



San Francisco Ethics Commission

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August 9, 2021

To: Members of the Ethics Commission

From: Patrick Ford, Senior Policy and Legislative Affairs Counsel
Michael Canning, Policy Analyst

Subject: **Agenda Item 10 - Presentation, discussion and possible action on findings and recommendations of Report on Gifts: Gifts to Individuals**

Summary and Action Requested

The Commission is currently reviewing the City's ethics laws and is undertaking the review in multiple phases. The second phase of the project addresses gift laws. Staff's findings and recommendations regarding gift laws will be presented in two reports, one addressing gifts to individuals and one addressing gifts to departments. This report presents Staff's findings and recommendations regarding gifts to individuals.

Staff recommends that the Commission discuss the recommendations in Section III and adopt a motion approving them.

Background

In light of the recent allegations of corrupt activities involving the receipt of gifts by City officials and employees, Staff reviewed state and local laws governing such gifts. Staff sought to identify loopholes and oversights in the local laws that cause them to be unnecessarily narrow, permissive, or complex. Such shortcomings impede the overall effectiveness of gift laws and, over time, can lead to an organizational culture that does not value or seek to comply with gift rules.

Instead, gift rules should be robust and clear so as to effectively address ethical risks and to plainly communicate to officials, employees, and the public that certain kinds of gifts are strictly off limits. Such strong, simple gift rules are more likely to prevent ethical issues and, where they are not followed, more likely to generate whistleblower or other complaints and result in penalties. This approach to gift rules will help ensure that a culture of casual corruption does not exist around gifts.

This report contains the first set of Staff's findings and recommendations for the second phase of the Commission's review of the City's government ethics laws, which addresses gift laws. This report focusses on gifts to individuals, and a subsequent report will discuss gifts made through City departments. Section I of the report provides a general overview of the Commission's review project. Section II presents legal and factual background about gifts to individuals and the laws that regulate them. Section III presents Staff's initial findings and recommendations regarding gifts to individuals. Section III.C briefly summarizes all of Staff's recommendations.

Staff recommends several changes to City laws regarding gifts in order to prevent pay-to-play corruption and the appearance of undue influence, both of which undermine City processes and harm the public's trust in local government.

Government Ethics and Conflict of Interest Review Policy Project

**Report on Gift Laws
Part A: Gifts to Individuals**



San Francisco Ethics Commission

August 2, 2021

Patrick Ford, Senior Policy and Legislative Affairs Counsel

Michael Canning, Policy Analyst

Executive Summary

In January 2020, the U.S. Department of Justice began to bring criminal corruption charges against multiple City officials, employees, and contractors. These charges allege numerous instances in which individuals seeking favorable outcomes from City government provided meals, travel, luxury goods, and other gifts in an attempt to influence the actions of City officials and employees. In response, the Ethics Commission embarked on a comprehensive review of the City's ethics laws to ensure that the types of conduct alleged in the criminal complaints are appropriately prohibited and deterred by City law and that any other relevant weaknesses identified in the laws could be addressed.

The current phase of the project analyzes state and local laws pertaining to gifts. This report discusses gifts made directly to individual officials and employees by non-City persons. The next report will discuss gifts made to officials and employees through payments to City departments.

Key Findings and Recommendations

In light of the recent allegations of corrupt activities involving the receipt of gifts by City officials and employees, Staff reviewed state and local laws governing such gifts. Staff sought to identify loopholes and oversights in the local laws that cause them to be unnecessarily narrow, permissive, or complex. Such shortcomings impede the overall effectiveness of gift laws and, over time, can lead to an organizational culture that does not value or seek to comply with gift rules.

Instead, gift rules should be robust and clear so as to effectively address ethical risks and to plainly communicate to officials, employees, and the public that certain kinds of gifts are strictly off limits. Such strong, simple gift rules are more likely to prevent ethical issues and, where they are not followed, more likely to generate whistleblower or other complaints that result in penalties. This approach to gift rules will help ensure that a culture of casual corruption does not exist around gifts.

The City's gift laws contain multiple weaknesses that should be addressed. Resolving these issues would make the laws stronger, clearer, and more effective and would limit opportunities for skirting the rules. The key policy findings and recommendations contained in this report are:

1. The application of many state law gift exceptions to the restricted source rule weakens the impact of that rule. "Gift" should be defined in local law with these exceptions omitted. Doing so will make the rule more effective and better achieve its intended purposes.
2. The local exceptions to the restricted source rule are overly broad and should be narrowed in several ways. Currently, several of the exceptions undermine the purposes of the rule and impede its effectiveness.
3. The restricted source rule fails to clearly prohibit the giving of a prohibited gift, the use of an intermediary to give or receive a prohibited gift, or restricted source gifts made to immediate family members of an official or employee. The rule should be clarified to explicitly prohibit these aspects of a prohibited gift transaction to strengthen the effectiveness of the restricted source rule.

4. The language of the restricted source rule needs to be clarified to more clearly apply to City contractors, permittees, and other individuals or entities who pursue or enter into agreements with the City, and to persons affiliated with a business entity that is a restricted source. Doing so will make the rule clearer and will better serve the policy goals of deterring pay-to-play behavior.
5. The impact of the local subordinate gift rule is undermined by several overly broad exceptions that currently exist in local law. These exceptions should be narrowed to strengthen the purpose and effectiveness of this rule.
6. Gifts currently allowed from permit expeditors to certain officials and employees are problematic and should be prohibited. The law should be changed to treat permit expeditors similarly to how lobbyists are treated under existing gift rules.

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I. Overview of the Ethics Commission's Ethics Review Project

Corruption among public officials has been associated with decreased voter turnout, elevated levels of government spending, and a decline in general social trust.¹ The City's ethics laws were created to "assure that the governmental processes of the City and County promote fairness and equity for all residents and to maintain public trust in governmental institutions."² In light of the very serious recent corruption allegations described below and the harm they inevitably cause to the public's trust in City government, the Commission identified a Government Ethics and Conflicts of Interest project to review existing ethics laws as its top policy priority.

The purpose of the project is to assess whether current law adequately identifies and prohibits conduct that could give rise to a conflict of interest or otherwise undermine fair and objective government decision making. Where current laws and programs are insufficient, the project seeks to recommend and implement improvements. The project is principally focused on analyzing unethical conduct revealed through the multiple ongoing corruption investigations summarized below and identifying policy approaches to prevent similar conduct in the future. It is important to note that no shortcoming identified in the law in any way excuses prior acts of public corruption. Rather, this review seeks to strengthen existing laws to foreclose problematic conduct that would otherwise be lawful and to better deter and detect future corrupt acts.

A. Background

In January of 2020, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local businessman.³ Since that time, the Department of Justice has brought corruption charges against eleven individuals, including Nuru and Bovis. Two of these individuals were City department heads: Nuru and Harlan Kelly, the General Manager of the Public Utilities Commission. Another individual, Sandra Zuniga, was a high-level staff member in Mayor London Breed's office. The remaining eight federally charged individuals were owners or officers of companies that contract with the City.

The San Francisco District Attorney's Office has also brought charges against a former Public Works bureau manager, Gerald Sanguinetti, for failure to disclose personal economic interests as required by law.

Additionally, Tom Hui, the director of the Department of Building Inspection, resigned after the City Attorney's office presented findings of their investigation of Hui. Airport Commissioner Linda Crayton also resigned because of her involvement with Nuru and Bovis. Although Hui and Crayton

¹ Stockemer, Daniel (2009), *Bribes and Ballots: The Impact of Corruption on Voter Turnout in 75 Democracies*; Liu, Cheol & Mikesell, John (2014), *The Impact of Public Officials' Corruption on the Size and Allocation of U.S. State Spending*, *Public Administration Review*, 74. 10.1111/puar.12212; Richey, Sean (2010), *The Impact of Corruption on Social Trust*, *American Politics Research*, 38. 676-690. 10.1177/1532673X09341531.

² Campaign & Gov. Conduct Code § 3.200(a).

³ U.S. v. Mohammed Colin Nuru and Nick James Bovis, Case No. 3 20 70028, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020) (*hereinafter* "Nuru and Bovis Complaint").

have not been charged with a crime, their resignations bring to five the number of City officers and management employees that have resigned because of their alleged involvement in corrupt activities.

The City officers and employees who have been charged with a crime as part of the ongoing corruption investigations are:

Name	Position	Charges	Status
Mohammed Nuru⁴	Director of Public Works	Honest services wire fraud for involvement in multiple bribery and kickback schemes involving City contracts and projects.	Currently awaiting trial. Resigned from City service following charges.
Harlan Kelly⁵	General Manager of the Public Utilities Commission	Wire fraud and honest services wire fraud for accepting bribes and kickbacks from Walter Wong.	Currently awaiting trial. Resigned from City service following charges.
Sandra Zuniga⁶	Director of the Mayor's Office of Neighborhood Services, Director of Mayor's Fix-It Team	Conspiracy to launder money for concealing bribes and kickbacks received by Nuru.	Agreed to plead guilty and cooperate with federal prosecutors. Dismissed from City service following charges.
Gerald Sanguinetti⁷	Former Public Works Bureau Manager, Bureau of Street Use and Mapping	Felony perjury (and misdemeanor failure to file) for failure to disclose income earned by his wife from no-bid DPW contracts.	Currently awaiting arraignment. Departed City service prior to charges.

