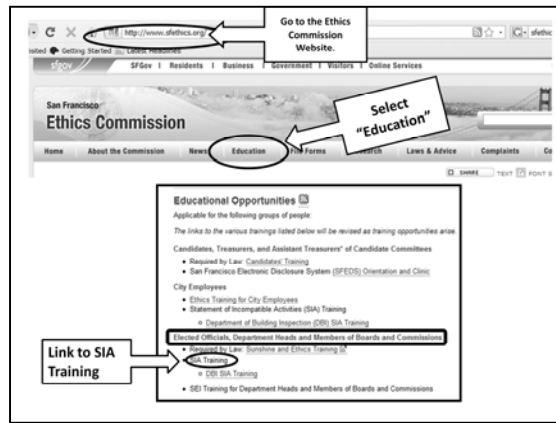


Governmental Ethics Ordinance
Training

Welcome to the Governmental Ethics Ordinance Training for Advisory Board and Committee Members, and City Employees.

If you are an elected official, a department head, or member of a board or commission, watch the Rules of Conduct for Public Officials on the City Attorney's website.

S:\Outreach & Training\Ethics Commission Trainings\Governmental Ethics Ordinance Training\Governmental Ethics Ordinance Training 2.3.2011



If you wish, you may watch the Statement of Incompatible Activities Training on the Ethics Commission website at www.sfethics.org. Look under the Education page on the Ethics Commission website. The training is listed under conflicts of interests.

Agenda

- Conflicts of Interest and Governmental Ethics
 - Political Reform Act
- Ethics Rules Governing City Employees
 - California Government Code § 1090
 - San Francisco Campaign and Governmental Conduct Code (C&GCC)
- Obligations, Enforcement, and Penalties

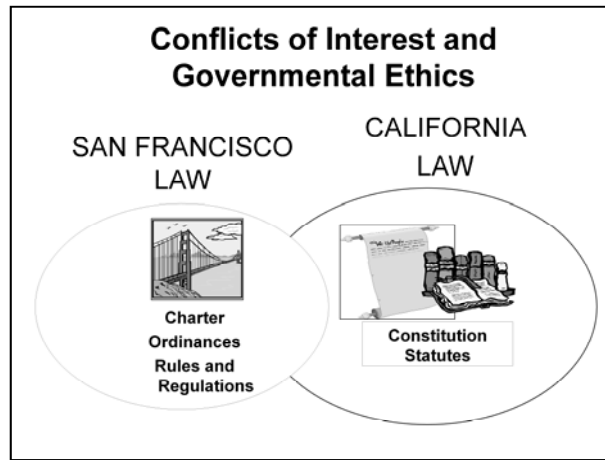
This video focuses on the Ethics Rules governing City Employees.

In this training, we will cover Conflicts of Interest and Governmental Ethics. This section explains Conflicts of Interest Rules generally found in the Political Reform Act.

In the section labeled Ethics Rules Governing City Employees, we will be discussing California Government Code Section 1090 and the San Francisco Campaign and Governmental Conduct Code.

And finally we will discuss your obligations, the enforcement process, and the various penalties that may apply for breaking these governmental ethics rules.

You may wish to read and review your department specific SIA, all the pertinent local laws pertaining to conflicts of interest, and Ethics Rules City employees must adhere to because to the extent that these trainings conflict with state or local law, the law controls. You can find these laws posted on the San Francisco Ethics Commission Website, under Laws & Advice.



Let's start off with Conflicts of Interest and Governmental Ethics. Why do we have ethics laws?

The underlying purpose of conflicts laws is to ensure that all officers and employees of the City perform their public duties in a manner that is consistent with the idea that public office is a public trust. To ensure that the governmental processes promote fairness and equity for all residents and to maintain public trust in governmental institutions, the people of San Francisco have declared that they have a compelling interest in creating laws that regulate conflicts of interest and the outside activities of City officers and employees.

These ethics rules are based on both local and state laws, namely the SF Charter, the Campaign and Governmental Conduct Code, the state Constitution and the Political Reform Act.

General Rule

- You may not make, participate in making, or seek to influence a governmental decision if you have a financial interest in the decision.



I'll start with a question. How do you know if there is a conflict of interest?

The answer always is: it depends on the facts. That's the first general rule about conflict of interest analysis.

The second general rule – and the one we're emphasizing in this training – is that no public official may make, participate in making, or seek to influence a governmental decision if the officer or employee has a financial interest in the decision.

Under the law, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the official's economic interests.

(Govt Code sec. 87103)

- 1 Are you a **PUBLIC OFFICIAL...**
- 2 ...who is involved in a **GOVERNMENTAL DECISION...**
- 3 ...that may affect your **FINANCIAL INTERESTS?**

There are three key points to remember about this general rule.

A lot of analysis goes on to determine whether there is an actual conflict, but for purposes of this training, remember three key points.

The three key points are:

- Are you a public official
- who is involved in a governmental decision
- that may affect your financial interests?

I am going to get into detail about who is a public official, what does it mean to be involved in a governmental decision, and what is a financial interest.

