

Jesse Arreguín
Councilmember, District 4

ACTION CALENDAR
October 28, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Arreguin

Subject: "Good Government" Package

RECOMMENDATION:

Refer to the following policies to the Fair Campaign Practices and Open Government Commission for discussion and to make recommendations back to the City Council:

1. **Public Calendars:** require the Mayor and City Councilmembers to maintain a public calendar of meetings that relate only to City business and require such meetings to be posted in advance to the extent practicable but no later than 1 week after the meeting occurred, along with a short description of the purpose and attendants of the meeting. The City Clerk will post the public calendars of the Mayor and Council on the city's website.
2. **Revolving Door Policy:** prohibition of former City staff, for a specified period of time after they left employment with the City, from lobbying current staff on matters relating to City business. Additionally, prohibit Council staff from concurrently holding employment by organizations that regularly lobby City Council.
3. **Conflict of Interest Disclosures:** require outside firms, when commissioned by the City or City Manager for research report(s), to disclose any relevant conflicts of interest
4. **Contract Disclosures:** require specified types of contracts under 50k to be reported to Council. Any increase in a city contract resulting in a contract amount over \$50,000 requires Council approval for the increase, even if the initial contract was approved by City Manager action.
5. **Political Polling:** prohibition on including in city funded community surveys questions on resident favorability of elected officials.
6. **Independent Ballot Questions:** designation of the City Attorney's Office as the sole drafter of a ballot question on an initiative or Council-initiated ballot

measure, and the Council's role is relegated to approving the ballot question without modification.

7. Contribution Prohibitions: prohibit contributions from contractors doing business with the City for specified duration and at a specified threshold, as well as parties to land use applications.

BACKGROUND:

Open Government is essential to ensure the integrity and accountability of legislative bodies that "conduct the people's business." The following policies are part of an overall package aimed at increasing transparency, accountability, and equal access to public officials who are entrusted with protecting and advancing public interest.

Public Calendars

The disclosure of the calendars of elected officials provides an additional and crucial layer of transparency that enables the public to better judge the performance of their representatives and the manner in which they conduct the "people's business." The City of San Jose, as a part of their "Sunshine Ordinance," requires that City Councilmembers post a public calendar of their meetings that relate to City business.

It is not the intent to disclose personal meetings of Councilmembers that are not related to City business, nor disclose the names of constituents seeking general assistance.

Concerns have been previously raised regarding the Council staff time needed to re-post meetings subject to the Public Calendar. This office has undertaken the effort to create of a Public Calendar on Google Calendars to demonstrate the minimal amount of staff time required. It took no more than 5 minutes a week to retroactively repost relevant meetings. If meetings are post concurrently as they are scheduled, that time will significantly less.

Revolving Door Policy

The City of San Jose also has a "Revolving Door Ordinance" to assure the independence, impartiality and integrity of City officials and staff in making governmental actions and decisions, to prevent such former officials and staff from using their positions with the City for personal gain, and to prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the City by hiring former officials and staff.

Any ordinance developed in the City of Berkeley should also specify that former employees who are now lobbyists or have significant business in front of the City cannot access the Staff Only area behind Council Chambers, similar to the requirement in the State Legislature that lobbyists are not allowed on the Assembly and Senate Floor. This would prevent former staffers from potentially lobbying Councilmembers and Staff in an area that is not accessible to the public. Also, former staffers should not be able to speak off the record to City Staff during public hearings since it bestows an unfair advantage and circumvents the requirement that city business be done openly.

Last, City Council staff should not be able to hold employment as a lobbyist while also working for the very legislative body he/she must influence.

Conflict of Interest Disclosures

When the City of Berkeley solicits impartial reports from outside firms, it is important that any contributor/author of the report disclose pertinent conflicts, such as public positions on local measures that intersect with the report solicited. The failure to report such conflicts undermine the credibility of the information, warranted or not, and by extension, any public policy upon which it is formulated.

