



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: March 2, 2010
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Re: Proposed Amendments to the Government Ethics Ordinance

At the Commission's March 8, 2010 meeting, staff will propose amendments to three sections of the Government Ethics Ordinance ("GEO"), San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 3.200 et seq. These proposals address concerns that have arisen during staff's implementation of the law and recommend changes that would simplify its application.

Either the voters or the Board of Supervisors ("Board") may amend the GEO. The Board may amend the GEO if the amendment furthers the purposes of the law; the Ethics Commission approves the proposed amendment by at least a four-fifths vote of its members; the proposed amendment is available for public review at least 30 days before it is considered by the Board or any of the Board's committees; and the Board approves the proposed amendment by at least a two-thirds vote of all its members. S.F. C&GC Code § 3.204.

1. Section 3.216(b), (c), and (d). Gifts.

Section 3.216(b) bars City officers and employees from soliciting or accepting any gifts from restricted sources, with some limited exceptions. 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.

Staff proposes to extend the restricted source rule to include loans so that an officer or employee may not circumvent the gift rules by soliciting or receiving a loan from a restricted source, unless the loan is received from a commercial lending institution in the ordinary course of business. The ban on gifts from restricted sources exists to lessen the possibility of undue influence in decision-making, and extending the ban to include loans advances this goal.

But staff recommends that the prohibition should not apply to loans from commercial lending institutions made in the ordinary course of business. This exception tracks similar exclusions in the Political Reform Act, and staff believes it is appropriate

because loans from commercial lenders – if they are offered on the same terms available to the general public – are unlikely to influence City decision-makers.

The other changes to section 3.216(b) are grammatical, adding “or” and changing “any” to “a” on line 3 of page 2.

Decision Point 1A:

Shall the Commission approve the recommendations to section 3.216(b) as set forth on pages 1-2 of the draft amendments?

Section 3.216(c) bars an officer or employee from soliciting or accepting any gratuity in money or other valuable thing from a subordinate or an applicant for a position as a subordinate. The Commission has interpreted this restriction to apply to gifts. *See* Ethics Regulation 3.216(c)-1. Thus, staff recommends changing the phrase “gratuity in money or other valuable thing” to “gift” on lines 14-15 of page 2. In addition, staff has added the term “under his or her supervision” to make clear that the rule applies to when there is a supervisory-subordinate relationship.

Staff also recommends extending this ban on gifts to loans as well, for the same reasons set forth above in the discussion regarding gifts from restricted sources. Because the City's employment-related decisions should be based solely on merit, staff recommends extending the ban on gifts from subordinates or applicants to include loans.

Decision Point 1B:

Shall the Commission approve the recommendations to section 3.216(c) as set forth on page 2 of the draft amendments?

Section 3.216(d) requires City elected officers to report to the Ethics Commission a gift of transportation, lodging, or subsistence for any out-of-state trip paid for in part by an entity other than the City, another governmental body or a bona fide educational institution. The official accepting such a gift of travel must disclose the following information:

- the entity funding the trip,
- any contributor who paid more than \$500 to the entity funding the trip,
- a description of the purpose and itinerary of the trip,
- any decision-making City employees accompanying the officer,
- any locally registered lobbyist or campaign consultant accompanying the official,
- any employee of or individual with an ownership interest in a locally registered lobbyist or campaign consultant who is accompanying the official, and
- any employee or officer of the entity funding the trip who is accompanying the official.

Section 3.216(d) currently requires the disclosure of this information *before* the official takes the trip. The officer must also file this disclosure if the trip is funded *in part* by donations from an entity other than another governmental body or bona fide educational institution. In addition, if

the officer reimburses an entity for a gift of travel, the officer accepting the gift of travel must disclose information to the Ethics Commission within 30 days of the reimbursement.

Staff proposes several changes to section 3.216(b). First, staff proposes to add “a person” to the law. Currently, the law requires reporting only when an “entity” pays for the trip. Staff’s proposal would require reporting when an individual pays as well. This change will capture information where a person rather than an entity funds the travel.