(FYI: these 3 concepts are culled from 8 key points developed by the FPPC, which administers and enforces the Political Reform Act, to analyze whether there is a conflict of interest: No public official shall make, participate in making, or in any way attempt to influence a governmental decision in which he or she has a financial interest (economic, direct or indirect, material, foreseeable) that is different from the interest of the public generally, and where participation is not legally required.)

1 WHO IS A PUBLIC OFFICIAL?

 **Appointed Member of a Board or Commission**

 **Elected Official**

 **Employee**

 **Consultant**

As a City officer or employee, you are a public official.

- Who is a public official?
- A public official is an appointed member of a board or commission, an elected official, an employee or a consultant.
- As a City officer or employee, you are considered a public official.

The Political Reform Act defines the term public official as a “member, officer, employee, or consultant” of a local government agency. The term “member” includes any member of a board or commission with decision making authority and in limited circumstances could include a member of a nonprofit corporation. Whether a “consultant” qualifies as a public official depends upon the nature and extent of the consultant’s work.

2

What does it mean to be involved in a GOVERNMENTAL DECISION?



- **Making**
- **Participating in making**
- **Seeking to influence**

The next question you want to ask yourself is: Are you involved in a governmental decision?

We'll start by defining what it means to be involved in a governmental decision.





You are involved in a governmental decision if you are:

- Making,
- participating in making, or
- seeking to influence a governmental decision.

Each of these phrases has specific meanings.

2 **GOVERNMENTAL DECISION**

Making a governmental decision means:

-  •Voting
-  •Appointing a person
-  •Obligating or committing your department to a course of action
-  •Entering into any contract

Making a governmental decision means:


- voting on a matter,
- appointing a person to a position,
- obligating or committing your department to a course of action, or
- entering into any contract for your department


Deciding not to act may also constitute making a decision.

2

GOVERNMENTAL DECISION

Participating in making a governmental decision means:

 •Negotiating


 •Advising or making recommendations

Participating in making a governmental decision means:

- negotiating,
- providing advice by way of research, investigation, or preparation of reports and analyses for the decision-maker, or
- making recommendations

Participating in making a decision does not include ministerial or clerical actions, appearing before an agency to represent the official's personal interests, or actions by a public official with regard to his or her compensation for services or the terms or conditions of his or her employment or contract.

2 **GOVERNMENTAL DECISION**
Seeking to influence means:



1. Contacting, appearing before, or attempting to persuade any official of your own agency.

Seeking to influence a governmental decision means contacting, appearing before, or otherwise attempting to influence any official in your own agency.

Influencing a decision includes contacting, appearing before, or otherwise attempting to influence any member, officer, employee or consultant of the official's agency, or an agency appointed by or subject to the budgetary control of the official's agency. Even where a public official appears before another agency that is not subject to the control of the official's agency, the official would still be considered to be influencing a decision if the official is acting on behalf of, or as a representative of, the public official's agency in contacts with the other agency. Only where the official is acting solely in a personal capacity in such a situation could the official avoid being deemed to be influencing a decision.

2

GOVERNMENTAL DECISION

Seeking to influence means:



2. **Acting or purporting to act as a representative of your agency, or using agency letterhead in a communication with any other agency.**

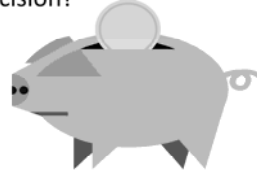


Seeking to influence also means acting or purporting to act as a representative of your agency, or using agency letterhead to communicate with any other agency.

Acting as a representative of the official's agency includes, for example, delivering correspondence using official stationery.

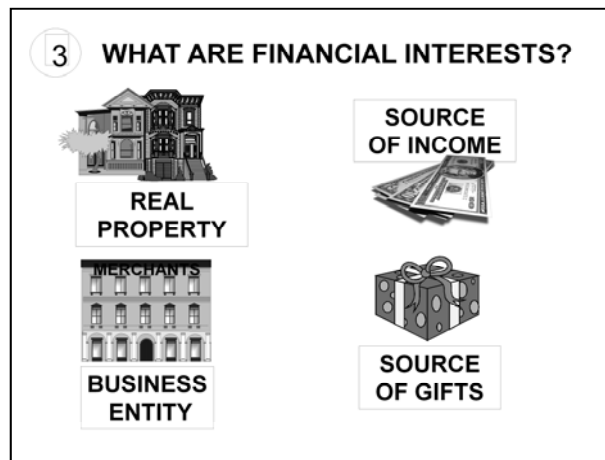
Governmental Decision

If you're a public official doing any of the above (making, participating in making or seeking to influence), you are involved in a governmental decision. The third question is: Do you have a financial interest in that decision?



If you're a public official doing any of the above, if you are making, participating in making or seeking to influence a governmental decision, you are involved in a governmental decision.