Contract Disclosures

Under existing policy, contracts under \$50,000 are allowed to be executed by the City Manager without Council approval or affirmative disclosure. Most contracts relate to the routine administration of the City; however, some types of contracts are of public importance, such as outside attorneys, research by consultants, etc.

For example, when Council was considering the initiation of litigation against the City and County Clerk, the City Manager had already retained Remcho Johansen & Purcell LLP, unbeknownst to certain Councilmembers. It was never publicly disclosed and only available on Records Online if one knew to search.

While the City Manager should not be impeded to enter into contracts that are necessary for the efficient administration of the City, City Council and the public should be affirmatively informed of certain contracts, in the very least, that otherwise are not known to exist unless one knows to specifically ask.

Political Polling

Before every major election, the City routinely employs community surveys in order to assess the viability of potential ballot measures submitted by City Council, such as parcel taxes for critical City services. However, there have been instances where the favorability of certain elected officials has been included in the survey. While the intent was to gauge which endorsements would be useful in advancing Council's interest in maximizing the passage of its ballot measures, it no less results in a publicly-funded polling that is more appropriate for a candidate political campaign.

Independent Ballot Questions

State law requires that ballot questions must be impartial and accurate. Yet, a ballot question may be drafted by very the legislative body that has a direct interest in the matter. Additionally, individual members of a legislative body may not have the legal qualifications to properly draft a ballot question that meets the requirements of State law, which puts the City in a position of liability.

Additionally, case law has established that a ballot question need not be necessarily accurate as much as may not be inaccurate, and that there exists latitude to either

minimize or highlight certain aspects of the measure so long as it isn't factually incorrect. The temptation is too great for any political individual or body to not take advantage of the leeway granted by case law; it is technically legal to highlight the sweet and minimize the bitter, or reverse, so long as it is not factually incorrect or partial.

In order to mitigate liability and to ensure public trust that the City conducts elections impartially and without favor, City Council should be prohibited from drafting ballot questions or attempting to influence the drafting of ballot question outside a public meeting. The City Attorney is most qualified to handle such tasks and Council's role should solely be in adopting the ballot question. All concerns should be noted publicly and considered by the City Attorney if any such concern leads to a more accurate ballot question.

Contribution Prohibitions

A previous referral limited the prohibition on contractors doing business with the City solely to contractors doing business with the Public Works Department and only over a certain monetary amount. Additionally, the prohibition included parties to the land use applications of large projects before the Zoning Adjustments Board (ZAB) or Council.

Ultimately, the proposal was not advanced due to the cost concerns relating to administration and tracking. However, it is possible to advance the prohibition without using staff resources for active enforcement. The competition of political campaigns alone provides ample incentive for self-enforcement, as campaigns already monitor the contributions of competing campaigns. If it is a complaint driven process, there would be no need of monitoring by City Staff.

Last, any contributions that were legal at the time of acceptance, but later rendered impermissible through subsequent action, the contribution should be promptly returned when such fact is discovered. In this way, a contribution would not constitute a violation through no fault of the candidate's own, unless the candidate fails to promptly return the contribution upon discovery.

FINANCIAL IMPLICATIONS:

Unknown. Some staff time.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

(510) 981-7140

ATTACHMENTS:

1. "Public Calendars" Council Item. July 16, 2013.
2. Text of San Jose's Revolving Door Ordinance
3. "Contribution Limits on Contractors Doing Business With the City" Council Item. March 6, 2012.
4. Staff report on Contractor Contribution Limits. January 22, 2013.



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
July 16, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Public Calendars

RECOMMENDATION

Refer to the City Manager and the Open Government Commission (OGC) for study the concept and feasibility of requiring the calendars of City Councilmembers to be made public insofar as they relate to city business, and request that the City Manager and OGC return to Council with a recommendation.

BACKGROUND:

Open Government is essential to ensure the integrity and accountability of legislative bodies that “conduct the people’s business.” The City of Berkeley is committed to those goals, and is among the few Cities that have so-called “Sunshine Ordinances” (local ordinances that expand California’s open government laws, such as the Public Records Act and the Brown Act). The City of San Jose has a comparable “Sunshine Ordinance,” though it includes a simple, yet useful “public calendar” component that requires certain officials to publish their calendars online.

