



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH
POPULATION HEALTH DIVISION

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TO: Food Security Task Force
From: Israel Nieves-Rivera, PHD Policy Director
Date: January 3, 2020
RE: Food Security Task Force-Policy Positions and Assistance on Funding Priorities

FREQUENTLY ASK QUESTIONS RELATED TO TAKING POSITIONS ON LOCAL, STATE AND FEDERAL BILLS OR REGULATIONS.

How can the Food Security Task Force (FSTF) provide general advice and assistance to the Board of Supervisors (BOS) around proposed state bills that either may help, or may negatively affect food security in San Francisco?

As the legislative body with reserve power to set City policy, the Board of Supervisors may decide City policy with regard to State and federal legislation and executive activities (Charter § 1.101.) Under Charter section 3.100(2), the Mayor is responsible for “coordination of all intergovernmental activities of the City and County.”

By ordinance, the Board has created the State Legislation Committee (“SLC”). The SLC is directed by the San Francisco Administrative Code (Chapter 5, Article III, Sections 5.5 – 5.11) to make recommendations for endorsement, opposition, or neutrality with respect to legislation pending before the State Legislature that would affect the City and County.

The State Legislation Committee generally meets monthly on a Wednesday, unless otherwise noted. Information on the meeting agenda, minutes and supporting documents can be found on the following website (<https://sfgov.org/slc/meetings/11>). The committee has seven voting members that are comprised of, the Mayor’s Office (Chair), the BOS Supervisor President Office, the BOS Supervisor Budget Chair’s Office, the City Attorney’s Office, two members of the Board of Supervisors that is designated by the President of the Board of Supervisors, the Controller’s Office, the Assessor Office and the Treasurer’s Office.

How to propose a position to a state bill to the State Legislation Committee?

Currently the FSTF has five City and County Departments and a Representative from the San Francisco Unified School District. The agency with the core expertise on the proposed legislation or the greatest impact usually takes the lead in completing the form. Please note that every city agency may have its own distinct internal department policy on how to take positions on state legislation that they may need to follow. However, the process to present a position to the SLC is the same. A staff person from one of the departments is required to complete the State Legislation Proposal Form. The form includes recommended position (i.e., sponsor, support, support if amended, oppose, and other and describe), a summary of the bill, the challenge bill is



trying to address, the solutions that the bill hopes to make, the departments impacted by the bill, and any fiscal impact the bill might have to San Francisco.

How can the FSTF provide general advice and assistance to the BOS on proposed federal regulations that will negatively impact food security in San Francisco?

The SLC does not set City policy regarding either federal legislation or State or federal administrative matters (regulations). The Board may adopt a resolution setting City policy on these matters, and the Mayor must conform to the City's lobbying activities accordingly. In the absence of policy direction from the Board, the Mayor may direct the City's lobbyists to advocate for a position of the Mayor's choosing on federal legislation or State or federal administrative matters.

FREQUENTLY ASK QUESTIONS PROVIDING GENERAL ADVICE AND ASSISTANCE ON FUNDING PRIORITIES¹

How should the Food Security Task Force (FSTF) provide general advice and assistance on funding recommendations?

The FSTF is tasked with recommending to the Board of Supervisors legislative action and city-wide strategies that would increase participation in federally funded food programs. The FSTF is also tasked with providing general advice and assistance to the Board of Supervisors with regard to funding priorities, legislative action, and City policies on addressing hunger and enhancing the food security of San Francisco residents. To accomplish these goals, the FSTF prepares and submits to the Board an annual assessment of the state of hunger and food insecurity in San Francisco. The assessment may, but is not required to, include recommendations for funding, programs, and policy (San Francisco Administrative Code § 5.10-1.).

What conflict of interest should the FSTF avoid when making any funding recommendations?

Members of the task force should be very mindful of the potential for conflicts of interests, and should limit their participation in discussions about the funding of programs and contracting to very high-level discussions and recommendations. Such members should abstain from participating in discussions designed to identify detailed funding priorities and/or eligibility criteria for funding or contracting opportunities, and should refrain from bidding on related contracts if the member has a potential conflict of interest.

¹ City Attorney Memorandum to Sugary Drinks Distributor Advisory Committee
<https://www.sfdph.org/dph/files/SDDTAC/SDDTAC-City-Attorney-Memo.pdf>



What conflict of interest should the FSTF avoid when making any funding priorities or the City's contracting process?

California Government Code Section 1090 and its local counterpart, San Francisco Campaign and Governmental Code Section 3.206(b), generally prohibit City officers and employees, or any board or commission of which they are members, from "making" any contract in which they have a "financial interest." Even though some of the FSTF members are not City officers or employees, the California Attorney General's Office and the California Fair Political Practices Commission ("FPPC") have advised that Section 1090 applies to members of advisory bodies. *See, e.g.*, 82 Ops.Cal.Atty.Gen. 4–5 (1999); FPPC McMinn Adv. Ltr., File No. I-14-155 (Oct. 8, 2014). As an official advisory committee for the City, this rule applies to the FSTF.

What does "making a contract" mean?

Section 1090 does not define what constitutes "making" a contract, but courts and administrative agencies have broadly construed this term. "Making" a contract does not simply include final approval of a contract, but extends to the planning, preliminary discussion, negotiations, drawing of plans and specification, and solicitation of bids that lead to the formal making of a contract. *Stigall v. Taft* (1962) 58 Cal.2d 565, 569. Individuals in advisory positions can influence the development of a contract during the early stages of the contracting process even though they have no actual power to execute the final contract. *See, e.g.*, *City Council of the City of San Diego v. McKinley* (1978) 80 Cal.App.3d 204 (member of Park and Recreation Board who owned a landscape architectural firm participated in the making of a contract in violation of Section 1090 where he was also a member of a committee created to advise the Board on the design, architecture, landscaping, and technical planning of a Japanese garden).

What does "financial interest" mean?

Section 1090 also does not define what constitutes a "financial interest." But similarly, courts have broadly interpreted "financial interest" for the purposes of Section 1090, cautioning that the term should not be read in a "restrictive and technical manner." *See People v. Honig* (1996) 48 Cal.App.4th 289. For Section 1090's purposes, FSTF members should consider sources of income to them and to their employers as a financial interest. A Section 1090 violation has three potential consequences for the official who engages in such a violation. First, any contract made in violation of Section 1090 is void, which means the City Attorney's Office cannot approve the contract as "to form." *Thomson v. Call* (1985) 38 Cal.3d 633, 646. Second, the interested party, such as a City contractor or grantee, must disgorge all of the public funds it has received, and the public entity is not required to restore any of the benefits it has received. *Id.* at 647. The disgorgement of public funds is "automatic" and is appropriate regardless of whether any fraud occurred. *Carson Redevelopment Agency v. Padilla* (2006) 140 Cal. App. 4th 1323, 1335-37. Third, an individual official who engages in the violation of Section 1090 may be personally liable for civil or criminal penalties. Cal. Gov. Code § 1097; S.F. Campaign & Gov'tal Conduct Code § 3.242.