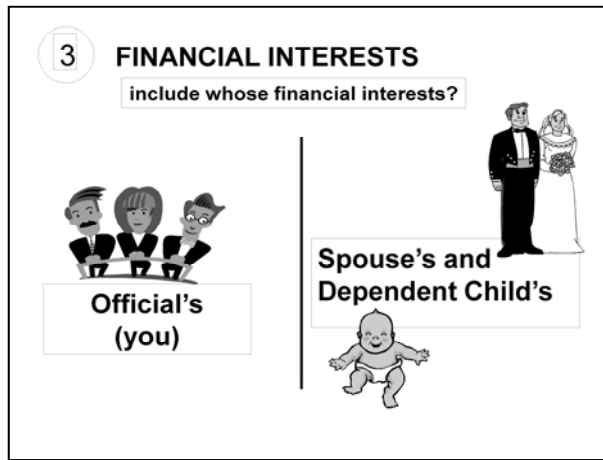
The third question is: Do you have a financial interest in that decision?



So, what are financial interests?

Under conflicts of interest laws, you may not participate in a decision if the decision involves a financial interest that is identified in the Political Reform Act. These interests are interests in four subject matters:

- real property,
- a source of income,
- a business entity, or
- a source of gifts.



Before I talk specifically about these interests, you need to know that when we talk about financial interests under the conflict of interest laws, we're talking not only about your own financial interests but also the financial interests of your spouse and dependent children. And under California law, the term "spouse" includes a registered domestic partner.

**3 FINANCIAL INTERESTS
REAL PROPERTY**




In the Jurisdiction
+ 2 miles

AN INVESTMENT OF **\$2,000**
OR MORE IN FAIR MARKET VALUE

A financial interest in real property means an interest worth \$2,000 or more in any real property in San Francisco. This includes owning the real property, or having a leasehold on the property that's worth \$2,000 or more. Real property "in San Francisco" means property that exists within the physical boundaries of San Francisco and 2 miles outside. It also means real property owned by San Francisco that's physically located outside of the City, such as Treasure Island, Hetch Hetchy, and the San Francisco Airport.

Remember, this includes investments and interests in real property held by your spouse or registered domestic partner, and dependent children.

**3 FINANCIAL INTERESTS
SOURCE OF INCOME**



ANY SOURCE OF INCOME OF **\$500**
OR MORE IN THE 12 MONTHS PRIOR TO
THE DECISION

Any source of income of \$500 or more in the 12 months prior to the decision is considered a financial interest. This includes promised income and half of your spouse's income.

3 FINANCIAL INTERESTS SOURCE OF INCOME

Your spouse's separate income or your dependent child's income is not deemed to be a source of income to you.

Examples of separate income include non-community property set aside through a prenuptial agreement or assets your spouse inherits.



1/2 SPOUSE'S
INCOME

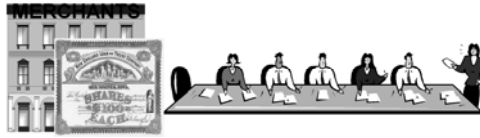
You generally have an interest in one-half of your spouse's or registered domestic partner's income.

But your spouse's separate income or your dependent child's income is not deemed to be a source of income to you.

Examples of separate income include non-community property set aside through a prenuptial agreement or assets your spouse inherits.

3

FINANCIAL INTERESTS BUSINESS ENTITY




- Director
- Officer
- Employee

- Partner
- Trustee
- Or hold a management position

You are deemed to have a financial interest in any business entity that does business in San Francisco if you are a director, officer, employee, partner, trustee, or hold a position of management in that entity.

3 FINANCIAL INTERESTS

BUSINESS ENTITY



An investment of \$2,000 or more in an entity doing business located in or planning to do business in, or that has done business in San Francisco during the previous two years


- Generally big companies and corporations do business in the City and County of San Francisco.
- SEC registered mutual funds are not considered financial interests.

You are also deemed to have a financial interest in a business entity if you have an investment of \$2,000 or more in the entity that does business in San Francisco, or that plans to do business in San Francisco or that has done business in San Francisco during the previous two years.

Under the Political Reform Act, an entity does business in San Francisco if it has contacts on a regular or substantial basis with a person who maintains a physical presence in San Francisco. Contacts include manufacturing, distributing, selling, purchasing or providing goods or services. If a public official wishes to claim that a business is not doing business in the jurisdiction, the official bears the burden of proof.


- Generally big companies and corporations do business in the City.
- SEC registered mutual funds are not considered financial interests.

3 **FINANCIAL INTERESTS**
SOURCE OF GIFTS



\$420 in
2009-2010

ANY SOURCE OF GIFTS OF
OR MORE IN THE 12
MONTHS PRIOR TO THE DECISION



So we've covered what it means to have a financial interest in real property, in a source of income and in a business entity. We'll now discuss what it means to have a financial interest in a source of gifts. Note that after we talk about gifts here, which are the state rules, we will talk about other ethics rules in the next section and then return to discussing gift rules under local laws.

You are considered to have a financial interest in any source of that gives you \$420 or more in gifts in the 12 months prior to the governmental decision. This includes gifts that are provided to you, that are received by you or that are promised to you.