⁴*Id.*

⁵ U.S. v. Harlan Kelly, Case No. 3:20-mj-71739 MAG, Criminal Complaint and Affidavit of FBI Special Agent Tyler Nave (N.D. Cal. 2020) (*hereinafter* "Kelly Complaint").

⁶ U.S. v. Sandra Ann Zuniga, Case No. 3:20-mj-70698 JCS, Criminal Complaint and Affidavit of FBI Special Agent Tyler Nave (N.D. Cal. 2020); U.S. v. Sandra Ann Zuniga, Case No. CR 21-00096 EMC, Plea Agreement (N.D. Cal. 2021).

⁷ San Francisco District Attorney, [District Attorney Chesa Boudin Announces Charges Against Former Public Works Official Gerald Sanguinetti for Failing to Disclose over a Quarter Million Dollars in Income](#), Press Release, July 8, 2021.

The City contractors who have been charged with a crime are:

Name	Contractor Affiliation	Charges	Status
Nick Bovis ⁸	Sought multiple City contracts through DPW, Airport	Honest services wire fraud for involvement in multiple bribery and kickback schemes involving City contracts and projects.	Agreed to plead guilty and cooperate with federal prosecutors.
Baltimore Hernandez ⁹	CEO of AzulWorks (Multiple contracts with DPW, Rec and Park; sought Port contract)	Bribery for bribes paid to Nuru for preferable treatment of contract bids.	Agreed to plead guilty to conspiring to commit fraud and cooperate with federal prosecutors. The City Attorney has initiated disbarment proceedings against AzulWorks.
Florence Kong ¹⁰	Owner of SFR Recovery, Inc. and Kwan Wo Ironworks (DPW Contractors)	Bribery for bribes paid to Nuru for preferable treatment of contract bids; making false statements	Pleaded guilty; sentenced to one year in prison. The City Attorney has suspended Kong, SFR, and Kwon Wo from contracting with the City.
Walter Wong ¹¹	Permit Expediter; principal of multiple companies (multiple City contracts)	Conspiracy to commit honest services wire fraud and conspiracy to commit money laundering for multiple schemes to bribe Nuru and Kelly.	Agreed to plead guilty and cooperate with federal prosecutors. Agreed in settlement with City to return \$1.45 million of proceeds from City contracts and grants and pay \$317,000 in fines and penalties.

⁸ Nuru and Bovis Complaint, *see* note 3; U.S. v. Nick James Bovis, Case No. CR 20-00204 WHO, Plea Agreement (N.D. Cal. 2020).

⁹ U.S. Attorney's Office, Northern District of California, [San Francisco Public Official and Contractors Charged with Crimes Related to Public Corruption and Money Laundering Scheme](#), June 8, 2020, (*hereinafter* "June 8, 2020 U.S. Attorney Press Release"); In the Matter of AzulWorks, Inc., San Francisco City Attorney, Counts and Allegations by the City Attorney under San Francisco Administrative Code Chapter 28. The City Attorney initiated a debarment proceeding against AzulWorks, Inc. for Hernandez's conduct.

¹⁰ U.S. v. Florence Kong, Plea Agreement (N.D. Cal. 2020); CITY ATTORNEY DENNIS J. HERRERA, Order of Suspension by the City Attorney under San Francisco Administrative Code Chapter 28, [In the Matter of: Florence Kong, an Individual, SFR Recovery Inc., a California Corporation, and Kwan Wo Ironworks Inc., a California Corporation](#).

¹¹ U.S. v. Wing Lok "Walter" Wong, Case No. CR 20-257 JD, Information (N.D. Cal. 2020); U.S. v. Wing Lok "Walter" Wong, Case No. CR 20-257 JD, Plea Agreement (N.D. Cal. 2020); CITY ATTORNEY OF SAN FRANCISCO, [Herrera secures \\$1.7M settlement from Walter Wong, the permit expediter at the center of the public integrity investigation](#), May 13, 2021.

Paul Giusti ¹²	Government and Community Relations Manager for San Francisco Recology (City refuse contractor, DPW contractor)	Bribery for bribes paid to Nuru for preferable treatment of contract bids; concealment money laundering for using nonprofit organizations to conceal bribes.	Agreed to plead guilty to conspiracy charge and cooperate with federal prosecutors.
John Porter ¹³	Vice President and Group Manager for San Francisco Recology (City refuse contractor, DPW contractor)	Bribery for bribes paid to Nuru for preferable treatment of contract bids; concealment money laundering for using nonprofit organizations to conceal bribes.	Currently awaiting trial.
Alan Varela ¹⁴	Founder and President of ProVen Management (multiple City contracts)	Bribery for bribes paid to Nuru for preferable treatment of contract bids.	Pleaded guilty to honest services wire fraud.
William Gilmartin III ¹⁵	Vice President of ProVen Management (multiple City contracts)	Bribery for bribes paid to Nuru for preferable treatment of contract bids.	Agreed to plead guilty to honest services wire fraud and cooperate with federal prosecutors.

¹² U.S. v. Paul Fredrick Giusti, Case No. 3-20-71664 MAG, Criminal Complaint and Affidavit of IRS Special Agent Mark Twitchell in Support of Criminal Complaint (N.D. Cal. 2020) (*hereinafter* “Giusti Complaint”); DEPARTMENT OF JUSTICE, U.S. ATTORNEY’S OFFICE, NORTHERN DISTRICT OF CALIFORNIA, [Trash Company Executive Agrees To Plead Guilty To Conspiracy And To Cooperate With Federal Investigation Into City Hall Corruption](#), July 28, 2021.

¹³ U.S. v. John Francis Porter, Case 3-21-mj-70609 MAG, Criminal Complaint and Affidavit of IRS Special Agent Mark Twitchell in Support of Criminal Complaint (N.D. Cal. 2021).

¹⁴ U.S. v. Alan Varela and William Gilmartin III, Case No. 3-20-71327 TSH, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020) (*hereinafter* “Varela and Gilmartin Complaint”); U.S. Attorney’s Office, Northern District of California, [Two City Contractors Plead Guilty To Charge Of Seven Year Conspiracy To Bribe San Francisco City Hall Official](#), May 27, 2021, (*hereinafter* “U.S. Attorney May 27, 2021 Press Release”).

¹⁵ *Id.*

The City officials and employees who have not been charged with a crime but have resigned because of the corruption probe are:

Name	Position	Allegations	Status
Tom Hui ¹⁶	Director of the Department of Building Inspection	Alleged to have accepted gifts in exchange for favorable treatment of building permit applications.	Resigned after City Attorney investigation into Hui's conduct.
Linda Crayton ¹⁷	Airport Commissioner	Alleged to have offered Nuru and Bovis preferential treatment on a contract bid.	Resigned after federal charges against Nuru and Bovis revealed Crayton's involvement in Nuru/Bovis contract scheme.
Naomi Kelly ¹⁸	City Administrator	Alleged to have accompanied husband Harlan Kelly on trip to China paid by Walter Wong; travel expenses were alleged bribe to Harlan Kelly.	Resigned after federal charges against Wong and Harlan Kelly.

The Controller's City Services Auditor Division and the City Attorney have also undertaken investigations of multiple City departments and private organizations in response to the federal allegations. To date, the Controller's office has released five reports and anticipates releasing additional reports in the future. These reports have revealed the corruption risks created by, among other things, DPW's contracting processes and the practice of funneling gifts to the City through non-City organizations.¹⁹

B. Project Methodology

The Ethics Commission's Government Ethics and Conflict of Interest Review Policy Project is proceeding in multiple phases. The first phase of the project addressed behested payments and resulted in the Commission recommending legislation that would prohibit most City officials and high-level employees from soliciting behested payments from individuals who have a matter before the official or employee's department. Currently, the legislation is pending before the Board of Supervisors.²⁰

¹⁶ Dennis J. Herrera, San Francisco City Attorney, [Memorandum: Mohammed Nuru Federal Complaint Investigation—Tom Hui, Director of Building Inspection](#), March 10, 2020 (*hereinafter* "Hui Memorandum").

¹⁷ Nuru and Bovis Complaint, *see* note 3, at ¶¶ 74-87; Dominic Fracassa, [SFO official, target of alleged Nuru corruption scheme, resigns post](#), SAN FRANCISCO CHRONICLE, Jan. 29, 2020.

¹⁸ Kelly Complaint, *see* note 5; Megan Cassidy & Dominic Fracassa, [City Administrator Naomi Kelly to resign amid City Hall scandal](#), SAN FRANCISCO CHRONICLE, Jan. 12, 2021.

¹⁹ *See* [PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: PUBLIC WORKS CONTRACTING](#), City and County of San Francisco, Office of the Controller (June 29, 2020); [PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: GIFTS TO DEPARTMENTS THROUGH NON-CITY ORGANIZATIONS LACK TRANSPARENCY AND CREATE "PAY-TO-PLAY" RISK](#), City and County of San Francisco, Office of the Controller (June 29, 2020), *available* (*hereinafter* "June 29, 2020 Controller Report").

²⁰ San Francisco Board of Supervisors, File No. 201132, *available on* [Legistar](#).

