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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: Amendment to GEO section 3.216(d) – deadline for reporting gifts of travel

Staff recommends that the Ethics Commission amend section 3.216(d) of the Government Ethics Ordinance ("GEO"), San Francisco Campaign and Governmental Conduct Code section 3.200 et seq., to extend the deadline for reporting of gifts of out-of-state travel. Under existing law, elected officials must report gifts of out-of-state travel *prior to* leaving on those trips. This reporting deadline, however, often results in initial disclosure of inaccurate information and requires an additional amendment to the disclosure once the elected official returns from his or her trip. Staff proposes that elected officials instead be required to disclose details regarding their out-of-state travel 30 days after returning from their trip to limit the number of disclosures that must be filed and to ensure that the public is provided with the most accurate information possible.

BACKGROUND

At its meeting on March 8, 2010, the Ethics Commission considered and approved several amendments to the GEO, but tabled others in order to obtain additional information from staff. At that meeting, the Commission unanimously approved the following amendments:

- Section 3.216(b): extension of the ban on gifts from restricted sources to include loans, except for loans from commercial lending institutions made in the ordinary course of business. (A restricted source is either (a) a person who has or is seeking a contract with the department of an officer or employee; or (b) a person who has knowingly attempted to influence the officer or employee in the prior 12 months.)
- Section 3.216(c): clarification that the current ban on "gratuity in money or other valuable thing" applies to gifts from subordinates and extension of the ban against gifts from subordinates to include loans.

- Section 3.216(d): clarification that reporting of gifts of travel applies to gifts made by an individual as well as an entity, and to delete language regarding gifts of travel accepted by elected officials that is no longer necessary due to changes in state law.

At its March meeting, the Commission tabled draft proposals to amend section 3.224 (compensated advocacy) and section 3.220 (dual office holding). In addition, the Commission tabled an additional amendment to section 3.216(d), which is the subject of this memorandum.

DISCUSSION

Section 3.216(d) requires City elected officers to report gifts 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. Under state law, a local elected official may accept a gift of out-of-state travel in two instances:

- When the official is traveling within the United States in connection with a speech or participation on a panel. 2 C.C.R. § 18950.1(a).
- When the official is not delivering a speech, but the travel is reasonably related to a legislative, governmental, or public policy purpose and provided by either a government, an educational institution, a 501(c)(3) nonprofit organization, or a foreign organization that satisfies the requirements for 501(c)(3) status. 2 C.C.R. § 18950.1(b).

As currently drafted, section 3.216(d) requires reporting of the first category of out-of-state travel. Section 3.216(d) only requires additional reporting of the second category if a 501(c)(3) nonprofit organization is the source of the gift of travel. Under section 3.216(d), the official accepting such a gift of travel must disclose the following information:

- the name of the entity funding the trip,
- the total amount paid by the entity to fund the trip, including but not limited to the amount directly related to the cost of the elected officer's transportation, lodging, and subsistence,
- 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 employee 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 again proposes that the information required above be reported within 30 days after the end of the trip. Current law requires reporting *before* the travel occurs. Elected officials who accept gifts of travel often do not have all of the required information prior to their trip. For example, the elected official may only have an estimate of the costs of the trip. The elected official may also not know who else will be traveling until the trip begins. Thus, when they are required to file reports with the Commission, such reports sometimes contain incomplete information and must be amended upon their return.

Requiring information within 30 days of the end of the trip would lessen the administrative burden of such reports, both for elected officials and for staff. When staff receives gift of travel reports, staff must process them by scanning them, redacting private information as appropriate and readying them for posting on the website. Requiring reports beforehand creates more paperwork and undermines the value of the reports because they simply may not contain all of the information that must be disclosed. In addition, under state law, elected officials are required to disclose gifts of travel when they file their Form 700 Statements of Economic Interests. State law requires that this travel be reported on the elected official's annual Form 700 Statement of Economic Interests, which is on a different time-frame and with less detail. Lastly, staff is unaware of any instances in which an interested member of the public has sought these reports prior to an elected official's out-of-state trip. For the above reasons, staff recommends that the Commission approve the amendment related to the time that reports must be filed under section 3.216(d).

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.

Decision Point 1:

Shall the Commission approve the recommendation to delete “has first disclosed” and add instead “discloses, within 30 days after the end of the trip,” to section 3.216(d)(1) as set forth on page 3, line 1 of the attachment? (All other additions or deletions set forth in the attachment were previously unanimously approved by the Ethics Commission at its March 8, 2010 meeting.)

1 [Government Ethics Ordinance Amendments.]

2

3 **Ordinance amending Campaign and Governmental Conduct Code to: (1) prohibit loans**
 4 **from restricted sources and subordinates; and (2) modify the reporting requirements**
 5 **for elected officials receiving gifts of travel.**

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

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

10 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
 11 amended by amending Section 3.216, to read as follows:

12 SEC. 3.216. GIFTS.

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

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

23 (1) Restricted Source. For purposes of this section, a restricted source means: (A) a
 24 person doing business with or seeking to do business with the department of the officer or

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1 employee; or (B) ~~any~~ a person who during the prior 12 months knowingly attempted to
2 influence the officer or employee in any legislative or administrative action.

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

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

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

19 (d) Gifts of Travel.

20 (1) Gifts to Elected Officers. In addition to the gift limits and reporting requirements
21 imposed by the Political Reform Act and this Code, no elected officer may accept a gift of
22 transportation, lodging, or subsistence for any out-of-state trip paid for in part by an individual
23 or entity other than the City and County of San Francisco, another governmental body, or a
24 bona fide educational institution, defined in Section 203 of the Revenue and Taxation Code,
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1 unless the officer ~~has first disclosed~~ discloses, within 30 days after the end of the trip, on a form filed
2 with the Ethics Commission:

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

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

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

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

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

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

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

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

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

23 (32) Reimbursement of Gifts of Travel. In addition to any other reporting requirements
24 imposed by the Political Reform Act or local law, an elected officer who reimburses an
25 individual or an entity for a gift of transportation, lodging or subsistence related to out-of-state

1 travel ~~in order to~~ and thereby avoids having received or accepted the gift shall file a form with
2 the Ethics Commission within 30 days of such reimbursement disclosing:

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

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

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

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

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

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

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

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

21 By: _____
22 JON GIVNER
23 Deputy City Attorney
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