3

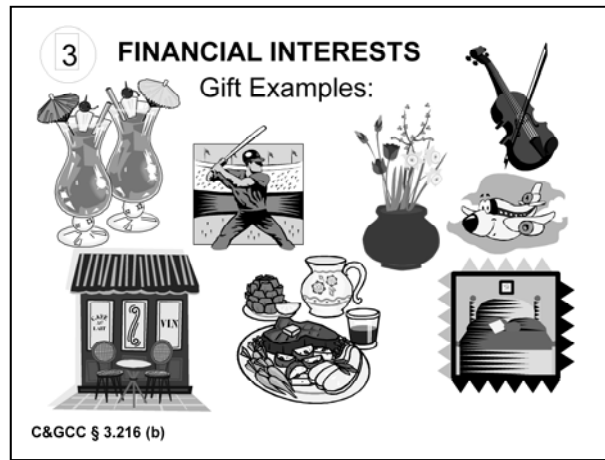
FINANCIAL INTERESTS

WHAT IS A GIFT?



**ANYTHING OF VALUE FOR
WHICH YOU DO NOT PROVIDE
SOMETHING OF EQUAL OR
GREATER VALUE IN RETURN**

A gift is anything of value for which you do not provide something of equal or greater value in return.



Anything of value includes drinks, ball game tickets, flowers, concert tickets, airfare, coffee, dinner, lodging, or other item.



Gifts from any one source are cumulative. This means that if you receive a gift of \$210 from one person in the beginning of the year and you receive another gift of \$210 in the middle of the year from the same person, the cumulative value of the gift you have received from that individual is \$420.

You are deemed to have a financial interest in a person who gives you gifts worth \$420 or more. As such, you would not be able to make a governmental decision regarding your generous friend because to do so would raise questions as to whether you are acting in your friend's interest or the City's interest when you make, participate in making or seek to influence that decision.

If my friend is extremely generous and gives me a new laptop valued at \$470 and I give him a \$50 gift certificate to an electronics store. I have received a gift of \$420 from my friend. In this situation, if I am a public official and if my friend comes to my department to seek a governmental decision, I am deemed to have a financial interest in my friend, and there is a conflict of interest if I were to participate in the decision. So I cannot make, participate in making, or seek to influence that governmental decision.

3

FINANCIAL INTERESTS

Gift Exceptions:

- Gifts from family members are not considered gifts



C&GCC § 3.216 (b)

Here are a few gift exceptions.

Gifts from family members are not considered gifts.

3 FINANCIAL INTERESTS
 Gift Exceptions:

WITHIN 30 DAYS:

- PAY FOR THE GIFT  
- RETURN IT 
- DONATE IT  
 (BUT DON'T TAKE
 A TAX DEDUCTION)

Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4

There are other exceptions to the gift rule. If you pay for the gift, or return it, or donate it to a charitable organization without taking a tax deduction, it's not considered a gift if it's done within 30 days. An example of this is, if a friend of mine treats me to a \$80 dinner and I treat that friend out to an \$80 dinner within 30 days, I am deemed not to have received a gift from this friend.

Recap: The General Rule

- If you have a financial interest in the real property, business entity, source of income or source of gift that is the subject of a governmental decision, you generally may not make, participate in making, or seek to influence that decision.



If you have a financial interest in the real property, business entity, source of income or source of gift that is the subject of a governmental decision, you generally may not make, participate in making, or seek to influence that decision.

- 1 Are you a **PUBLIC OFFICIAL...**
- 2 ...who is involved in a **GOVERNMENTAL DECISION...**
- 3 ...that may affect your **FINANCIAL INTERESTS?**

To determine if there's a possible conflict of interest, think about the three key points.

Are you a public official who is involved in a governmental decision that may affect your financial interests?

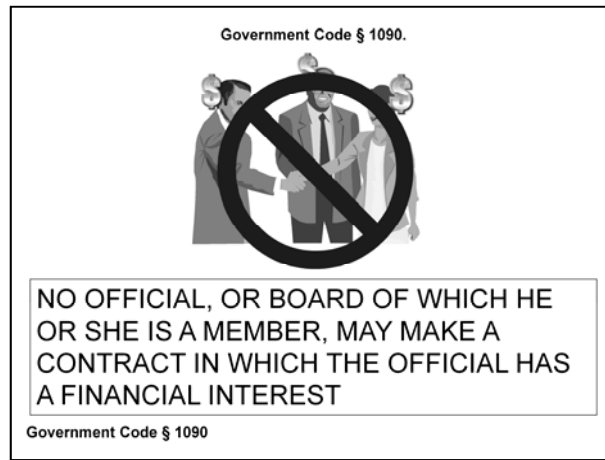
If you answer yes to all three, the likelihood is that you may have a financial interest and you may not be involved in the decision.



Ethics Rules Governing City Employees

- Government Code § 1090
- Use of Confidential or Privileged Information
- Political Activity
- Decisions Involving Family
- Influencing Decisions while Seeking Future Employment
- Post Employment Restrictions
- Disclosure of Relationships and
- Laws Related to Gifts

We're now going to move on to other ethics laws that govern City officials.



California Government Code section 1090, which is incorporated into local law, prohibits public officials, employees and consultants from being financially interested in contracts made by them or by the boards or commissions of which they are members.

Employees, consultants, and members of purely advisory bodies who are financially interested in a contract must abstain from participating in the making of the contract.