The current phase of the project focuses on gift laws. This report presents findings regarding gifts to individuals, and a companion report will present findings regarding gifts made through City departments. Subsequent phases of the project are planned to address other aspects of government ethics law.

The methodology used during all phases of the project includes reviewing the findings of the ongoing corruption investigations, analyzing existing City laws and programs, performing empirical research using available data sources, and comparing approaches taken in other jurisdictions. Another core element is engagement with stakeholders, including advocates, good government groups, members of the regulated community, and peer agencies. Staff held interested persons meetings on October 13 and 15, 2020, and on April 27 and 29, 2021 and will continue to hold such meetings periodically throughout the course of the project.

II. Legal and Factual Background regarding Gifts to Individuals

A gift is a good or service provided to a government official or employee for free or at a discount without equal consideration provided in return. It is important to track and regulate gifts for a number of reasons. Primarily, gifts can influence the decision making of government officials and in this way can be a tool for exerting undue influence. In the most severe cases, gifts can be given as outright bribes. And in all cases, gifts can give rise to the appearance of corruption, especially “pay-to-play,” a form of political corruption whereby government officials or employees give favorable treatment to persons who provide them with things of value, or where those seeking decisions from government give, or believe they must give, things of value to secure a favorable outcome.

This section provides an overview of existing laws regarding gifts to individuals. The section then presents factual background regarding gifts to individuals, including known incidents involving gifts and a review of gifts publicly reported by high-level City officials on their required financial disclosure filings, known as a Statement of Economic Interests or Form 700.

A. Existing Laws on Gifts to Individuals

1. *Definition of Gift*

Gift is defined in the California Government Code as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”²¹ A gift can be a monetary payment such as cash or a check. It can also be any good or service for which the recipient does not pay fair market value.²²

²¹ Cal. Gov. Code § 82028 (2021).

²² 2 CCR 18946.

2. State Law: Disclosure and Annual Limit

City officials and many City employees are required to file the Statement of Economic Interests (Form 700) to disclose aspects of their personal financial interests.²³ As a fundamental tool to help government officials detect and avoid potential conflicts of interests, Form 700 filings help ensure that governmental actions are made without any regard to the official or employee's personal gain. The types of financial interests required to be reported are established in the law and are associated with the official's governmental duties. Under state law, individuals who are required to file the Form 700 must disclose gifts of \$50 or more received from a reportable source.²⁴ Additionally, a Form 700 filer cannot accept gifts totaling more than \$520 in a single year from a single source that would have to be reported on the individual's Form 700.²⁵

These two rules—Form 700 disclosure and the annual \$520 limit—are the primary ways in which gifts to government officials and employees are regulated under California law. The limit is intended to ensure that no government official or employee accepts an excessively large gift (or series of gifts) from any source that is a reportable source of income for that individual. The disclosure requirement is designed to help officials monitor when they may need to recuse themselves to avoid a conflict of interest and ensures that, when an official or employee accepts a gift from a reportable source that is under the \$520 limit (but more than \$50), the public is able to see that gift on public disclosures. These rules thus serve the dual purposes of prohibiting gifts that carry the greatest danger of undue influence while also creating transparency that supports accountable decision making.

State law, however, provides numerous exceptions to the disclosure requirement and the annual limit. Payments that meet one of the exceptions are not considered to be *gifts* under state law and thus do not have to be disclosed on the Form 700 and are not subject to the \$520 limit. Some of the exceptions are contained in the California Government Code and were created shortly after the passage of the Political Reform Act in 1974.²⁶ These exceptions include: gifts that have been returned to the source, paid for, or donated to charity; gifts given by immediate family members; and inheritances.²⁷ Other exceptions to the state's general gift definition were created more recently and are contained in state regulations. These exceptions include gifts from "long term, close personal friends," "acts of neighborliness," and "acts of human compassion."²⁸ These exceptions will be discussed in greater detail below in Section III.B.1.

²³ Campaign & Gov. Conduct Code § 3.1-102(a).

²⁴ Cal. Gov. Code § 87207 (2021). State and local law explain which sources of gifts and income must be reported on the Form 700. This scope is determined by the filer's *disclosure category*, which specifies the types of financial interests that are reportable for that filer.

²⁵ *Id.* at § 89503 (2021). The gift limit is increased each year based on increases in the Consumer Price Index. Only some sources of income must be reported on the Form 700, and only gifts from reportable sources are subject to the \$520-per-year limit.

²⁶ Most of these statutory exceptions were created in 1978. See OFFICE OF THE LEGISLATIVE COUNSEL, [Statutes of California and Digests of Measures: 1978](#). The exception for plaques and trophies was created in 1986. See Cal. Gov. Code § 82028 (Deering's California Codes Annotated 2021).

²⁷ Cal. Gov. Code § 82028(b) (2021).

²⁸ 2 CCR 18942. Certain restricted sources are precluded from utilizing some of the state law exceptions. See *id.* at 18942(a)(18)(D)(i)–(iii).

3. San Francisco Law: Restricted Source Rule

In addition to the disclosure requirement and \$520 annual limit created under California law, San Francisco law imposes local rules on gifts to City officials and employees. First, City law prohibits all City officials and employees from soliciting or accepting a gift from anyone that the official or employee knows or has reason to know is a restricted source.²⁹ The source of a gift is considered a *restricted source* if the person meets one of two definitions.

First, a restricted source is any “person doing business with or seeking to do business with the department of the officer or employee.”³⁰ This includes all City contractors that contract with the official or employee’s department and those who are currently pursuing such a contract.³¹

Second, a restricted source is any “person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.”³² This includes any person who engages in a communication with the official or employee “made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.”³³

The purposes of the restricted source rule are to prevent pay-to-play corruption and to preserve the public’s trust in City government.³⁴ The rule narrowly targets sources that have contracts with the official or employee’s department, or who have sought to influence them in some official action, and classifies those sources as being inherently problematic. This is because a gift from a restricted source may influence or appear to influence the official or employee’s official actions and result in preferential treatment for the giver of the gift. As such, gifts from restricted sources can create the appearance of corruption, which alone is sufficient to damage the public’s trust in government.³⁵

²⁹ Campaign & Gov. Conduct Code § 3.216(b).

³⁰ *Id.* at § 3.216(b)(1).

³¹ Ethics Commission Regulation 3.216(b)-1.

³² Campaign & Gov. Conduct Code at § 3.216(b)(1).

³³ Ethics Commission Regulation 3.216(b)-2. Exceptions are provided for certain communications, such as oral or written comment at a public hearing.

³⁴ See SAN FRANCISCO DEPARTMENT OF ELECTIONS, [Voter Information Pamphlet Consolidated Municipal Election, November 4, 2003](#) at 84 (describing Proposition E in the November 2003 election, which created the restricted source rule). “Faith in government is the cornerstone of democracy. To maintain the public’s faith in local government, San Franciscans have enacted various conflict of interest laws. These laws seek to ensure that City officials make their decisions in a manner that is fair and evenhanded for all of our City’s residents.” *Id.*

³⁵ Avoidance of the appearance of corruption has been recognized by the U.S. Supreme Court as an important policy interest: “Congress could legitimately conclude that the avoidance of the appearance of improper influence ‘is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.’” *Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (citing *CSC v. Letter Carriers*, 413 U.S. 548, 565 (1973)).

San Francisco law provides for several exceptions to the restricted source rule.³⁶ First, non-cash gifts of \$25 or less are exempt from the rule, up to four such gifts per year. Second, gifts of food and drink that are shared within a City office are exempt from the rule, with no limit on the value of the food and drink. Additionally, employees of the Airport, Port, and departments that manage City investments may accept free meals from industry representatives without being subject to the restricted source rule. Finally, accepting free attendance to a conference is not subject to the restricted source rule.

In addition to these local exceptions, gifts that meet one of the state exceptions discussed above are also not subject to the restricted source rule. This is because the restricted source rule defines *gift* solely by reference to California law, including any exceptions to the definition of *gift* created under state law.³⁷ Thus, by definition, many things of value that may be given to an official or employee are not limited by the City's restricted source rule, including gifts from long-term close, personal friends, gifts that constitute acts of human compassion, gifts given by a romantic partner, gifts of travel, and wedding gifts.³⁸ Such gifts are therefore permitted, even if the source is a restricted source for the official or employee in question.

4. San Francisco Law: Gifts from Subordinates

City law also prohibits every City official and employee from soliciting or accepting a gift "from any subordinate or employee under his or her supervision...."³⁹ This rule prohibits, for example, a department head from accepting a gift from a deputy director within the department. This rule prevents superiors from extorting gifts from subordinates over whom they have supervisory authority, which protects employees from exploitation, preserves the integrity of City decision making, and promotes accountability within City organizations.⁴⁰

Importantly, the City's subordinate gift rule contains its own definition of the term *gift* in regulations enacted by the Ethics Commission in 2004.⁴¹ This definition largely mirrors the language of the state definition, but it leaves out many of the exceptions created under state law.

³⁶ Ethics Commission Regulation 3.213(b)-5.

³⁷ See Campaign & Gov. Conduct Code at §3.216(b)(2). "For purposes of this subsection, the term gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder, including any subsequent amendments. Gifts exempted from the limits imposed by California Government Code Section 89503 and Section 3.1-101 of the Campaign and Governmental Conduct Code shall also be exempted from the prohibition set forth in this subsection." The second sentence of the quoted section exempts gifts of travel and wedding gifts from the restricted source rule.

