or plea agreement against the Contractor, the hearing officer shall terminate the Order of Suspension. An
Order of Suspension upheld by a hearing officer under this Chapter shall be the final administrative
determination by the City in the matter. Any termination of an Order of Suspension shall not preclude
a Charging Officer from initiating Debarment proceedings against the Contractor based on the
underlying conduct of the Suspension Order pursuant to section 28.4 following termination of the
Order of Suspension.

SEC. 28.211. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT OR
ORDER OF SUSPENSION; VIOLATION OF ORDER.

(a) An Order of Debarment shall provide for a term of debarment not to exceed five
years from the date of the Order. An Order of Suspension shall remain in effect until the Contractor
establishes to the Charging Officer or the City Administrator that the underlying basis of the Order of
Suspension has been finally resolved without a verdict, judgment, or plea agreement against
Contractor.

(b) At any time during the pendency of an Order of Suspension, the City may initiate debarment
proceedings against the Contractor. If the City suspends and later debars a Contractor for the same
underlying conduct, the period of Suspension shall count towards the period of Debarment.

(c) The An Order of Debarment or Suspension shall prohibit any named Contractor and
the Contractor’s affiliates from participating in any contract or grant at any tier, directly or
indirectly, with or for the City and County; any Contractor and the Contractor’s affiliates
named in an Order of Debarment shall be deemed irresponsible and disqualified for the
purposes of all City and County contracts and grants. Upon such Order, any department head,
board, or commission may cancel any existing contract or grant with a Suspended or Debarred
Contractor or direct the cancellation of an existing subcontract to which a Suspended or
Debarred Contractor is a party. In the event of such cancellation, the Suspected or Debarred
Contractor’s recovery under the no recovery shall be had on that contract or grant by the debarred
shall be limited to compensation for work satisfactorily completed as of the date of cancellation.

(d) Administrative Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City and County against the Contractor.

(e) Violation of an Order of Suspension or Debarment, such as by submission of a proposal, bid or sub-bid, or grant request, during the Suspension or Debarment period, may be considered a false claim as provided in this Administrative Code and the California Government Code.

SEC. 28.1312. PUBLICATION AND REPORTS OF DEBARMENT OR SUSPENSION.

Any Order of Debarment or Suspension issued under this Chapter shall be a public record. The Controller shall maintain and publish on the City's Internet website a current list of contractors subject to Orders of Debarment or Suspension and the expiration dates for the respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the contractors then subject to an Order of Debarment or Suspension and the expiration dates for the respective debarment terms; (b) the status of any pending debarment or suspension matters; and (c) any Order of Debarment or Suspension received by the Controller since the date of the last report.

Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal 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.
Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 5. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

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

By: /s/ Randy Parent
RANDY PARENT
Deputy City Attorney

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