Other public officials, on the other hand, may be required to choose between maintaining a private interest and remaining in public office.

Contracts that violate section 1090 are void and a violation may subject the public official to severe sanctions.



Section 1090 does not define the term financial interest, but courts have given it a broad interpretation. Section 1090 is concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the official involved from exercising absolute loyalty and undivided allegiance to the best interests of the City.

Section 1090 also does not define what making a contract is. But courts have construed the term broadly to include planning, preliminary discussions, compromising, drawing of plans and specifications, solicitation of bids that lead to the making of a contract, negotiations, and signing on the dotted line.

Section 1090 is fairly complicated, so it's a good idea to contact us or your deputy City Attorney when you're faced with conflicts issues related to contracts.

Contracting Ban

- You may not enter, submit, negotiate for, or attempt to enter into a contract or a subcontract with the City where the amount exceeds \$10,000.



C&GCC § 3.222

As a City officer, you may not enter, submit, negotiate for, or attempt to enter into a contract or a subcontract with the City, where the amount exceeds \$10,000.

The definition for City includes any commission, board, department, agency, committee, or other organizational unit of the City and County of San Francisco. The ban also extends to contracts with the Redevelopment Agency, Housing Authority, SF Unified School District, and SF Community College District.

Contracting Ban: Exceptions

Does not apply to contracts or subcontracts:

- With a nonprofit organization
- With a business with which an officer is affiliated (unless exercising management and control over the business)
- Entered into before a member of a board or commission commenced his or her service

C&GCC § 3.222

This prohibition does not apply to contracts or subcontracts with a nonprofit organization, or a business with which an officer is affiliated unless the officer exercises management and control over the business.

You are considered to exercise management and control over a business if you are:

- an officer or director of a corporation,
- a majority shareholder of a closely held corporation,
- a shareholder with more than five percent beneficial interest in a publically traded corporation,
- a general partner or limited partner with more than 20% beneficial interest in the partnership, or
- a general partner regardless of percentage of beneficial interest and who occupies a position of or exercises management or control of the business.

Contracting Ban: Exceptions

Does not apply to:

- An agreement to provide property, goods or services to the City at a substantially below fair market value
- A settlement agreement resolving a claim or other legal dispute
- A grant or an agreement for employment in exchange for salary and benefits



C&GCC § 3.222

The ban also does not apply to an agreement to provide property, goods or services to the City at a substantially below fair market value, a settlement agreement resolving a claim or other legal dispute, or a grant or an agreement for employment in exchange for salary and benefits.

USE OF CONFIDENTIAL OR PRIVILEGED INFORMATION

You may not disclose confidential City information or use confidential or privileged City information for financial or personal gain.



C&GCC § 3.228

Local law prohibits City officers and employees from disclosing any confidential or privileged information unless authorized or required by law to do so.

Nor may officers and employees use any confidential or privileged information obtained by virtue of their office or employment to advance their own financial interests or the financial interests of others.


POLITICAL ACTIVITY

Ⓞ You may not engage in political activity:

- On City time
- On City premises
- With City resources

or

- In City uniform



C&GCC § 3.230

Both state and local law impose specific restrictions on political activity. Government Code section 54964 bars local agencies from expending public funds to support or oppose a candidate or ballot measure.

Government Code section 3205 and Campaign and Governmental Conduct Code section 3.230 prohibit officers and employees from directly or indirectly soliciting funds from other officers or employees of the City or from persons on the City's employment lists, unless the solicitation is part of a solicitation made to a significant segment of the public that may include officers or employees of the City.


In addition, officers and employees may not engage in political activity during working hours or on City premises. For the purposes of this ban, "City premises" does not include property that is made available to the public and that can be used for political purposes.

Officers and employees may not use City resources to engage in political activity; nor may they participate in political activities of any kind while in uniform.

For the purposes of this ban, "political activities" mean all activities that have as a purpose to influence voters to support or oppose a ballot measure, or to vote for or against a candidate.

DECISIONS INVOLVING FAMILY

YOU MAY NOT SEEK TO INFLUENCE AN EMPLOYMENT ACTION INVOLVING A RELATIVE.



Relative = spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, or first cousin, and any similar step relationship or relationship created by adoption.

C&GCC § 3.212

You cannot make, participate in making, or seek to influence a City decision about an employment action involving a relative.

But you can act as a personal reference or provide a letter of reference for a relative who is seeking appointment to a job in any City department other than your own department.

A department head who is prohibited from participating in an employment action involving a relative must delegate in writing to an employee in the department the authority to make any decisions regarding such employment action.

Employment action means hiring, promotion or discipline. [The ban does not apply to an appointment or other decisions related to holding a City office or position that is not salaried.]

**NO INFLUENCING WHILE SEEKING
FUTURE EMPLOYMENT**

You may not seek to influence a governmental decision affecting a person or entity with whom you are discussing or negotiating future employment.



Cal. Gov't Code § 87407; C&GCC § 3.206(c)

Under both the PRA and local law, you cannot make, participate in making, or seek to influence a government decision affecting a person or entity with whom you are discussing or negotiating future employment.