³⁸ Some of these exceptions do not apply to gifts from government contractors, but they may apply to gifts from restricted sources that attempt to influence an official or employee (the other method by which a source becomes a restricted source). These are the exceptions for dating relationships, acts of human compassion, and long-term personal friends. 2 CCR 18942(a)(18)(D).

³⁹ Campaign & Gov. Conduct Code at § 3.216(c). "An employee is a subordinate employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors." Ethics Commission Regulation 3.216(c)-1(b)(7).

⁴⁰ San Francisco Ethics Commission, *Agenda Item VII: Regulation Related to S.F. Campaign & Governmental Conduct Code § 3.216(c): Gifts From Subordinates*, January 8, 2004.

⁴¹ See Ethics Commission Regulation 3.216(c)-1(b)(2)(A).

This local definition of *gift* includes basic state law exceptions, like those for gifts that are returned, paid for, or donated. But, it omits the newer state exceptions such as those for gifts from romantic partners and longtime close personal friends. This means that, unlike the restricted source rule, the subordinate gift rule still applies to gifts that meet one of these state exceptions. For example, an official could not accept a gift from a subordinate, even if that subordinate were a romantic partner or a longtime close personal friend.

At the same time, local regulations create several exceptions to the subordinate gift rule. These include exceptions for non-cash gifts worth \$25 or less that are given on occasions when gifts are traditionally given and gifts of any value “given in recognition of an occasion of special personal significance.”⁴² These exceptions will be discussed in greater detail in Section III.B.5 below.

The local definition of *gift* that applies to the subordinate gift rule differs from the state definition of *gift* for two primary reasons. First, the local definition was created to purposefully deviate from the state definition because the state definition was deemed inappropriate for realizing the intent of the subordinate gift rule. When the local definition was created by the Ethics Commission in 2004, Staff identified examples where the state definition would have been inappropriate because either “the purpose of the [local rule] suggested that a stricter rule was more appropriate” or the existing state exceptions “seemed out of place” for the subordinate gift rule.⁴³

Second, the local definition of *gift* was created before many of the state exceptions existed. The local regulations were enacted in 2004, following the passage of Proposition E in 2003, whereas many of the state exceptions were not established until 2012. Thus, in contrast to the restricted source rule, the application of the subordinate gift rule has not been narrowed over time as FPPC regulations have created more exceptions to the state’s definition of *gift*. The subordinate gift rule has remained the same since the Ethics Commission created the definition by regulation in 2004.

5. San Francisco Law: Gifts from Lobbyists

Under City law, registered lobbyists are prohibited from giving a gift to any City official or an official’s parent, spouse, domestic partner, or dependent child.⁴⁴ City officials are prohibited from soliciting or accepting any such gift from a lobbyist.⁴⁵ Officials are also prohibited from accepting a gift from someone who is not a lobbyist if the official “knows or has reason to know that the third-party is providing the gift or gift of travel on behalf of a lobbyist.”⁴⁶ The purpose of the lobbyist gift rule is to prevent gifts from being used as a method to unduly influence City officials. Lobbyists are persons who receive compensation for their efforts to influence City decisions. Lobbyists are

⁴² *Id.* at Regulation 3.216(c)-1(b)(2)(B).

⁴³ San Francisco Ethics Commission, *Agenda Item VII: Regulation Related to S.F. Campaign & Governmental Conduct Code § 3.216(c): Gifts From Subordinates*, January 8, 2004.

⁴⁴ Campaign & Gov. Conduct Code at § 2.115(a)(1).

⁴⁵ *Id.* at § 2.115(a)(2).

⁴⁶ *Id.*

regulated under local law, and the law seeks to assure the public that lobbyists cannot use gifts to inappropriately secure beneficial outcomes for their clients.⁴⁷

Like the restricted source rule, the lobbyist gift rule uses the state law definition of gift.⁴⁸ This means that state law exceptions apply to the lobbyist gift rule. For example, a lobbyist could give a bereavement offering (which is exempted under state law) to an official notwithstanding the rule.⁴⁹

B. Factual Background on Gifts to Individuals

This section presents Staff's empirical research regarding gifts to individuals. This section first summarizes known or alleged instances in which problematic gifts were made to City officials and employees as described in public documents issued through the federal corruption investigations. The section then presents data about gifts received and reported by City officials based on data from electronically filed Form 700s. This includes both general data about the number, type and value of gifts reported, as well as information about instances in which filers report gifts that appear to originate from restricted sources. The information included in this section provides additional context to better understand the scope and nature of gifts that are given to City officials and employees and how some of them are problematic from a policy perspective.

1. *Known or Alleged Gift Incidents*

The federal corruption investigation discussed above, as well as the subsequent investigations by the City Attorney's office and admissions by City officials, have revealed numerous instances of gifts being given to City officials and employees in ways designed to influence them in their conduct of their official duties.

Many of these gifts were allegedly received by Mohammed Nuru. Nuru received a free \$35,000 gold Rolex watch from City contractor Florence Kong. Kong has admitted to giving this gift as part of her guilty plea to federal bribery charges. Nuru did not report the watch on his Form 700, and the value of the watch far exceeds the annual limit on gifts from a single source, which is currently \$520. Nuru also allegedly received over \$250,000 in free materials and labor for his vacation home from Balmore Hernandez and a free \$40,000 tractor from Alan Varela; like Kong, both Hernandez and Varela were City contractors seeking Nuru's support for contract bids.⁵⁰ Again, these gifts were not reported and their value exceeds the annual limit. Nuru allegedly received gifts from

⁴⁷ *Id.* at § 2.100(b). "To increase public confidence in the fairness and responsiveness of governmental decision making, it is the further purpose and intent of the people of the City and County of San Francisco to restrict gifts, campaign contributions, and bundled campaign contributions from lobbyists to City officers so that governmental decisions are not, and do not appear to be, influenced by the giving of personal benefits to City officers by lobbyists, or by lobbyists' financial support of City officers' political interests." *Id.*

⁴⁸ *Id.* at § 2.105. However, the lobbyist gift rule explicitly applies to gifts of travel, which are exempted under the restricted source rule.

⁴⁹ A limited number of state law exceptions, however, explicitly do not apply to gifts from lobbyists. Gifts from lobbyists do not fall within the exceptions for reciprocal exchanges, dating relationships, acts of human compassion, and long-term personal friends. 2 CCR 18942(a)(8), (18)(A)–(C).

⁵⁰ June 8, 2020 U.S. Attorney Press Release, *see* note 9; Varela and Gilmartin Complaint, *see* note 14.

Zhang Li, a developer seeking permits in the City. The gifts from Zhang to Nuru included travel and accommodations during a trip to China, as well as expensive alcohol and other gifts provided during the trip.⁵¹ Again these gifts do not appear on Nuru's Form 700, and their value exceeds the annual limit. Nuru also allegedly accepted but failed to report free meals from Paul Giusti, the head of government affairs for Recology.⁵² Nuru also may have accepted free or discounted meals from Nick Bovis provided at one or more of Bovis's restaurants.⁵³

Acceptance of such gifts by an official would violate the restricted source rule. If the source of a gift is either contracting with the official's department or seeking to influence the official in their official actions, the source is a restricted source and gifts are not permitted under City law.

Nuru is not the only official alleged to have accepted potentially unlawful gifts. Then-PUC General Manager Harlan Kelly is alleged to have accepted numerous gifts from permit consultant Walter Wong, including discounted repairs on his personal residence, travel expenses related to a trip to China, gifts given during the trip to China, and, potentially, numerous meals.⁵⁴ Wong was likely a restricted source for Kelly because of his contracting activities with the PUC and his attempts to influence Kelly. Kelly did not report the gifts in question on the Form 700.

Additionally, then-Airport Commissioner Linda Crayton is alleged to have met over dinner with Nuru and Nick Bovis to discuss her support of a concessions contract at SFO.⁵⁵ If she accepted a free meal from Bovis or anyone else who was seeking to contract with the Airport or otherwise influence Crayton's official actions, this gift would violate the restricted source rule.

In a written public statement issued in February 2020, Mayor London Breed acknowledged having accepted gifts from Mohammed Nuru during the time that Nuru was a subordinate to the Mayor.⁵⁶ The gifts consisted of car repairs and car rental fees totaling approximately \$5,600. As discussed above, City officials are prohibited from accepting gifts from subordinate employees.

Additionally, in June of this year, Senior Building Inspector Bernard Curran was placed on administrative leave after he admitted to accepting a \$180,000 loan from a developer whose construction projects Curran had approved.⁵⁷ The developer may have been a restricted source for Curran, in which case the loan would have violated the restricted source rule.

Unrelated to the ongoing corruption investigations, in 2017 Supervisor Eric Mar acknowledged in a settlement with the Ethics Commission and the FPPC to accepting numerous gifts from Another Planet Entertainment, a City permittee whose outdoor festival permits are approved by the Board

⁵¹ Nuru and Bovis Complaint, *see* note 3, at ¶ 142.

⁵² Giusti Complaint, *see* note 12, at ¶ 58. The meal for four individuals was paid for by Giusti and cost \$1,182.23. *Id.*

⁵³ Nuru and Bovis Complaint, *see* note 3, at footnote 13.