The public calendars of San Jose officials only include City-related appointments, regular City Council meetings, public events, speaking engagements, meeting with developers, consultants, lobbyists, and meetings with subcommittees. Calendar entries must include the names, titles and affiliated organization(s), and a general statement of the issue of applicable appointments.

Additionally, the public calendar does provide necessary exemptions for the following: (1) personal appointments, (2) information protected by the attorney-client privilege (3) Information about attorney work product (4) Information about City staff recruitment (5) Information about a personnel issue (6) Information about corporate recruiting and retention, (7) Information about criminal investigations and security, (8) Information about whistle-blowers, (9) Information about those who may fear retaliation, and (10) Information that is otherwise prohibited from disclosure.

It is not the intent of this referral to require the publishing of prospective schedules, but rather after-the-fact reporting of pertinent events and meetings of elected officials.

The disclosure of the calendars of elected officials provides an additional and crucial layer of transparency that enables the public to better judge the performance of their representatives and the manner in which they conduct the “people’s business.”

FINANCIAL IMPLICATIONS:

Unknown; some staff time required.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

981-7140

Attachments:

1. “Ex-Santa Clara County Supervisor Shirakawa's scandal reveals lack of basic sunshine provisions” *San Jose Mercury News* May, 2013.

ORDINANCE NO. 27271

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 12.10 OF TITLE 12 OF THE SAN JOSE
MUNICIPAL CODE TO REVISE THE CITY OF SAN JOSE
REVOLVING DOOR ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 12.10 of Title 12 of the San José Municipal Code is amended to be numbered, entitled, and to read as follows:

**CHAPTER 12.10
REVOLVING DOOR RESTRICTIONS****12.10.010 Purpose**

The purposes of this Chapter are:

- A. To assure the independence, impartiality and integrity of City and Agency officials and designated employees in making governmental actions and decisions.
- B. To prevent such former officials and designated employees from using their positions with the City or Agency for personal gain.
- C. To prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the City or Agency by hiring former officials and designated employees.

12.10.020 Definitions

For purposes of this Chapter, the terms below shall have the following meaning:

- A. "Agency official" shall mean the chairperson and members of the Board of Directors of the Redevelopment Agency of the City of San José.
- B. "City official" shall mean the Mayor and City Councilmembers.
- C. "Commission" shall mean any body created by the City Council or Agency Board whose members are required to file statements of economic interest pursuant to the Fair Political Practices Commission.
- D. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- E. "Nonprofit organization" shall mean an entity which would qualify as such under the Federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the City Council or Redevelopment Agency board within the past five years.
- F. "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the City or the Agency.
- G. "Work" shall mean any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 12.10.050. Work for the City or Agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a City or Agency official or designated employee on any type of board, committee or

similar body as a representative of the City or Agency is deemed to be work for the City or Agency.

12.10.030 Prohibitions

For one (1) year immediately following the termination of City or Agency office or employment, no former City or Agency official or designated employee shall:

- A. Work on any legislative or administrative matter on which the official or employee worked on behalf of the City or Agency during the twelve (12) months prior to termination of service, or which was within the former City or Agency official's or designated employee's area of job responsibility. For example, "work on any legislative or administrative matter" includes providing advice or recommending any action with regard to a City or Agency legislative or administrative matter such as a land use, development or public works project. Legislative matters include City Council, Agency Board and City board or commission actions related to ordinances, resolutions, agreements, permits or licenses.
- B. Represent anyone else, whether or not for compensation, before the City Council, Redevelopment Agency Board, any commission thereof, or any staff of the City or Agency.
- C. Receive any gift or payment which would be prohibited under Part 5 of this Chapter from any person who was, in any way, involved in or affected by the work of the official or employee during the twelve (12) months prior to the termination of service.

12.10.040 Prohibition for Former Commission Members

A former member of a commission shall not represent anyone else, whether or not for compensation, before the commission on which the former member served, for a period

of one (1) year immediately following the termination of service on that commission. No other provisions of this Chapter shall apply to persons serving on a commission who are not otherwise City or Agency officials or designated employees.