Second, staff proposes that the information be reported within 30 days after the end of the trip. Current law requires reporting *before* the travel occurs. Oftentimes, officials do not have the required information when they accept the gift of travel; thus, they must amend their reports upon their return. Requiring information within 30 days of the end of their trip would lessen the administrative burden of such reports.

Third, staff proposes to delete language regarding gifts of travel to the City. In July 2008, the Fair Political Practices Commission amended one of its regulations to provide that a City cannot accept a gift to pay for an elected official's travel. *See* 2 C.C.R.§ 18944.2. Thus, section 3.216(d)(2) is no longer necessary, and staff recommends that it be deleted.

Other minor changes to section 3.216(d) are grammatical, renumbering subsection (3) to (2) on line 24 of page 3 and deleting “the fair market value of” on line 9 of page 4.

Decision Point 1C:

Shall the Commission approve the recommendations to section 3.216(d) as set forth on pages 2-4 of the draft amendments?

Section 3.224. Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy.

Section 3.224 bars City officers from lobbying other City officers or employees for compensation on someone else's behalf. Subsection (c) permits the Ethics Commission to waive the ban for any member of a board or commission who, by law, must be appointed to represent any profession, trade, business, union or association.

Staff recommends changing the waiver provision so that *any* member of a board or commission may seek a waiver from the Commission so long as the Commission finds that (1) granting the waiver would not create a potential for undue influence or unfair advantage, and (2) the appointing officer has been unable to recruit other qualified candidates for the position despite reasonable efforts. The genesis for staff's recommendation was the recent request for waiver made by a prospective appointee of the Access Appeals Commission ("AAC"). Staff advised the Commission not to entertain a request for a waiver because the prospective appointee did not occupy a seat that must be filled by a representative of any profession, trade, business, union or association. The Building Inspection Commission informed staff that because of the complex nature of matters considered by the AAC, it is difficult to recruit and appoint members to the AAC who do not regularly engage in compensated advocacy before the Department of Building Inspection or Planning Department. Staff believes that if facts showed that a waiver would not create the potential for undue influence or unfair advantage, and that the City has had difficulties

in recruiting a qualified individual despite reasonable efforts, the Commission should have at least have the opportunity to consider a waiver request. Thus, staff recommends the changes to section 3.224(c).

Decision Point 2:

Shall the Commission approve the recommendations to section 3.224(c) as set forth on pages 4-5 of the draft amendments?

Section 3.220. Prohibition on Dual Office Holding

Section 3.220 provides that a person who holds City office with an annual salary exceeding \$2,500 and cannot hold any other City, state or federal office with a salary exceeding \$2,500. If that official accepts the second position, section 3.220 requires the official to vacate his or her first City office. This law has existed in some form for over 100 years. Staff believes that the law was enacted to bar any one person from holding too much power in government. But staff does not believe that the law has much application today, particularly in light of the existence of California Government Code section 1099.¹ Section 1099, which applies to all public officers, bars an individual from simultaneously holding two public offices when such offices are incompatible. The attorney general has issued dozens of opinions applying the law, so City officers have sufficient guidance about its application. Staff believes that forfeiture of an office based on incompatibility rather than a salary threshold is a better way to assess whether there is a conflict of interest. Accordingly, staff recommends deletion of section 3.220.

Decision Point 3:

Shall the Commission approve the recommended deletion of section 3.220, as set forth on pages 5-6 of the draft amendments?

¹ California Government Code section 1099 provides:

(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.

(2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.

(3) Public policy considerations make it improper for one person to hold both offices.

(b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.

(c) This section does not apply to a position of employment, including a civil service position.

(d) This section shall not apply to a governmental body that has only advisory powers.

(e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.

(f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.

1 [Government Ethics Ordinance Amendments.]

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3 **Ordinance amending Campaign and Governmental Conduct Code to: (1) prohibit loans**
 4 **from restricted sources and subordinates; (2) modify the reporting requirements for**
 5 **elected officials receiving gifts of travel; (3) permit the Ethics Commission to waive the**
 6 **compensated advocacy ban for City officials; and (4) eliminate the prohibition on**
 7 **holding two offices with salaries exceeding \$2,500 per year.**

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

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

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12 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
 13 amended by amending Sections 3.216 and 3.224, to read as follows:

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14 SEC. 3.216. GIFTS.