⁵⁴ Kelly Complaint, *see* note 5. The allegations against Kelly are largely based on evidence provided by Walter Wong.

⁵⁵ Nuru and Bovis Complaint, *see* note 3, at ¶¶ 74-87.

⁵⁶ London Breed, [Transparency and Accountability](#), Feb. 14, 2020.

⁵⁷ J.K. Dineen, [S.F. building inspector put on leave after allegedly failing to report loan from developer](#), [SAN FRANCISCO CHRONICLE](#), June 9, 2021.

of Supervisors. The gifts, which consisted of many tickets to music festivals given over several years, were not properly reported and violated the restricted source rule.⁵⁸ Five months later, Entertainment Commissioner Audrey Joseph also entered into a settlement with the Commission in which she admitted to gift violations related to festival tickets received from Another Planet Entertainment.⁵⁹

Many of these incidents have been admitted to by the individuals involved, and the remainder have been alleged by the Department of Justice after a criminal investigation. These allegations involve officials and employees at the highest levels of City government and serve as a stark reminder of how gifts can carry a danger of apparent or actual undue influence over government decision making. Improper gifts can be indicators of pay-to-play corruption and can severely undermine the public's trust in government.

2. Form 700 Gift Data

To provide better context about the scope of gifts given to City officials and employees, Staff reviewed electronically filed Form 700 disclosures for the past eight years and compiled data about all gifts reported by the elected officials, department heads, and board and commissioner members who are required to file their statements electronically. As discussed above, the Form 700 is a required disclosure for all City officials and many City employees through which individuals must disclose their own personal financial interests. The Form 700 requires filers to disclose gifts of \$50 or more.

Since 2013, City elected officials, commissioners, and department heads have been required to file the Form 700 electronically through the Commission's online system. Rather than submitting a paper form, these filers submit their disclosures in an electronic format that allows the disclosures to be made available online to the public. Electronic filing also allows for easy aggregation and review of all filed disclosures. Electronic filers, or *e-filers*, represent roughly 500 of the roughly 4,200 total City filers; the remaining 3,700 filers file in a paper format that cannot easily be aggregated and reviewed.⁶⁰

Overview of Gift Data

Based on a review of electronic Form 700 filings covering calendar years 2013 through 2020, Staff found 1,839 reported gifts across the eight-year period with a total value of \$899,991. Staff pulled all available records from Schedule D and Schedule E of the Form 700. Schedule D is used to report gifts and Schedule E is used to report travel payments. Travel payments reported on Schedule E include both income and gifts. Staff excluded travel payments identified as income and then combined the reported travel gifts with the gifts reported in Schedule D for this analysis. Any records in which the gift date was outside of 2013-2020 were excluded, along with several records

⁵⁸ [*In the Matter of Eric Mar, Case No. 1617-125 \(jointly with FPPC Case No. 15/2201\), Stipulation, Decision, and Order*](#), Oct. 23, 2017.

⁵⁹ [*In the Matter of Audrey Joseph, Case No. 23-150930, Stipulation, Decision, and Order*](#), March 16, 2018.

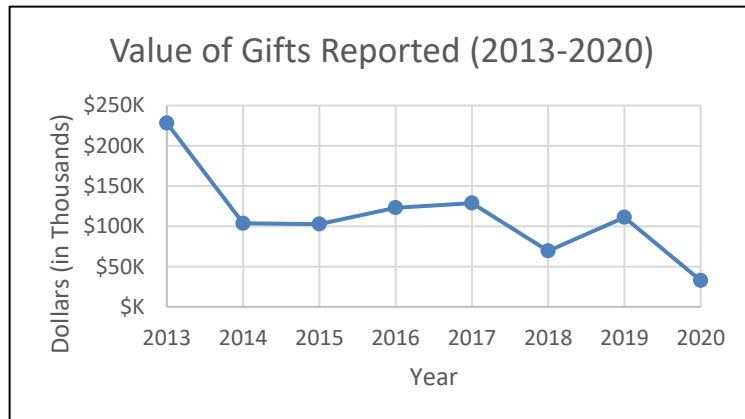
⁶⁰ The roughly 3,700 City employees who currently file the Form 700 in paper format do so by filing the form with their respective departments. All remaining paper filers will be required to file the Form 700 electronically beginning January 1, 2022.

believed to be unnecessarily reported as they fell outside of the state's definition of gift. The quantity of e-filed gifts and their values over time can be observed in **Table 1** and **Figure 1** below.

Table 1: Total Number and Value of Gifts Reported by Form 700 E-Filers (2013-2020)

Year	Gifts	Value	Average Value Per Gift
2013	333	\$228,286	\$686
2014	271	\$103,698	\$383
2015	230	\$102,852	\$447
2016	208	\$123,120	\$592
2017	221	\$128,877	\$583
2018	232	\$69,391	\$299
2019	251	\$111,116	\$443
2020	93	\$32,650	\$351
Total	1,839	\$899,991	\$489

Figure 1: Total Value of Gifts Reported by E-Filers



As discussed above, these reported gifts presumably reflect only gifts from reportable sources that do not meet any gift exception; gifts that meet a state law exception (such as gifts from close friends or family members) or are received from someone who is not a reportable source do not need to be disclosed on the Form 700. Also, any gifts that were not disclosed would not be represented in the data.⁶¹

From 2013 to 2019, the quantity of gifts reported ranged from a low of 208 gifts in 2016 to a high of 333 gifts in 2013, with an average of 249 gifts reported each year. The quantity of gifts reported by e-filers decreased sharply in 2020, likely due to the COVID-19 pandemic.

From 2013 to 2019, the value of the gifts reported by e-filers ranged from \$69,391 in 2018 to \$228,286 in 2013, with an average value of \$123,906 per year. However, this high point in 2013 is largely due to the gifts reported by a single filer, then-Mayor Edwin Lee.⁶² If Mayor Lee's gifts are excluded, the value of the gifts reported is more consistent, ranging from \$69,391 in 2018 to \$128,877 in 2017, with an average value of \$98,934 per year. As with the quantity of gifts, the value also decreased in 2020, likely due to changes in behavior caused by the pandemic.

Staff reviewed each gift record and assigned it to a category based on the type of gift reported. This review found that gifts of travel contributed the most to the overall value of gifts reported,

⁶¹ Filers may not report all gifts they receive, either due to filer error or intentional attempts to obfuscate illicit gifts. To the extent that there is under-disclosure, available figures would undervalue the actual total amount of gifts received, and prohibited gifts from restricted sources may in particular be underreported.

⁶² In 2013, gifts reported by former Mayor Edwin Lee comprised 48% of all gifts reported. During the years Mayor Lee reported gifts (2013-2016), his gift disclosures made up 31% of all gifts reported. No Form 700 was filed for Mayor Lee for 2017 due to his death in December 2017, and thus no data is available on gifts received by Lee in 2017.

accounting for 72% of the total value reported. There were 382 gifts of travel, worth \$649,931 reported between 2013 and 2020, making the average gift of travel worth \$1,701.⁶³

By quantity, staff found gifts of tickets, meals, events, and passes to be the most common type of gift reported by e-filers, making up 59% of all gifts by quantity, but just 20% of gifts by value. This broad category was used because the descriptions provided by filers did not allow for greater specificity. Staff attempted to distinguish meals from event tickets, but many of the records were for gifts that could easily have fit into either category (such as a ticket to dinner fundraiser event), so this broader category was chosen. The consumables category represents gifts of alcohol, coffee, snacks, chocolates, and other items that can be consumed but which are not described as a full meal. A breakdown of gifts by type can be found in **Table 2** below.

Table 2: Quantity and Value of Gifts Reported by E-filers by Type (2013-2020)

Gift Type	Gifts	% of Total Gifts	Value of Gifts	% of Value of Total Gifts	Average Value of Gift
Travel	382	21%	\$649,931	72%	\$1,701
Tickets, Meals, Events, Passes, Etc.	1,091	59%	\$181,293	20%	\$166
Misc.	142	8%	\$31,388	3%	\$221
Physical Items	137	7%	\$15,948	2%	\$116
Cash	27	1%	\$15,894	2%	\$589
Consumables	60	3%	\$5,537	1%	\$92
Total	1,839	100%	\$899,991	100%	\$489

Staff also categorized the gift records by type of recipient: elected officials, department heads, and members of boards and commissions. As observed in **Table 3**, elected officials reported the most gifts per filer and reported gifts of higher value than those reported by department heads or members of boards and commissions.

Table 3: Average Reported Gift Values by Recipient Type (2013-2020)

Recipient Type	Average Gifts Per Filer	Average Value Per Gift	Average Total Value Per Filer
Elected Officials	18.4	\$791	\$14,582
Department Heads	9.9	\$331	\$3,263
Board/Commission Members	8	\$355	\$2,853
Overall	10.7	\$489	\$5,233

As previously mentioned, only 12% of all Form 700 filers currently file electronically. This means that many filings by City employees, who largely file via paper form, were not readily available for analysis and review. The gift data presented above does not reflect gifts reported by these City employees. While the rate at which paper filers report gifts is uncertain, the \$899,991 in gifts reported by electronic filers between 2013 and 2020 could indicate that the total value of

⁶³ Gifts of travel that meet certain exceptions are not subject to the annual gift limit of \$520. See Cal. Gov. Code § 89506(a) (2021).

reportable gifts received by City officials and employees during the review period may exceed \$1 million, if gifts by paper filers were added. The availability of Form 700 data will improve in 2022 when all Form 700 filers will be required to file electronically.