12.10.050 Exceptions

The following work shall not be subject to the prohibitions of Section 12.10.030:

- A. As an employee or volunteer of a nonprofit organization, as defined in Section 12.10.020.E.;
- B. As an employee of a government entity;
- C. As an independent contractor of the City or Agency where it has been determined that it is in the best interest of the City or Agency to retain the former official or employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In such event, the City or Agency shall contract directly with the former official or employee. The rate of compensation for such services shall not exceed the former official's or employee's rate of pay, including benefits, at the time City or Agency service terminated.

12.10.060 Applicability

- A. The provisions of this Chapter shall not apply to prevent a former City or Agency official or designated employee from testifying as a percipient witness in any legal proceeding.
- B. The provisions of this Chapter shall not apply to prevent a former City or Agency officer or designated employee from working as a supervisor of a person or persons performing work that would be prohibited by this Chapter, so long as the

supervisor is screened from any personal participation in the work and receives no part of the fee therefrom.

12.10.070 Waiver

The City Council or Redevelopment Agency Board of Directors may waive the prohibitions of Section 12.10.030, upon full disclosure of the facts surrounding the proposed activity, if the Council or Board finds that such waiver is in the best interest of the City or Agency and that such waiver is not inconsistent with the purposes of this Chapter as set forth in Section 12.10.010.

12.10.080 Enforcement

- A. The City Attorney may conduct inquiries or investigate complaints of violations of this Chapter. The City Attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this Chapter.
- B. A City or Agency official, designated employee or person who is subject to the provisions of this Chapter may request a formal written opinion from the City Attorney and may reasonably rely on such advice in order to comply with the requirements of this Chapter. Before such opinion is rendered, such official or employee shall fully cooperate with the City Attorney in disclosing facts and information in order to prepare the formal opinion.
- C. Any person may file a complaint with the City Clerk alleging a violation of this Chapter with the Elections Commission.

- D. The City Attorney may put persons on notice of a potential violation of the requirements of this Chapter, whether or not a complaint is filed with the Elections Commission.

12.10.090 Penalties

Violations of this Chapter may result in civil penalties of up to Five Thousand Dollars (\$5,000) for each violation. The City of San Jose or the Redevelopment Agency shall be entitled to recover from any former City or Agency official or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this Chapter.

PASSED FOR PUBLICATION of title this 26th day of October, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

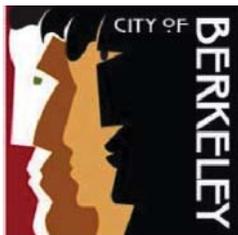
ABSENT: NONE

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk

**Jesse Arreguín**

Councilmember, District 4

CONSENT CALENDAR

March 6, 2012

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Contribution Limits on Contractors doing Business with the City

RECOMMENDATION:

Refer to the Fair Campaign Practices Commission (FCPC) for consideration the issue of prohibiting contributions by contractors doing business with the City and the Berkeley Unified School District.

BACKGROUND:

San Francisco's election law prohibits any person or entity with a contract or prospective contract with the City from making contributions to candidates for public office in order to prevent the possibility of corruption, actual or perceived. The contribution limitations are in line with Berkeley's existing prohibition on contributions by certain organization and business entities. Consideration of a similar law in Berkeley should be done so in a manner consistent with existing law, and with awareness of application and possible unintended consequences (See Chronicle article).

The FCPC may also want to consider the possibility of adding to the prohibition individuals and entities party to a land use case before the City due to the fact that the outcome may affect their general or financial well-being.

FINANCIAL IMPLICATIONS:

Unknown.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. San Francisco Campaign and Governmental Conduct Code Section 1.126
2. San Francisco Chronicle, "SF Contractor Donation Ban Proving Cumbersome," Oct 2011

SEC. 1.126. CONTRIBUTION LIMITS--CONTRACTORS DOING BUSINESS WITH THE CITY, THE UNIFIED SCHOOL DISTRICT AND THE COMMUNITY COLLEGE DISTRICT.

