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Date: April 7, 2010  
To: Members, Ethics Commission  
From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director  
Re: Draft amendments to regulations related to gifts from restricted sources

Staff proposes two changes to Ethics Commission Regulation 3.216(b)-5, which sets forth exemptions to the ban on gifts from restricted sources. San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) section 3.216(b) bars City officers and employees from soliciting or accepting any gift from a restricted source. A “restricted source” is (1) a person or entity doing business or seeking to do business with the officer’s or employee’s department, or (2) a person or entity who attempted to influence the officer or employee in a legislative or administrative action in the last 12 months. C&GC Code section 3.216(b)(3) authorizes the Commission to issue regulations exempting gifts of minimal value from the prohibition in section 3.216(b). Under that authority, the Commission has adopted regulations that exempt several types of gifts from the restricted source rule, including non-cash gifts worth \$25 or less and certain business-related meals from members of the aviation, banking and maritime industries. (Regulation 3.216(b)-5 is set forth on pages 5-7, which also sets forth the proposed amendments.)

Staff proposes to (1) add gift cards and gift certificates to the existing exception for non-cash gifts worth \$25 or less; and (2) adopt an exception permitting City employees and officers to accept prizes awarded in random drawings in connection with the City’s Annual Joint Fundraising Drive.

Regulations adopted by the Commission become effective 60 days after the date of their adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation(s). S.F. Charter § 15.102.

## **1. Gift cards and gift certificates are not “cash” gifts**

Regulation 3.216(b)-5(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. The regulation does not state whether gift cards or gift certificates are “cash” gifts or non-cash gifts. Staff

recommends that the Commission amend the regulation to 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 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. They are similar to non-cash gifts in that the recipient must only go to a specific vendor in order to redeem them; in this respect, they are not like cash. Under staff’s proposed regulation, cards that can be negotiated only at a specific vendor are not cash gifts; thus, officers and employees can accept them, provided that their value is \$25 or less. On the other hand, cards that can be negotiated at any vendor, such as a Visa gift card, are cash gifts, and are therefore completely forbidden by section 3.216, regardless of value. 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.

**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 5?

**2. Regulation to exempt items of value solicited or received by an officer or employee under the City’s Combined Charities Fundraising Drive**

Every year, many City officers and employees participate in the City’s Annual Joint Fundraising Drive, aka “Combined Charities,” which raises funds from City employees and officers for many charitable organizations. The charity drive, which is authorized under the San Francisco Administrative Code, is organized by a steering committee that consists of employees from City departments and representatives of the five federations (umbrella groups that represent similar charities) such as Local Independent Charities, the Bay Area Black United Fund, the Community Health Charities of California, Earthshare California, Global Impact, and United Way of the Bay Area.

In order to create incentives for widespread participation, City employees who serve on the steering committee solicit prizes from private entities or City departments. Prizes have included \$10 Peet’s Coffee gift cards; \$20 Starbuck coffee cards; t-shirts; California Academy of Science admission tickets; Harry & David gift baskets; theater tickets; autographed books; round-trip airline tickets from SFO to any Southwest destination, and round-trip airline tickets from SFO to London, among others. City officers and employees who donate to the charity drive, either by making a one-time check to the Combined Charities or having set amounts deducted from their paychecks throughout the course of a year, receive ticket stubs that are entered into a drawing for the prizes.

State and local law set a number of rules, including the restricted source rule, restricting the ability of City officers and employees to accept gifts from private parties. When an employee receives a prize as a result of his or her participation in the Combined Charities drive, the employee has received a gift subject to these restrictions. In analyzing the receipt of such gifts, a key question is: *who is it a gift from—is it from the City or the private entity?*

In May 2009, the Fair Political Practices Commission (“FPPC”) issued an opinion that helps answer this question. There, the San Diego Association of Governments (“SANDAG”) received gifts from third parties like local restaurants. SANDAG distributed the gifts to its employees either in random drawings or in raffle drawings for employees who bought tickets to support the local United Way charity drive. In those circumstances, the FPPC concluded that “the employee has received a gift from the outside source and SANDAG is an intermediary of the gift.” Similarly, the FPPC recently adopted a regulation clarifying that prizes received by employees in agency raffles must be treated as gifts from the outside source that provided the prize to the agency. While there may be some arguments that the new regulation does not apply to Combined Charities drawings and that the City’s situation is distinguishable from the facts in the SANDAG opinion, staff and the City Attorney’s Office have advised that any prize received by an employee in the Combined Charities drawing should be considered a gift to the employee *from whoever donated the prize*.

Because under local law, no City officer or employee may accept a gift worth over \$25 from a restricted source, there could be impact on this year's Combined Charities drawing.<sup>1</sup>

A restricted source, as noted above, is a person or entity that either (a) has a contract or is seeking a contract with the employee's department or (b) has lobbied the employee to influence a government decision within the last twelve months. So, for example, if an employee of the SFPUC contributes to the Combined Charities campaign and wins a \$100 prize in the drawing – and if the donor of the prize happens to be a SFPUC contractor – then the prize winner cannot accept the prize because the donor is a restricted source for that employee. Staff proposes to fix this problem by proposing a regulation, set forth on page 7 to exclude Combined Charities prizes from the “restricted source” rule. Under the proposed regulation, items of any value solicited by a City officer or employee for use in the Combined Charities fundraising drive, or received by an officer or employee as a reward or benefit for participating in the fundraising drive, are not subject to the restricted source gift ban of C&GC Code section 3.216(b). Staff has also added an example to demonstrate that an employee who wins a \$50 gift certificate in a raffle for participants in the Combined Charities Fundraising Drive may accept the gift, even though it originated from a vendor of the employee’s department. 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 gifts are from a source that must be reported.

<b>Decision Point 2:</b>
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<sup>1</sup> Staff has also identified a second issue that applies to City officers and employees who are required to file Form 700s. A Form 700 filer cannot accept any gift or combination of gifts worth over \$420 in one calendar year from any source within the filer's disclosure category. Each Form 700 filer's "disclosure category" is set in the City's Conflict of Interest Code. Depending on the types of decisions the employee makes as part of his or her job, the employee's disclosure category may be very narrow or more broad. If a Form 700 filer in a broad disclosure category wins the grand prize in the Combined Charities drawing, he or she cannot accept more than \$420 in value. So if the prize is \$1,000 worth of airline tickets from Virgin Airlines, the employee can either return the tickets, donate them to charity or pay the airline \$580 to bring the gift under the limit. The \$420 gift limit is a matter of State law, so the Ethics Commission does not have the power to change it. The City Attorney’s Office will be contacting the FPPC about this matter.

Shall the Commission approve staff's recommended changes to add subsection (g) to Regulation 3.216(b)-5 as set forth on page 7 and to add the example as set forth on page 7?

**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 solicited by a City employee or officer for use in the City's Annual Joint Fundraising Drive under Administrative Code Chapter 16, Article V (also known as Combined Charities Fundraising Drive), or received by a City employee or officer as a reward or benefit associated with participation in the 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.**