Restricted Source Gifts in Form 700 Data

As discussed above, the federal corruption charges against various City officials, employees, and contractors allege that many gifts were given that would violate the restricted source rule. Staff sought to understand the extent to which restricted source gifts were received by City officials outside of what has already been alleged by the Department of Justice. The existence of such gifts would indicate that restricted source gifts are an issue that goes beyond the scope of the federal probe. This information is useful because it provides additional context for the Commission's policy discussion about the extent of gifts being received by City officials and how effective the restricted source rule has been in practice.

To gather data on the degree to which officials may be receiving restricted source gifts, Staff conducted a more targeted review of Form 700 filings from e-filers in six departments connected to the ongoing federal corruption investigations.⁶⁴ Across these six departments, there were 65 e-filers, 22 of whom reported gifts on the Form 700 between 2013 and 2020.

Among the 22 e-filers who reported receiving gifts, six filers reported a total of 23 gifts that appear to have been given from a restricted source. Five of the filers reported multiple gifts from potential restricted sources. Based on publicly available documents reviewed, the source of each gift appeared to be doing business with or seeking to do business with the department of the recipient or had reportedly been attempting to influence an action by the filer at the time the gift was given.

Examples observed by Staff are:

- An official was reportedly contacted by a registered lobbyist and then accepted a gift from that lobbyist within seven months of the reported lobbying contact. Officials cannot accept a gift from anyone who has attempted to influence them within that last 12 months.
- An official reported receiving a dinner and piece of apparel from an entity at a time when the entity was seeking to enter into a contract with the department and likely had attempted to influence departmental decision-makers regarding the contract.
- An official accepted a gift of tickets from an entity that was currently doing business with and actively pursuing additional business opportunities with the department.

While necessarily limited in size due to the level of more in-depth research it required, this sampling of 65 e-filers found that nearly 10% overall reported a gift that appeared to be from a restricted source. While this indicates an issue that points to a heightened need for further education and outreach, it also demonstrates that achieving the policy purposes of the City's restricted source rule also warrants attention to maximize the strength, clarity, and enforcement of the law in practice. Section III recommends changes to existing gift laws for this purpose.

⁶⁴ These departments were selected because the individuals named in the federal investigations either were officials of, employed by, had contracts with, or sought to enter into contacts with one of these six departments.

III. Findings and Recommendations regarding Gifts to Individuals

A. Goals

The many instances of problematic gifts described above indicate that gifts pose a danger to the integrity of City government and the public's trust. It is critical that the laws governing gifts be as effective as possible to meet this policy need. Toward this end, Staff reviewed state and local laws governing the receipt of gifts by City officials and employees. Staff sought to identify loopholes and oversights in the local laws that cause them to be unnecessarily narrow, permissive, or complex. Such shortcomings impede the overall effectiveness of gift laws and, over time, can lead to an organizational culture that does not value or seek to comply with gift rules.

Instead, gift rules should be robust and clear so as to effectively address ethical risks and to plainly communicate to officials, employees, and the public that certain kinds of gifts are strictly off limits. Such strong, simple gift rules are more likely to prevent ethical issues and, where they are not followed, more likely to generate whistleblower or other complaints and result in penalties. This approach to gift rules will help ensure that a culture of casual corruption does not exist around gifts.

B. Findings and Recommendations

With these goals in mind, Staff identified six broad issues with local gift laws. The sections that follow propose how these issues should be addressed.

1. The application of many state law gift exceptions to the restricted source rule weakens the impact of that rule.
2. The local exceptions to the restricted source rule are overly broad and should be narrowed in several ways.
3. The restricted source rule fails to clearly prohibit the giving of a prohibited gift, the use of an intermediary to give or receive a prohibited gift, or restricted source gifts made to immediate family members of an official or employee.
4. The language of the restricted source rule needs to be clarified to more clearly apply to City contractors, permittees, and other individuals or entities who pursue or enter into agreements with the City, and to persons affiliated with a business entity that is a restricted source.
5. The impact of the local subordinate gift rule is undermined by several overly broad exceptions that currently exist in local law.
6. Gifts currently allowed from permit expeditors to certain officials and employees are problematic and should be prohibited.

1. The application of many state gift exceptions to the restricted source rule is inappropriate. "Gift" should be defined in local law with these exceptions omitted.

Findings: As discussed above in Section II.A, the restricted source rule fails to define the term *gift* and instead relies on the definition provided in state law, including all exceptions created under state regulations. Consequently, any gift that is exempted from being termed a *gift* under state

law is also exempt from San Francisco's restricted source rule. This result gravely undermines the purposes of the rule by allowing officials and employees to accept gifts from restricted sources in a variety of situations. Not only does this create many ways to skirt the rule, but it also contributes to the rule's overall complexity and ambiguity, which makes the rule harder to comply with and more challenging to enforce.

The current state gift exceptions are listed below and are categorized by whether they arise under the Government Code or under Fair Political Practice Commission (FPPC) regulations.

Government Code § 82028 (exceptions created by Political Reform Act of 1974 or via 1978 and 1986 legislation)

1. Informational material (1974)
2. Gifts not used and within 30 days after receipt are either returned to the donor or delivered to a non-profit without being claimed as a charitable contribution for tax purposes (1978)
3. Gifts from listed close familial relations (1978)
4. Campaign contributions (1978)
5. Any devise or inheritance (1978)
6. Personalized plaques and trophies (less than \$250 in value) (1986)

Regulation 18942 (additional exceptions created by the FPPC between 1994 and 2012)⁶⁵

7. Home hospitality (1994)
8. Holidays, birthdays and other occasions where gifts are exchanged, including reciprocal exchanges (1994)
9. Leave credits (1994-2006 [date uncertain])
10. Disaster relief or other assistance offered to the public without regard to official status (1994-2006 [date uncertain])
11. Admission to event where admittee makes a speech (1994)
12. Payments for campaign activities (1994)
13. Ticket provided to official and one guest to event where official performs a ceremonial role on behalf of his or her agency (2010)
14. A prize or award received in a manner not related to the official's status (1994)
15. Benefits received as wedding guest (2006)
16. Bereavement offerings (2012)
17. Acts of neighborliness (2012)
18. Various (2012)
 - A. Bona Fide Dating Relationship
 - B. Acts of Human Compassion
 - C. Long-term Close Personal Friend
 - D. Exceptions 18 (A)—(C) cannot apply to gifts from:
 - i. A lobbyist

⁶⁵ This timeline was constructed using multiple documents provided by the Fair Political Practices Commission: Staff Memorandum, March 27, 1992; Meeting Minutes, February 16, 2006; Meeting Minutes, May 11, 2006; Meeting Minutes, February 11, 2010; Staff Memorandum to Commissioners, March 17, 2010; Meeting Minutes, August 12, 2010; Staff Memorandum to Commissioners, October 31, 2011. All sources on file with San Francisco Ethics Commission.

- ii. A person who has or reasonably will have license, permit, or contract applications before official's agency (and 12 months after decision in matter is made)
 - iii. A person involved in a licensing or enforcement proceeding within 12 months of the gift being made
19. Existing personal relationship and the official never makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the source of the gift (2012)

Any gift that meets one of these exceptions is also exempt from San Francisco's restricted source rule. There are a number of problems with this outcome.

First, the restricted source rule has a different purpose than the state gift rules, so broadly incorporating the state's general gift exceptions without closely evaluating their impact on the underlying policy goals of the City's restricted source provisions weakens the likelihood that the local restricted source law will achieve its stated purposes. State gift rules that apply to local government officials and employees are confined to disclosure and the annual value limit (currently \$520). These state rules apply globally to *all* gifts that are reportable on an individual's Form 700. They do not discriminate between different types and sources of reportable gifts; all reportable gifts must appear on the Form 700 and are subject to the annual limit. For these types of rules, the state exceptions to the term *gift* may be justified. It might be unreasonable to require public disclosure of gifts of home hospitality, trading rounds of golf, or gifts from close, longtime friends or to cap them at \$520 per year if such gifts have little or no nexus to the official or employee's government duties.

However, the City's restricted source rule is different in its purpose and scope. The restricted source rule narrowly targets only those gifts that are made by individuals or organizations that have a matter before the official or employee in question. Because of the ability of gifts from such sources to create undue influence in appearance or in practice, the rule identifies them as inherently problematic and prohibits them. The intention of the state law exceptions is thus at odds with the scope of the restricted source rule: the state exceptions seek to exempt gifts that may be less likely to be connected to an official or employee's government duties, while the restricted source rule, by definition, applies to gifts from sources that are involved with the official or employee in an official capacity.