When we're talking about seeking future employment, a potential employer would be deemed a financial interest of yours.

POST EMPLOYMENT RESTRICTIONS

- Restrictions on Switching Sides
- One-Year Ban
- Employment with Contractors



C&GCC § 3.234

When you leave City employment, you are subject to three different rules called post-employment restrictions. When you leave one City department for another, you are subject to the one-year ban on contacting your former department to influence a governmental decision on behalf of someone else. These are a permanent ban on switching sides, a one-year ban on contacting your former department, and a ban on future employment with certain contractors.

RESTRICTIONS ON SWITCHING SIDES POST-EMPLOYMENT

As a former officer or employee, you cannot represent or assist in representing any other person (except the City) in court, or in a federal, state or local agency regarding a matter in which:

- The City has a substantial interest
- and
- You participated in personally and substantially



C&GCC § 3.234 (a)(1)

The first post employment restriction is a ban on switching sides. This permanent ban provides that as a former officer or employee of the City, you may not, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or any state, federal, or local agency, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

- (i) in which the City and County is a party or has a direct and substantial interest;
- (ii) in which you participated personally and substantially as a City officer or employee;
- (iii) which involved a specific party or parties at the time of your participation; and
- (iv) which is the same matter in which you participated as a City officer or employee.

As a former officer or employee, you may not aid, advise, counsel, consult, or assist any other person, other than the City, in any proceeding in which you cannot participate in personally.

The Ethics Commission may waive this post-employment restriction if it determines that granting a waiver would not create the potential for undue influence or unfair advantage.

ONE-YEAR BAN

FOR 365 DAYS

This ban applies whether or not you are compensated, or are a current or former City officer or employee. For one year after you leave City employment or move to another department, you may not communicate with your former department to represent anyone other than yourself or the City to influence a governmental decision.

C&GCC § 3.234 (a)(2)

The second post employment restriction is a one year ban. This ban applies whether or not you are compensated, or are a current or former City officer or employee.

For one year after you terminate your City employment or move to a another City department, you may not communicate with your former department to represent anyone other than yourself or the City to influence a governmental decision.

This ban does not stop you from taking a job.

The Ethics Commission may waive this ban if it determines that granting a waiver would not create the potential for undue influence or unfair advantage.

Employment with Contractors

Whether you are a current or former City officer or employee, you may not be employed by or receive compensation from any person or entity that entered into a contract with the City within the preceding 12 months if you personally and substantially participated in the award of the contract.



C&GCC § 3.234 (a)(3)

The third post employment restriction is a ban on employment with certain contractors. Whether you are a current or former City officer or employee, you may not be employed by or receive compensation from any person or entity that entered into a contract with the City within the preceding 12 months if you personally and substantially participated in the award of the contract.

DISCLOSURE OF RELATIONSHIPS

**MUST DISCLOSE ON THE PUBLIC
RECORD ANY:**

**PERSONAL
BUSINESS
OR
PROFESSIONAL**



**RELATIONSHIP WITH THE PERSON OR ENTITY
THAT IS THE SUBJECT OF A GOVERNMENTAL
DECISION BEING MADE BY THE OFFICER OR
EMPLOYEE. . .**

C&GCC 3.214

You must disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by you.

IF, AS A RESULT OF THE
RELATIONSHIP, THE ABILITY OF THE
OFFICER OR EMPLOYEE TO ACT FOR
THE BENEFIT OF THE PUBLIC COULD
REASONABLY BE QUESTIONED.



DISCLOSURE MEANS:

- NOTING IN THE MINUTES; OR
- IN A MEMORANDUM KEPT ON FILE

C&GCC 3.214

If, as a result of the relationship, your ability to act for the benefit of the public could reasonably be questioned.

Disclosure means noting it in the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of your department.

6 Gift Rules

- 1. General Gift Rules
- 2. Ban on Gifts from Restricted Sources
- 3. Ban on Gifts from Subordinates
- 4. Prohibition on Bribery
- 5. No Gifts for Referrals
- 6. No Gifts for Doing Your Job

We're going to discuss 6 gift rules that apply to all officers and employees of the City. These are:

1. General Gift Rules
2. Ban on Gifts from Restricted Sources
3. Ban on Gifts from Subordinates
4. Prohibition on Bribery
5. No Gifts for Referrals
6. No Gifts for Doing Your Job

1. General Gift Rules: For Everyone



You cannot be involved in a governmental decision regarding a source that gives or promises to give gifts to you worth \$420 or more because in that situation, you are considered to have a financial interest in that gift source.

The first rule is related to what we discussed earlier, that you have a financial interest in anyone giving you \$420 or more in the 12 months prior to a governmental decision. By having a financial interest, you may not make, participate in making or seek to influence a governmental decision regarding your source of gifts.

1. General Gift Rules: SEI filer

- You may not receive gifts greater than \$420 from any source that you must report.



If you are an SEI filer, you must report gifts that are \$50 or more.

In addition, if you are an SEI filer, you may not receive gifts that have a cumulative value of more than \$420 in a calendar year from any source that you must report.