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15 (a) Prohibition on Bribery. No person shall offer or make, and no officer or employee
 16 shall accept, any gift with the intent that the City officer or employee will be influenced thereby
 17 in the performance of any official act.

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18 (b) General gift restrictions. In addition to the gift limits and reporting requirements
 19 imposed by the Political Reform Act and this Code California Government Code section 89503,
 20 section 3.1-101 of the Campaign and Governmental Conduct Code and any subsequent
 21 amendments ~~to those sections thereto~~, no officer or employee of the City and County shall solicit
 22 or accept any gift or loan from a person who the officer or employee knows or has reason to
 23 know is a restricted source, except loans received from commercial lending institutions in the
 24 ordinary course of business.

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1 (1) Restricted Source. For purposes of this section, a restricted source means: (A) a
2 person doing business with or seeking to do business with the department of the officer or
3 employee; or (B) ~~any~~ a person who during the prior 12 months knowingly attempted to
4 influence the officer or employee in any legislative or administrative action.

5 (2) Gift. For purposes of this subsection, the term gift has the same meaning as under
6 the Political Reform Act, California Government Code section 81000 et. seq., and the
7 regulations adopted thereunder, including any subsequent amendments. Gifts exempted from
8 the limits imposed by California Government Code section 89503 and section 3.1-101 of the
9 Campaign and Governmental Conduct Code shall also be exempted from the prohibition set
10 forth in this subsection.

11 (3) Regulations. The Ethics Commission shall issue regulations implementing this
12 section, including regulations exempting voluntary gifts that are nominal in value such as gifts
13 that are given by vendors to clients or customers in the normal course of business.

14 (c) Gifts from Subordinates. No officer or employee shall solicit or accept any ~~gratuity in~~
15 ~~money or other valuable thing~~ gift or loan, either directly or indirectly, from any subordinate or
16 employee under his or her supervision or from any candidate or applicant for a position as a
17 subordinate or employee ~~or subordinate~~ under his or her supervision. ~~him or her.~~ The Ethics
18 Commission shall issue regulations implementing this Section, including regulations
19 exempting voluntary gifts that are given or received for special occasions or under other
20 circumstances in which gifts are traditionally given or exchanged.

21 (d) Gifts of Travel.

22 (1) Gifts to Elected Officers. In addition to the gift limits and reporting requirements
23 imposed by the Political Reform Act and this Code, no elected officer may accept a gift of
24 transportation, lodging, or subsistence for any out-of-state trip paid for in part by ~~an~~ a person or
25 entity other than the City and County of San Francisco, another governmental body, or a bona

1 fide educational institution, defined in Section 203 of the Revenue and Taxation Code, unless
2 the officer ~~has first disclosed~~ discloses, within 30 days after the end of the trip, on a form filed with
3 the Ethics Commission:

4 (A) the name of the person or entity and the total amount that will be paid by the person
5 or entity to fund the trip, including but not limited to the amount directly related to the cost of
6 the elected officer's transportation, lodging, and subsistence;

7 (B) the name, occupation and employer of any contributor who has contributed more
8 than \$500 to the person or entity funding the trip and whose contributions were used in whole
9 or in part to fund the trip;

10 (C) a description of the purpose of the trip and the itinerary; and

11 (D) the name of any individual accompanying the official on the trip who is:

12 (i) a City employee required to file a Statement of Economic Interests,

13 (ii) a lobbyist or campaign consultant registered with the Ethics Commission,

14 (iii) an employee of or individual who has any ownership interest in a lobbyist or
15 campaign consultant registered with the Ethics Commission, or

16 (iv) an employee or officer of the entity funding the trip. ~~that will pay for the gift of~~
17 ~~transportation, lodging, or subsistence.~~