For example, state law would potentially consider an expensive bottle of wine given to a department head from a high school friend not to be a gift, and such an offering would thus not be reportable on the department head's Form 700 nor subject to the \$520 limit. Additionally, the gift would not be subject to the restricted source rule. From a policy perspective, however, this is problematic if the friend is also a local business owner who is attempting to secure the department head's support for a particular policy that would benefit her business. In this scenario, the friend meets the definition of a *restricted source* because of her attempts to influence the official actions of the department head. However, anything the friend gives the department head would potentially not be considered a *gift* because her long-standing relationship with the department head triggers the state exception. The same is true for a restricted source who is dating a government official or employee: because of the existence of a dating relationship, gifts from the restricted source are not prohibited. In this sense, the application of the state gift

exception overrides and undermines the clear intent of the restricted source rule established locally, which is to prohibit a gift in a situation where it might give rise to undue influence or its appearance.

This outcome is particularly problematic in light of the federal corruption probe. One of the central revelations of the ongoing investigations has been that City officials often maintain close and interwoven personal relationships with City contractors and others who seek favorable outcomes from City government. This pattern was observed in the cases of Nuru, Hui, and Kelly and their respective relationships with Bovis, Hernandez, Wong, Zhang, and others. When the federal investigation first became public in January 2020, it was revealed that Nuru and Bovis had a relationship that involved exchanges of benefits and appeared to have a personal component. Similarly, when the FBI asked city contractor Balmore Hernandez about the expensive, free construction services Hernandez provided on Nuru's vacation home, Hernandez said "his assistance with [Nuru's] vacation home was 'as a friend.'"⁶⁶ Kelly dined regularly with Walter Wong and the two communicated at length on Kelly's personal cell phone. Wong performed discounted home repairs for Kelly and paid for Kelly's family to visit China.⁶⁷

To be effective in achieving the purposes for which it was established, it is vital that the restricted source rule be strictly applied in these situations and not be vulnerable to exceptions based on an official cultivating a personal relationship with a restricted source. San Francisco law already recognizes that an ethics issue exists when a City official or employee takes action on a matter involving someone with whom the official or employee has a personal relationship: the relationship must be formally disclosed on the public record.⁶⁸ Allowing gifts to be given and received in such a situation only exacerbates the appearance of corruption precisely when the law is designed to minimize or prevent corrupting influences.

In fact, this very issue is already addressed in state law for purposes of the state's restricted source rule that applies to state officials. State law prohibits gifts from state lobbyists to state officials; this is the full extent of what could be deemed the "restricted source rule" in state law.⁶⁹ Importantly, many of the state gift exceptions cannot be applied to gifts from lobbyists. This limitation was put in place for the same reason described above: a restricted source should not be able to give a gift by exploiting an exception that was designed for purposes of the Form 700

⁶⁶ In the Matter of AzulWorks, Inc., San Francisco City Attorney, Counts and Allegations by the City Attorney under San Francisco Administrative Code Chapter 28. The City Attorney initiative a debarment proceeding against AzulWorks, Inc. for Hernandez's conduct.

⁶⁷ Kelly Complaint, see note 5.

⁶⁸ Campaign & Gov. Conduct Code § 3.214(a). "A City officer or employee shall 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 the officer or employee where, 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."

⁶⁹ See FAIR POLITICAL PRACTICE COMMISSION, [Limitations and Restrictions on Gifts, Honoraria, Travel and Loans](#), (providing a summary of gift rules applicable to California state public officials) (*hereinafter* "FPPC Gift Guide").

disclosure requirement and the annual gift limit.⁷⁰ Although this limitation also precludes some San Francisco restricted sources from using these exceptions, other kinds of restricted sources such as contractors and those who seek to influence government decisions (groups not addressed in state gift laws) are free to use these exceptions. Local law has thus far failed to bar their use of the exceptions.

The second problem with applying all state gift exceptions to the restricted source rule is that the application of many of the state exceptions was likely not intended when the restricted source rule was created. The current restricted source rule was enacted by San Francisco voters in 2003 through Proposition E, which was approved with 62% of the vote. The language of Prop E defined *gift* by reference to the California Government Code. As listed above, only six, basic exceptions existed in the Government Code at that time, as is still the case. It was not until 2006 that the restricted source rule was amended to incorporate state regulations that create additional gift exceptions.⁷¹ Furthermore, many of the current state gift exceptions did not exist at the time that the restricted source rule was created (nor at the time that local law was amended to incorporate all state regulatory exceptions). In 2012, the FPPC created several new exceptions through regulation. Those exceptions apply to bereavement offerings, “acts of neighborliness,” gifts given as part of a “bona fide dating relationship,” “acts of human compassion,” and gifts from “long term, close personal friends.”⁷² These regulations did not exist at any time when the restricted source rule was being considered or amended, but they nonetheless affect its scope. This means that as the FPPC has continued to create exceptions designed to apply solely to gift disclosure and the annual limit, this has automatically created exceptions to the restricted source rule.

This outcome is all the more illogical because, as discussed above, the FPPC does not even apply many of these newer exceptions to the state rule prohibiting gifts from lobbyists. This is a clear intent on the part of the FPPC to only apply the exceptions to gifts that do not come from a source with official dealings with the official or employee in question. The exceptions that don’t apply to gifts from lobbyists are primarily the more recent additions, including the exceptions for reciprocal gift exchanges, dating relationships, acts of human compassion, longtime friends, and existing personal relationships.⁷³ Although the inapplicability of these exceptions to gifts from lobbyists is helpful for purposes of San Francisco’s lobbyist gift rule, the restricted source rule applies more broadly to all persons who seek to influence the official actions of a City official or employee, and the exceptions unfortunately do apply to gifts from these restricted sources. Ensuring City restricted source laws are strong and effective in light of evolving state regulations is important so that loopholes do not result that undermine the purpose of the law.

⁷⁰ William J. Lenkeit and Zackary P. Morazzini, FAIR POLITICAL PRACTICES COMMISSION, [Memorandum: Adoption of Proposed Amendments to the Gift and Travel Regulations](#), Oct. 31, 2011, at 16. “These restrictions, as discussed above, are to limit the application of the exceptions to those who do not ... ‘have business before the agency.’”

⁷¹ See SAN FRANCISCO BOARD OF SUPERVISORS, [File No. 061333](#) (creating Campaign & Governmental Conduct Code section 3.216(b)(2)).

⁷² See William J. Lenkeit and Zackary P. Morazzini, FAIR POLITICAL PRACTICES COMMISSION, [Memorandum: Adoption of Proposed Amendments to the Gift and Travel Regulations](#), Oct. 31, 2011, at 16.

⁷³ See 2 CCR 18942.

Third, the state exceptions to the definition of *gift* are voluminous, and many of them are vague. Many of the exceptions listed above hinge on the nature of personal relationships, which are difficult to categorize. For example, whether or not someone constitutes a “long term, close personal friend” of, or is in a “dating relationship” with, a government official determines whether gifts from that person qualify for an exception. By incorporating the state exceptions into the restricted source rule, this complexity and vagueness is injected into an important local law. This can create unnecessary barriers for those who are trying to understand and comply with the rule, can make enforcement of the rule more challenging, and unnecessarily limits the rule’s scope and impact.

Fourth, the state gift exceptions allow officials and employees to not disclose exempt gifts on the Form 700. This means that there is no publicly available data on instances in which officials and employees are accepting gifts from a restricted source and claiming an exception under state law. It is therefore impossible to know when and from whom an official or employee is accepting a restricted source gift under one of the exceptions.

Finally, many of the state exceptions are inherently inapplicable to gifts from restricted sources. For example, one state exception applies to leave credits distributed by a government agency, but the City by definition cannot be a restricted source for an official or employee. Similarly, the exception for existing personal relationships only applies if the official or employee never participates in the kinds of government decisions that affect the source of the gift. But in the context of a restricted source gift, this is never the case if the restricted source is seeking to influence the officer or employee.⁷⁴ Both of these exceptions make sense in the context of Form 700 reporting and the gift limit, which apply universally to all reportable gifts. But, they are incompatible with the restricted source rule, further indicating that the existing state exceptions are a poor fit for San Francisco’s restricted source rule.

Recommendations: For the reasons laid out above, the restricted source rule should be amended so that several of the state law exceptions do not apply. The way to achieve this is to create a definition of *gift* in local law that applies to the restricted source rule. This definition would include many, but not all, of the state law exceptions. As discussed above, this approach has already been in place for the subordinate gift rule since 2004. It is important that this same step be taken for the restricted source rule. By doing so, the City can define exactly how the restricted source rule should apply and avoid involuntary changes in the future every time the FPPC amends its gift regulations that are focused on disclosure and the gift limit.

⁷⁴ It is possible that the restricted source does business with the officer or employee’s department and the officer or employee does not participate in contracting decisions. However, a gift given in this context would still carry the appearance of pay-to-play, even if the officer or employee did not have the power to affect the contract in question. An example is former Airport Commissioner Linda Crayton, who reportedly may have accepted a meal from City contractors seeking her assistance on a contract proposal. Although a subsequent review by the Controller’s office found that the involvement of Airport commissioners in the contracting process is limited by the department’s contracting process, this does little to reduce the appearance that such a gift is given to unduly influence City processes. See SAN FRANCISCO CONTROLLER’S OFFICE, [Public Integrity Review Preliminary Assessment: Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards](#).

The following table lists all of the state gift exceptions and recommends which exceptions should be retained in, and which should be omitted from, the definition of *gift* created under San Francisco law for purposes of the restricted source rule.