For instance, if Mary is an SEI filer with disclosure category 1, she must disclose all her financial interests. Her neighbor, who admires her beautiful tulip and rose garden, gives her wine worth \$100 in March, June, September and November or four times last year.

Mary must disclose the \$400 gifts of wine on her annual SEI report due April 1, the next year. Her neighbor wanted to give her an additional \$100 bottle in December, but she could not accept it because it would have brought the total value of gifts from the neighbor to greater than \$420.

Assume Pearl, on the other hand, is not an SEI filer. The winemaker could give Pearl any amount of wine and Pearl may accept it and not disclose it. So the winemaker has given her \$500 worth of wine during the last 12 months. If the winemaker comes to Pearl's department board or commission for a governmental decision, Pearl cannot be involved in the decision because the winemaker is deemed a source of gifts to Pearl and Pearl is deemed to have a financial interest in the winemaker.

2. Ban on Gifts from Restricted Sources

What is a Restricted Source?

1. Any person doing business or seeking to do business with **your department**
2. Any person who during the prior 12 months knowingly attempted to influence **you** in any legislative or administrative action

Regulation 3.126 (b)-5

The second gift rule we'll be talking about is the ban on gifts from restricted sources. Under local law, officers and employees may not solicit or accept any gift from a person who the officer or employee knows is a restricted source.

A restricted source is:

1. Any person doing business or seeking to do business with your department
2. Any person who during the prior 12 months knowingly attempted to influence you in any legislative or administrative action

2. Ban on Gifts from Restricted Sources

Definition of Person

- "person" means any:
 - Individual
 - Partnership
 - Corporation
 - Association
 - Firm
 - Committee
 - Club
 - Other organization or group of persons

Regulation 3.216(b)-4

A "person" means any:

- Individual
- Partnership
- Corporation
- Association
- Firm
- Committee
- Club or
- Other organization or group of persons

2. Ban on Gifts from Restricted Sources

“Doing business with your department”

- ...means entering into and performing under a contract with your department.



Regulation 3.216(b)-1

“Doing business” with the department of the officer or employee means entering into or performing pursuant to a contract with the department of the officer or employee.

“Doing business” does not include the receipt of or payment for services normally rendered by the City to residents and businesses such as sewer service, water and power, street maintenance and the like or providing a grant to a City department.

2. Ban on Gifts from Restricted Sources

“Attempted to influence” includes...



...any communication made for the purpose of:

- ⊙ Supporting
- ⊙ Promoting
- ⊙ Influencing
- ⊙ Modifying
- ⊙ Opposing
- ⊙ Delaying
- ⊙ Advancing

...a governmental decision.

Regulation 3.216(b)-2

The ban applies to gifts from persons who “knowingly attempted to influence you in any legislative or administrative action.” This means that the person has contacted or appeared before you with an intent to influence you in a governmental decision.

The phrase “intent to influence” means any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.

However, the following communications are not considered attempts of intent to influence:

- (a) involve only routine requests for information such as a request for publicly available documents;
- (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
- (c) are made while attending a general informational meeting, seminar, or similar event;
- (d) are made to the press;
- (e) involve an action that is solely ministerial, secretarial, manual or clerical; or
- (f) constitute oral or written public comment that becomes part of the record of a public hearing.

2. Ban on Gifts from Restricted Sources:

Exceptions

$\leq \$25$ per occasion



limited to ≤ 4 times a year

No money, cash, gift certificates, or gift cards allowed!

C&GCC § 3.216 (b)-5

There is a de minimis exception to the ban on gifts from restricted sources. Under this exception, a restricted source may provide a gift, other than money, a gift card, or a gift certificate, that is worth \$25 or less on any occasion, up to four occasions per year.

As a side note for SEI filers, if the restricted source is a source of gifts that must be reported on your Form 700, you must report such gifts if they total \$50 or more in a calendar year.

2. Ban on Gifts from Restricted Sources:

Exceptions

2. Voluntary gifts of food or drink, regardless of value, to be shared in the office among your coworkers.



Regulation 3.126 (b)-5

Another exception is voluntary gifts of food or drink, regardless of value, to be shared in the office among officers and employees.

2. Ban on Gifts from Restricted Sources: Exceptions

3. Free attendance at a widely attended convention, conference, seminar or symposium.



Regulation 3.126 (b)-5

Still another exception is free attendance at a widely attended convention, conference, seminar or symposium. This may include waiver of all or part of a conference fee, the provision of local transportation, the provision of food, refreshments, entertainment or instructional materials furnished to all attendees, or attendance at “meet and greet” events and meals offered in connection with the event where networking opportunities may enable you to establish working relationships that may inure to the benefit of the City.

We are asked all the time about whether staff who are invited to a training or working event that is sponsored by a restricted source, may eat the food there. Staff who attend the session may accept food and beverages that are offered at the event such as coffee, tea, juice, pastry or bagels, if the value does not exceed \$25 and if such staff has not already accepted such food and beverages from the restricted source on four occasions during the calendar year.

3. Ban on Gifts from Subordinates

You may not solicit or accept anything of value from any subordinate or applicant.



