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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: September 8, 2010
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Re: Proposed amendment related to gift cards from restricted sources

At its meeting on April 12, 2010, the Ethics Commission considered but did not approve a proposed amendment to Ethics Commission Regulation 3.216(b)-5, which would have clarified that a gift card or gift certificate with a value of less than \$25 would not be deemed a cash gift under the restricted source gift ban. Because staff continues to receive inquiries regarding this issue, staff is bringing it again to the Commission for consideration.

San Francisco Campaign and Governmental Conduct Code section 3.216(b) bars City officers and employees from soliciting or accepting any gifts from restricted sources. Under the law, a restricted source is either (1) a person who has a contract, or seeking a contract, with the officer's or employee's department, or (2) a person who has knowingly attempted to influence the officer or employee in the last 12 months.

There are some limited exceptions to the restricted source gift ban rule. Regulation 3.216(b)-5, which is attached, establishes seven exceptions. The first exception, set forth in subsection (a), states that voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion, are not banned under the restricted source gift rule, provided that no officer or employee may receive such gifts more than four times during a calendar year from a single restricted source. In other words, under this regulation, no City officer or employee may receive more than \$100 worth of gifts from any restricted source in any calendar year. If the restricted source is a source of gifts that an officer or employee must report on a Statement of Economic Interests (Form 700 or "SEI"), the officer or employee must report any gift(s) that cumulate to \$50 or more per year from that source.

Under both state and local law, a person who files an SEI may not receive more than \$420 in a calendar year from any single source that he or she must report. However, nothing in either state or local law precludes a person from receiving gifts from more than one source. For example, assume that Officer A, an SEI filer, receives a gift of \$420 from Giver X and two equal gifts totaling \$100 from Giver Y – as long as Officer A reports these gifts on her SEI and as long as the gifts are otherwise not prohibited,

she is permitted to accept the gifts. However, if the givers are restricted sources, Officer A may not accept any of the gifts because each of them exceeds the \$25 exception.

Regulation 3.216(b)-5 is silent as to whether gift cards or gift certificates are “cash” gifts or non-cash gifts for the purposes of the restricted source gift ban. Staff has received several inquiries from City employees as well as City vendors regarding whether gift cards, which have become a convenient way of gift-giving, may be given or received. Staff proposes that the Commission clarify that gift certificates that can be redeemed anywhere are considered “cash” gifts while those that can be redeemed only at a specific store are not. Gift cards or gift certificates that can be redeemed anywhere are the equivalent of cash in that the recipient is generally not restricted in how or where he or she uses them. And gift cards or certificates earmarked for use at specific vendors, such as Peet’s Coffee or a local restaurant, are restricted in use and cannot be used anywhere else. They are similar to non-cash gifts in that the recipient must only go to the specific vendor in order to redeem them; in this respect, they are not like cash. On the other hand, cards that can be negotiated at any vendor, such as a Visa gift card, are akin to cash; under staff’s proposal, they will continue to be treated as cash and will be forbidden by section 3.216.

Under staff’s proposal, gift cards or gift certificates that can be negotiated only at a specific vendor will not be treated as cash gifts. If the regulation is approved, a City officer or employee will be able to accept a gift card or certificate from a restricted source, provided that the value is \$25 or less and provided that the officer or employee may receive gifts from the restricted source no more than four times a year. The cumulative value of gifts from the restricted source over a year’s time continues to be \$100. Staff’s proposal does not change the requirement that a Form 700 filer who receives gifts valued at \$50 or more must report such gifts on the Form 700.

If the Commission rejects staff’s proposal, then all gift cards will be considered cash, and will not be permitted under the restricted source gift ban rule.

Decision Point 1:

Shall the Commission approve staff’s recommended changes to Ethics Commission Regulation 3.216(b)-(5(a), as set forth on page 2?

Proposed Changes to Regulations to Government Ethics Ordinance

(Additions in **bold, underlined italic** text; deletions in ~~**bold strike through**~~ text)

Regulation 3.216(b)-5. Gifts from Restricted Sources – Exemptions

The following are not gifts subject to the ban in section 3.216(b).

(a) Voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion, provided that no officer or employee may receive gifts from any restricted source under this exception on more than four occasions during a calendar year. **For the purpose of this subsection, a gift card or gift certificate that can be negotiated only at a specific vendor (such as a Starbucks gift card) is a gift other than cash, but a gift card that can be negotiated at any vendor (such as an American Express Gift Card) is a cash gift.**

(b) Voluntary gifts, of food and drink, without regard to value, to be shared in the office among officers and employees.

(c) Free attendance at a widely attended convention, conference, seminar, or symposium where attendance is appropriate to the official duties of the officer or employee and the donor provides the free attendance voluntarily.

(1) "Free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event. "Free attendance" may also include attendance at meet-and-greet or hospitality sessions and meals offered in connection with the convention, conference, seminar, or symposium where networking or discussion opportunities may enable the officer or employee to establish working relationships that may inure to the benefit of the City. The term does not include entertainment collateral to the event.

(2) A "widely attended" event is an event that is open to individuals from throughout a given industry or profession, or an event that is open to individuals who represent a range of persons interested in a given matter.