(a) DEFINITIONS.

For purposes of this section, the following words and phrases shall mean:

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

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

- (A) the rendition of personal services,
- (B) the furnishing of any material, supplies or equipment,
- (C) the sale or lease of any land or building, or
- (D) a grant, loan or loan guarantee.

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

(b) Prohibition on contribution. No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District,

(1) Shall make any contribution to:

- (A) An individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves or a state agency on whose board on which an appointee of that individual serves;
- (B) A candidate for the office held by such individual; or
- (C) A committee controlled by such individual or candidate

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

(3) At any time from the commencement of negotiations for such contract until.

- (A) The termination of negotiations for such contract; or
- (B) Six months have elapsed from the date the contract is approved.

(c) Prohibition on receipt of contribution. No individual holding City elective office or committee controlled by such an individual shall solicit or accept any contribution prohibited by subsection (b) at any time from the formal submission of the contract to the individual until the termination of negotiations for the contract or six months have elapsed from the date the contract is approved. For the purpose of this subsection, a contract is formally submitted to the Board of Supervisors at the time of the introduction of a resolution to approve the contract.

(d) Forfeiture of contribution. In addition to any other penalty, each committee that receives a contribution prohibited by subsection (c) shall pay promptly the amount received or deposited to the City and County of San Francisco and deliver the payment to the Ethics Commission for deposit in the General Fund of the City and County; provided that the Commission may provide for the waiver or reduction of the forfeiture.

(e) Notification.

(1) Prospective Parties to Contracts. Any prospective party to a contract with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall inform each person described in subsection (a)(1) of the prohibition in subsection (b) by the commencement of negotiations for such contract.

(2) Individuals Who Hold City Elective Office. Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection if the clerk or secretary of a board on which the individual serves or a board of a state agency on which an appointee of the officer serves has filed the form on behalf of the board.

(Added by Ord. 71-00, File No. 000358, App. 4/28/2000; amended by Proposition O, 11/7/2000; Ord. 141-03, File No. 030034, App. 6/27/2003; Ord. 228-06, File No. 060501, App. 9/14/2006; amended by Proposition H, June 3, 2008)

(Derivation: Former Administrative Code Section 16.510-2; added by Proposition N, 11/7/95)

S.F. contractor donation ban proving cumbersome

[John Côté, Chronicle Staff Writer](#)

Monday, October 17, 2011

San Francisco Mayor [Ed Lee](#) received five apparently illegal campaign contributions from parties with city contracts he approved, including four subcontractors on a \$150 million contract to an engineering design firm working on some of the city's biggest infrastructure projects, campaign finance records show.

He's not the only one.

At least eight candidates vying to be elected mayor on Nov. 8 have received donations that appear to violate the city's restrictions on contributions by contractors, a Chronicle analysis of campaign finance records shows.

San Francisco for years has been at the national vanguard in campaign finance reform. But its contractor ban, designed to prevent pay-to-play politics, is so cumbersome that some donors are unaware that they are violating the law, donors and campaign staff say. For example, the ban prevents volunteers on the boards of directors at nonprofits awarded city grants of \$50,000 or more from giving to officeholders who approved the grant or candidates who may hold the office.

Campaigns said that even elaborate screening systems sometimes fail to catch illegal money, and the director of the city's Ethics Commission said his office is too overwhelmed to ensure compliance.

"This is unworkable," said former Supervisor [Bevan Dufty](#), a mayoral candidate.

Dufty should know. He received at least \$2,800 in questionable contributions from 13 donors, The Chronicle found. Almost all were affiliated with nonprofits that have received city grants or contracts. Some gave after Dufty was out of office.

The prohibition, in such instances, is on the donor, not the candidate receiving the money. The donations represent less than 1 percent of Dufty's roughly 3,000 donors. "I never did that well in school," Dufty said. "If you gave me a 99 percent, I'd feel like I aced my exam. Here, you have to be 100 percent."