C&GCC § 3.216 (c); Regulation 3.216 (c)-1


Under local law, you may not solicit or accept any gift from a subordinate or a candidate or applicant for a position as an employee or subordinate under you.

An employee is your subordinate employee if you directly or indirectly direct or evaluate his or her performance.

3. Ban on Gifts from Subordinates: Exceptions

- Voluntary gifts with a value of \$25 or less per occasion given on occasions in which gifts are traditionally given.
- Other exceptions

No money or cash allowed!



C&GCC § 3.216 (c); Regulation 3.216 (c)-1

Exceptions:

- Gifts, other than cash, with an aggregate value of \$25 or less per occasion, given on occasions on which gifts are traditionally given.
- Gifts, such as food and drink, without regard to value, to be shared in the office among employees.
- Personal hospitality provided at a residence that is of a type and value customarily provided by the employee to personal friends.
- Items given in connection with the receipt of personal hospitality if of a type and value customarily provided by the employee on such occasions.
- A gift of any value given in recognition of an occasion of special personal significance, such as a birth or adoption of a child.
- A gift of any value given in recognition of an occasion that terminates a subordinate relationship.

Voluntarily. A gift is given voluntarily if it is given freely, without pressure or coercion. A contribution to a gift from multiple persons is given voluntarily if it is made in an amount determined by the employee or subordinate. A contribution to a gift from multiple persons will be presumed to have been given voluntarily if the request for the donation includes a statement that an employee may choose to contribute less or not at all.

4. Prohibition on Bribery



- You may NOT offer or make and you may NOT accept any gift with the intent that you or anyone else will be influenced thereby in the performance of any official act.

C&GCC § 3.216 (a)

You may not offer or make, and you may not accept, any gift with the intent that you will be influenced thereby in the performance of any official act.

There are no exceptions to this rule, the violation of which could also subject you to criminal prosecution. (CA Penal Code section 68)

5. NO GIFTS FOR REFERRALS

No gifts for referring a member of the public to a particular person or entity for advice, service, or product related to the processes of the City.



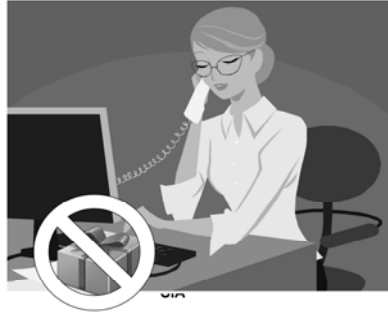
C&GCC § 3.226

You may not receive any money, gift or other thing of economic value from any person or entity, other than the City, for referring a member of the public to a person or entity for any advice, service or product related to the processes of the City and County.

Nor may you condition any governmental action on a member of the public hiring, employing, or contracting with any specific person or entity. The Ethics Commission may waive this restriction if the Commission determines that granting a waiver is necessary for the proper administration of a governmental program or action.

6. Prohibition on Gifts for Assistance with City Services

No gifts for doing your job!



You may not receive or accept gifts from anyone other than the City

- for the performance of a service or act that you are expected to render in the regular course of your duties, or
- for advice about the processes of the City directly related to the your duties and responsibilities, or the processes of the entity you serve.

Here is an example. A member of the public who regularly works with and receives assistance from the Department has season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

Here is another example. A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

You will find more detailed information on the exceptions to this rule in your department specific SIA Training.



In the next couple slides I will cover obligations, enforcement, and penalties.

OBLIGATIONS OF OFFICERS AND EMPLOYEES



- ⦿ Cooperate and Assist in Enforcement and Investigations.
- ⦿ Do Not File False Charges.
- ⦿ Do Not Assist Others in Violating Ethics Laws.

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Officers and employees are obligated to:

- ⦿ Cooperate and Assist in Enforcement and Investigations.
- ⦿ Not File False Charges.
- ⦿ Not Assist Others in Violating Ethics Laws

What is enforcement?

- The Ethics Commission can investigate and prosecute violations of ethics laws.
- The City Attorney can bring a civil case on the matter.
- The District Attorney can initiate criminal proceedings.

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The various enforcement mechanisms include:

- The Ethics Commission can investigate and prosecute violations of ethics laws.
- The City Attorney can bring a civil case on the matter.
- The District Attorney can initiate criminal proceedings.

Penalties for Violations of Local Law

- Criminal penalties of up to \$10,000 and/or one year in jail per violation.
- Civil or administrative penalties of \$5,000 per violation.
- Injunctive relief.
- Discipline and removal for official misconduct.

C&GCC 3.242

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The penalties for violations of local law are:

- Criminal penalties of up to \$10,000 and/or one year in jail per violation,
- Civil or administrative penalties of \$5,000 per violation,
- Injunctive relief which means the courts can order you to cease certain activities, and/or
- Discipline and removal for official misconduct.

Questions?

Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
ethics.commission@sfgov.org

415.252.3100

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As recommended before, these trainings are based on local law and state ethics laws. To the extent that these training videos conflict with state or local law, the law controls.

Please contact us if you have specific questions or need advice relating to a real life governmental ethics concern. We offer advice based on the facts and specifics of your situation.

Thank you for participating in this training.