(3) An officer or employee who attends such an event may not accept a sponsor's offer of free attendance at the event for an accompanying individual.

(d) Voluntary meals from a member of the investment, financial, or banking community provided to officers and employees who are responsible for managing investments or debt obligations on behalf of the City, provided that (i) such meals are necessary to discuss City investments or financial transactions in order to cultivate and maintain working relationships between the City and the investment, financial, or banking community; (ii) management of the City's investments or debt is discussed during the meal; and (iii) the person providing the meal is not negotiating a contract with the department of the officer or employee. For the purpose of this subsection, "investment, financial, or banking community" includes investment managers; firms that market and sell municipal securities in the tax-exempt and taxable markets including entities that support financing transactions such as bond insurers, rating agencies, credit banks, bond and disclosure counsel, financial advisors, feasibility consultants and trust agents; the custodian bank; and consultants who contract to assist the business of the retirement trust. For the purposes of this subsection, "negotiating a contract" means communicating with the department of the officer or employee regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the department makes the proposal until the date of the approval of the contract or the date that the person or the department communicates to the other party that negotiations for the contract have terminated.

(e) Voluntary meals or vessel boardings or vessel trips that do not extend overnight from a member of the maritime industry provided to officers and employees who are responsible for managing the Port's maritime commerce portfolio, provided that (i) such meals or vessel boardings or trips are necessary to cultivate and maintain working relationships between the Port

and the maritime industry; (ii) management of the Port's maritime commerce portfolio is discussed during the meal, vessel boarding or trip; and (iii) the person providing the meal, or vessel boarding or trip is not negotiating a contract with the Port at the time of the meal or vessel boarding or trip. For the purposes of this subsection, "maritime industry" means individuals and entities engaged in: cruise and cargo shipping; ship repair; commercial and sport fishing; ferry and excursion operations; harbor services such as pilots, tugboats, barges, water-taxis, lay-berthing and other ship services; terminal management; stevedoring and longshore labor; facility and ship security. "Managing the Port's maritime commerce portfolio" includes: managing and marketing the Port to the maritime industry; promoting Port maritime facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the City's cruise and cargo terminals, ferry terminals, shipyards and dry-docks, Fisherman's Wharf and Hyde Street commercial fishing harbors, excursion terminals and harbor service facilities for pilots, tugboats, barges, water-taxis, lay-berthing and other ship services. For the purposes of this subsection, "negotiating a contract" means communicating with the Port regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the Port makes the proposal until the date of the approval of the contract or the date that the person or the Port communicates to the other party that negotiations for the contract have terminated.

(f) Voluntary meals from a member of the aviation industry provided to officers and employees who are responsible for managing and marketing the Airport to the aviation industry, provided that (i) such meals are necessary to cultivate and maintain working relationships between the Airport and aviation industry representatives; (ii) the aviation industry's business relationship with the Airport is discussed during the meal; and (iii) the person providing the meal is not, at the time of the meal, negotiating contract benefits on terms that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. For the purposes of this subsection, "aviation industry" means individuals and entities engaged in: air cargo shipping; general and business aviation and commercial airlines; air tourism; airline service related associations and agencies; joint marketing programs with non-competitive airports to enhance air service to the public; and facility and airline security. "Managing and marketing the Airport " includes: managing and marketing the Airport to the aviation industry; promoting Airport facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the Airport's airfield, facilities and terminals. For the purposes of this subsection, "negotiating contract benefits" means communicating with the Airport regarding a proposal to adopt or change a material term of an existing or prospective contract to include commercial benefits that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. A person is "negotiating contract benefits" from the date that the Airport considers the proposal until the date of the approval of the contract or the date that the Airport communicates to the other party that negotiations for the contract benefits have terminated.

(g) Items of any value received by a City employee or officer in a random drawing associated with participation in the City's Annual Joint Fundraising Drive under Administrative Code Chapter 16, Article V (also known as Combined Charities Fundraising Drive).

Example: A restricted source sends five pizzas to a department as a goodwill gesture. Because this is a gift to the office, staff may share the pizza.

Example: A restricted source sends two opening day Giants ballgame tickets to a staff person. The staff person may not accept the tickets because their value exceeds \$25.

Example: A restricted source sends a baseball cap to the department head. The department head may accept the baseball cap because its value is \$25 or less, provided that the department head has not already accepted gifts with a value of \$25 or less from the restricted source on four occasions during the calendar year.

Example: Staff of a department are invited to a morning training event that is sponsored by a restricted source. Staff who attend the session may accept food and beverages that are offered at the event such as coffee, tea, juice, pastry or bagels, because their value do not exceed \$25, provided that such staff has not already accepted such food and beverages from the restricted source on four occasions during the calendar year.

Example: Staff of a City department are invited to attend a forum on best practices in the industry that is sponsored by a restricted source. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

Example: An employee donates to the City's Combined Charities Fundraising Drive. The employee's name is entered in a drawing with all other donors, and the employee wins a \$50 gift certificate in the drawing. The gift certificate was provided to the City by a company doing business with the employee's department. Even though the company that provided the gift certificate is a restricted source, the employee may accept the gift as a reward or benefit associated with participation in the fundraising drive.