Many of the major candidates in the field of 16 were imperfect. City Attorney [Dennis Herrera](#) had at least \$4,000 in questionable donations, most tied to nonprofits. Venture capitalist Joanna Rees had \$2,250. Supervisors [John Avalos](#) had almost \$2,000. State Sen. [Leland Yee](#), Supervisor [David Chiu](#) and Assessor-Recorder [Phil Ting](#) all had at least one questionable donation.

Compounding the problem is that all of those candidates have received public financing, and some have gotten matching funds from taxpayers for donations that appear invalid.

The campaigns in question said they were reviewing the donations. Some checks have been returned.

Herrera's camp also pointed to late contract disclosure filings from Lee's office.

"No one has any idea who shouldn't donate," Herrera campaign spokesman Matt Dorsey said.

Questionable donations

Lee, who is not accepting public financing, appears to be the only candidate who received potentially illegal donations in this race linked to contracts he directly approved.

Lee had five improper donations totaling \$2,100, four of them coming from subcontractors on a sewer system project awarded to an AECOM joint venture Aug. 1, city documents show.

AECOM also has a \$147 million contract on the Central Subway, a project that Herrera and others have called a potential boondoggle. Lee dined in February with then-AECOM executive Jack Baylis, Chinatown

powerbroker Rose Pak and former Mayor Willie Brown. Lee's opponents contend he would be a front man for Brown cronyism if elected, an assertion Lee rejects.

After a Chronicle inquiry, Lee's campaign returned those four contributions, a fifth from a city nonprofit grantee that hadn't been screened yet because it was donated online at the reporting deadline, and two others that had been questioned.

"It really was an oversight that we corrected," Lee campaign spokesman Tony Winnicker said.

All but one of those donations came from a single contract that didn't get entered into the campaign's database, Winnicker said.

He accused other campaigns of deliberately accepting improper donations and using the money to get taxpayer matching funds.

"It's a copout to say, 'Our donors didn't know,' " Winnicker said. "The bottom line is the contributions are illegal. If you have an ethical bone in your body, you'd return them."

Lee's camp has already returned more than 50 donations for various reasons, including some under investigation by the district attorney for potential money laundering.

The fact that much of the field is having reporting problems highlights the complex nature of San Francisco's campaign finance laws, including the contractor ban. Voters first approved the ban in 1995, and it has been modified at least five times.

The law prohibits contractors from donating to the officeholder who approves the contract from the start of negotiations until six months after the contract is approved.

It has been expanded to cover grants and loans from the city and to apply to top executives and boards of directors.

It bars officeholders from receiving the contributions, but not candidates for that office. Donors, though, are prohibited from giving to either.

Unexpected impact

The rules mean thousands of San Franciscans who serve as volunteers on boards of charitable groups cannot donate to candidates for mayor, according to John St. Croix, executive director of the city's Ethics Commission.

"We did not realize how many San Franciscans are covered by the contribution ban," St. Croix wrote in a report on the problem a year ago.

More than 67 percent of the contracts and grants reported under the ban went to nonprofits, according to figures from the first seven months of 2010 cited in the report. St. Croix, in an interview, said little had changed.

"I've got two books of these, thicker than Yellow Pages," he said of the contract disclosure forms. That's part of the reason his office has never compared the contract forms with campaign filings.

"I don't have enough staff to cross-reference all of those forms," St. Croix said.

Campaigns say it's part of the reason they're having difficulty weeding out donors.

"The fact is that there's no searchable database or other foolproof way for us to examine whether each contributor is involved with a nonprofit that is doing business with the city," Chiu campaign spokesman Addisu Demissie said.

St. Croix a year ago proposed legislation that, among other things, would have exempted nonprofits from the contractor ban, but it was never taken up by the Board of Supervisors.

"Well, maybe they'll take another look at it now," said Eric Potashner, a lobbyist at Platinum Advisors who volunteers on the board of Telegraph

Hill Neighborhood Center and donated to Herrera and Avalos within six months of the nonprofit receiving a city grant. Potashner said he didn't realize the ban included volunteers on nonprofit boards.