18 ~~(2) Gifts to the City. In addition to any other reporting requirements imposed by the Political~~
19 ~~Reform Act or local law, an elected officer shall file a form with the Ethics Commission disclosing the~~
20 ~~information required under subsections (d)(1)(A)-(D) of this Section before accepting a gift of~~
21 ~~transportation, lodging, or subsistence for any out-of-state trip paid for by the City in whole or in part~~
22 ~~with funds donated from an entity other than another governmental body or a bona fide educational~~
23 ~~institution, as defined in Section 203 of the Revenue and taxation Code.~~

24 (~~3~~2) Reimbursement of Gifts of Travel. In addition to any other reporting requirements
25 imposed by the Political Reform Act or local law, an elected officer who reimburses a person or

1 ~~an~~ entity for a gift of transportation, lodging or subsistence related to out-of-state travel ~~in order~~
2 ~~to~~ and thereby avoid~~s~~ having received or accepted the gift shall file a form with the Ethics
3 Commission within 30 days of such reimbursement disclosing:

4 (A) the name of the person or entity that originally paid for the transportation, lodging or
5 subsistence;

6 (B) the amount paid by the person or entity for the elected officer's transportation,
7 lodging or subsistence;

8 (C) the amount reimbursed by the elected officer to the person or entity and the process
9 used to determine ~~the fair market value of~~ that amount; and

10 (D) a description of the purpose of the trip and the itinerary.

11 (43) Format. The Ethics Commission shall provide forms for the disclosure required by
12 this subsection and shall make the completed forms available on its website.

13 (54) Definition. For the purpose of this subsection, the term "elected officer" means the
14 Mayor, member of the Board of Supervisors, City Attorney, District Attorney, Public Defender,
15 Treasurer, Assessor and Sheriff.

16 (e) Additional Restrictions. Nothing in this Section shall prohibit a City department,
17 agency, board or commission from imposing additional gift restrictions on its officers or
18 employees.

19 SEC. 3.224. - PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE
20 OTHER CITY OFFICERS AND EMPLOYEES—COMPENSATED ADVOCACY.

21 (a) Prohibition. No officer of the City and County shall directly or indirectly receive any
22 form of compensation to communicate orally, in writing, or in any other manner on behalf of
23 any other person with any other officer or employee of the City and County with the intent to
24 influence a government decision.

1 (b) Exceptions. This section shall not apply to any communication by: (1) an officer of
2 the City and County on behalf of the City and County; (2) an officer of the City and County on
3 behalf of a business, union, or organization of which the officer is a member or full-time
4 employee; (3) an associate, partner or employee of an officer of the City and County, unless it
5 is clear from the totality of the circumstances that the associate, partner or employee is merely
6 acting as an agent of the City and County officer; or (4) a City officer in his or her capacity as
7 a licensed attorney engaged in the practice of law, which includes representing clients in
8 communications with the City Attorney's Office, District Attorney's Office, Public Defender's
9 Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by
10 the City, representatives of the City who are named in a pending litigation matter or witnesses
11 or potential witnesses in a pending litigation matter.

12 (c) Waiver. The Ethics Commission may waive the prohibitions in this section for any
13 officer appointed to a board or commission if the Commission finds that (i) granting the waiver would
14 not create a potential for undue influence or unfair advantage, and (ii) the appointing officer has been
15 unable to fill the position with other qualified candidates despite reasonable efforts.~~member of a City~~
16 ~~board or commission who, by law, must be appointed to represent any profession, trade, business,~~
17 ~~union or association.~~

18 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby
19 amended by repealing Section 3.220, to read as follows:

20 ~~SEC. 3.220. PROHIBITION ON DUAL OFFICE HOLDING.~~

21 ~~Any person holding an office under the City and County with an annual salary in excess of~~
22 ~~\$2,500, whether by election or by appointment, who shall, during his or her term of office, hold or~~
23 ~~retain any other office with such a salary under the government of the United States, the State of~~
24 ~~California, or the City and County shall be deemed to have thereby vacated the office held by him or~~
25 ~~her under the City and County. For the purposes of this Section, the term salary does not include: (1) a~~

1 ~~stipend, per diem, or other payment provided for attendance at meetings; or (2) health, dental or vision~~
2 ~~insurance, or other non-cash benefits.~~

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

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6 By: _____
7 JON GIVNER
8 Deputy City Attorney

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