"This is a neighborhood center for seniors and kids," Potashner said. "The whole board is volunteers. They want to give back to the community a little bit. I think we're getting caught up in a technicality that really wasn't meant for us."

E-mail John Coté at jcote@sfchronicle.com.



Office of the City Manager

INFORMATION CALENDAR

January 22, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Mark Numainville, Acting City Clerk

Subject: Council Referral: Prohibit Contributions from Public Works Contractors and Parties to Land Use Applications

INTRODUCTION

This report is in response to the referral from the City Council on July 17, 2012.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Election Reform Act (BERA) limits contributions to candidates to \$250 and limits the source of those contributions to exclude businesses, non-profit organizations and labor unions.

BACKGROUND

The referral proposes further limiting contributions to candidates by prohibiting contributions from certain Public Works contractors that do business with the City and from parties to land use applications pending before the Zoning Adjustments Board (ZAB) or City Council.

Contributions to general purpose committees and ballot measure committees are not currently limited by source or amount. The referred policy would not change these regulations.

The City Council referral from July 17, 2012 requested that the scope of the land use prohibition be limited to large projects, that staff provide information on the costs for administration and tracking, and that staff determine the frequency to which these types of contributions generally occur.

To ascertain the extent to which the new policy would further limit contributions, staff used data from the 2010 election, the most recent election for which we have electronic data. For the 2010 General Election, 15 of 20 candidate controlled committees used the City's electronic filing system for campaign statements. The e-filing system provides for the electronic download of contribution data from e-filed campaign statements.

Staff then ran reports from the FUNDS\$ system to capture the contract data for the calendar year 2010. The results were manually filtered to produce the report for Public Works contracts of \$300,000 or more.

For the land use provision, staff researched the active projects from 2010 and created a spreadsheet for comparison to the contributor data. The scope was limited to the applicant, owner, or appellant for projects in one of four categories, 1) Residential projects of 10 - 49 units, 2) Projects with 10,000 to 49,000 sq. ft. of industrial or commercial space, 3) Residential projects of 50 or more units, 4) Projects with 50,000 or more sq. feet of commercial or industrial space.

The data set used for the analysis consisted of the following:

Number of contributions downloaded: 1,264

Number of Public Works contracts over \$300,000: 17

Number of land use projects (all categories): 8

Cross referencing the data from the contracts and land use projects with the contributor data resulted in the following:

Number of contributions from a prohibited Public Works contractor: 1

Number of contributions from a prohibited party to a land use project: 5

The five contributions in the land use category were from two appellants to a land use application while it was pending before Council.

To produce the list of prohibited contractors, staff must run a report of all contractors and then manually sort by contract amount and by department. Staff must also select out contract amendments to ensure that the contract amount is accurate for the purposes of the \$300,000 threshold. In order to ensure that campaign committees have up to date information on prohibited sources, it is anticipated that staff would need to produce this report weekly for much of the election cycle and perhaps daily in the final 3-6 month of the election cycle. This would require significant staff hours.

The report run by the contract management system does not have the ability to include subcontractors. Subcontractor names are not captured in the contracting process. Further, it is unclear if contributions would be prohibited from any employee of the contracting company, or just those with an ownership share.

In the process of sorting the data, staff identified a total of 54 contracts that exceed \$300,000 (including the 17 public works contracts).

The total staff time required to create the reports and distill the data for the analysis in this report was approximately 12 hours.

For both prohibitions (land use and contracts) the duration of the prohibition should be considered. For contracts, the period may include the entire life of the contract, or just

the RFP process through Council approval. For land use matters, the prohibition period is somewhat uncertain as a project may advance through the system during an election cycle, yet the parties to the project will not know if the project will be appealed at a later date. The contribution may not be prohibited when it is made, but may become prohibited later. One option would be to prohibit all applicants/appellants/owners from contributing until final approval of the project.

POSSIBLE FUTURE ACTION

Refer to FCPC for consideration and possible amendment to the BERA.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Significant staff time dedicated to creating lists of prohibited contributors, and conducting the review and enforcement of the new requirement.

CONTACT PERSON

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