Table 4: State Gift Exceptions and Recommendations

Government Code § 82028 (exceptions created by Political Reform Act of 1974 or via 1978 and 1986 legislation)		
	Exception	Recommendation
1	Informational material	Retain: This exception creates little opportunity for corrupting gifts, since there is no personal benefit to the recipient. ⁷⁵
2	Gifts not used and within 30 days after receipt are either returned to the donor or delivered to a non-profit without being claimed as a charitable contribution for tax purposes	Retain: This exception creates little opportunity for corrupting gifts, since there is no personal benefit to the official. The gift is disposed of and neither the gift nor its disposal benefits the recipient.
3	Gifts from listed close familial relations	Retain: This exception creates little opportunity for corrupting gifts because it only applies to gifts from a very small, defined set of immediate family members.
4	Campaign contributions	Retain: These payments are treated as political contributions. They are limited to \$500 and subject to local contribution rules.
5	Any devise or inheritance	Retain: This exception creates little opportunity for corrupting gifts because it is unlikely that a gift left through a will or trust would be used to influence a government decision. The timing of such a gift is unpredictable (since it is typically triggered by a death) and therefore unlikely to be used in a pay-to-play arrangement.
6	Personalized plaques and trophies	Omit: There is no clear policy need for restricted sources to give plaques and trophies to City officials and employees. Such a gift can create the appearance of an attempt to curry favor that could call into question the impartiality of decisions regarding the restricted source. Officials and employees could still receive acknowledgements and other recognition that do not involve the giving of tangible gifts by restricted sources.

⁷⁵ Only a limited set of transportation costs can fall within the exception. See 2 CCR 18942.1. This exception may also be required for First Amendment purposes.

Regulation 18942 (additional exceptions created by the FPPC between 1994 and 2012)		
7	Home hospitality	Omit: This exception allows officials to accept gifts from a restricted source in the source's home. The fact that gifts are given at a restricted source's home does not mitigate the potentially corrupting nature of the gifts and should therefore not serve to permit the gifts. ⁷⁶
8	Holidays, birthdays, and other occasions where gifts are exchanged, including reciprocal exchanges	Omit: This exception is predicated on the official or employee also giving gifts to the restricted source. This two-way flow of gifts does not mitigate the potentially corrupting influence of the gifts; if anything, it can further establish a privileged position in practice or appearance that the restricted source is "owed" something. This dynamic is apparent in the alleged relationships between certain City officials and contractors, as set forth in FBI charging documents.
9	Leave credits	Omit: This exception is inapplicable to the restricted source rule because it involves donations from the City to officials and employees.
10	Disaster relief or other assistance offered to the public without regard to official status	Retain: This exception creates little opportunity for corrupting gifts because it only applies in rare instances of a disaster and only applies to benefits made available to all members of the public.
11	Admission to events where making a speech	Retain: This exception creates little opportunity for corrupting gifts because it only applies to the cost of admission, food, and nominal gifts provided to attendees. These must be provided by the person who organizes the event. It is unlikely that a restricted source would hold an event for the purpose of providing these nominal gifts to an official. It is also unlikely that an official would agree to deliver a speech solely to obtain such gifts.
12	Payments for campaign activities	Retain: These payments are treated as political contributions. They are limited to \$500 and subject to local contribution rules.
13	Ticket provided to official and one guest to event where official performs a ceremonial role on behalf of his or her agency	Retain: This exception creates little opportunity for corrupting gifts because the official must perform a role in which the official is the focus of the event. ⁷⁷ Similar to events where the official delivers a speech, it is unlikely that a restricted source would invite an official to perform a ceremonial role solely to circumvent the restricted source rule, nor that an official would agree to perform a ceremonial role for the same purpose.

⁷⁶ Mohammed Nuru admitted on a recorded phone call to receiving expensive liquor and other gifts at the home of Zhang Li. Nuru and Bovis Complaint, see note 3, at ¶¶ 141–42.

⁷⁷ 2 CCR 18942.3.

14	A prize or award received in a bona fide contest, competition, or game of chance	Omit: This exception is largely inapplicable to the restricted source rule because it pertains to lottery and other gambling winnings. Insofar as a restricted source is operating a “game of chance,” officials and employees should not be participating because of the potential to disguise a restricted source gift and the appearance of pay-to-play.
15	Benefits received as wedding guest	Omit: This exception allows officials and employees to receive gifts from a restricted source when attending a wedding as a guest. Like other similar exceptions, this is based on a personal relationship between the official or employee and the source of the gift. But as discussed, the existence of a personal relationship does little to mitigate the corrupting influence of restricted source gifts and, if anything, raises the risk of undue influence and pay-to-play.
16	Bereavement offerings	Omit: Although the exception for bereavement offerings only applies in the limited instance of a death of a spouse, parent, child, or sibling, there is no clear policy need for officials or employees to accept gifts from restricted sources in this situation. If restricted sources wish to express their condolences, they may do so with a card, phone call, or other method that does not bestow a personal benefit on the official or employee.
17	Acts of neighborliness	Omit: This exception is predicated on the official and the restricted source being “polite” members of “a civilized society” in which people do each other favors from time to time. Similar to the exception for reciprocal exchanges, this exception is based on the idea that when a personal relationship is present, disclosure and reporting are not necessary. But, in the context of the restricted source rule, it is vital that the rule not be set aside because of a personal relationship or the appearance of a polite favor. The federal corruption probe has revealed the ecosystem of favors among City officials and restricted sources. The restricted source rule is intended to prevent such behavior, and this exception undermines the rule by creating space for personal favors that have a monetary value. These kinds of gifts should clearly be unlawful, and this exception unnecessarily invites such conduct when applied to restricted source gifts.
18.A	Bona Fide Dating Relationship	Omit: This exception allows officials and employees to accept gifts from someone with whom they go on a date without being subject to gift rules. For obvious reasons, in the context of a gift from a restricted source the addition of a romantic component does not mitigate the danger of undue influence. It only increases the appearance of undue influence over government decisions and a lack of

		<p>impartiality on the part of government officials and employees. This exception was created solely with disclosure and reporting requirements in mind; the FPPC intentionally retained the application of conflict-of-interest rules over such gifts by making this exception inapplicable to gifts from lobbyists, contractors, or others with business before the official's department. Because of that, this exception is already largely inapplicable to restricted source gifts. But the exception can still be applied to a restricted source gift, for example when a person has sought to influence the recipient in their government duties. When applied to the restricted source rule in this way, this exception is flawed and undermines the purpose of the rule.</p>
18.B	Acts of Human Compassion	<p>Omit: This exception allows officials and employees to accept gifts to "offset family medical or living expenses that the official can no longer meet without private assistance because of an ... unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child...." Again, this exception was created to bypass the gift limit, in this case for instances in which the recipient is in dire need of help from others and the gift limit would prevent that aid from occurring. But in the context of a restricted source gift, this exception is inappropriate. City officials and employees should not turn to restricted sources to meet personal financial needs. This creates a significant danger of undue influence, especially because this exception allows the donation of unlimited amounts of money.</p> <p>Like the exception for dating relationships, this exception is already largely inapplicable to restricted source gifts (it cannot apply to gifts from lobbyists, contractors, and others with matters before the department). But it can still be applied in certain circumstances, and this undermines the purpose of the rule.</p>
18.C	Long-term, close personal friend	<p>Omit: This exception allows officials and employees to accept gifts from long-time, close personal friends without being subject to reporting and limit rules. But when applied to restricted source gifts, this exception places the personal relationship above the fact that the source has official business before the official or employee or their department. The FPPC attempted to address this issue by making this exception inapplicable to gifts from lobbyists, contractors, and others with matters before the department, but this fails to capture all types of restricted sources. The exception is also vague as to what constitutes</p>

		a close, personal friendship. As discussed, certain City officials might have characterized their relationships with City contractors and permit expeditors in this way. The vague loophole created by the application of this exception to the restricted source rule weakens the rule and invites abuse.
19	Existing personal relationship and the official never makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the source of the gift.	Omit: This exception is largely inapplicable to the restricted source rule because by definition the official or employee <i>does</i> participate in the kinds of decisions that affect a restricted source who is attempting to influence the official or employee. If the restricted source is doing business with the official or employee's department, it is possible that the official or employee does not participate in contracting decisions. Nonetheless, such a gift could create the appearance of pay-to-play and does not warrant an exception.
Gifts exempted under FPPC Regulation 18942(b)		
1	Gifts of Travel	<p>Omit: This exception allows certain gifts of travel to be received without being subject to the gift limit (it is not however an exception to the reporting requirement). The exception only applies to payments for travel that are either (i) associated with making a speech within the U.S., or (ii) provided by a government agency or a 501(c)(3) organization for a legislative, governmental, or public policy purpose.⁷⁸ San Francisco law applies this exception to the restricted source rule, allowing such gifts of travel to be accepted from restricted sources.⁷⁹</p> <p>This exception is problematic because there is nothing about the exception that mitigates the corrupting potential of a gift from a restricted source. Travel has been revealed in the federal corruption investigations as a common method for restricted sources to attempt to curry favor with City officials. The fact that the recipient of the gift delivers a speech during the trip does little to prevent abuse of this exception; unlike exception 11 and 13 above (which only allow for free admission to an event where the official makes a speech or performs a ceremonial role), this exception allows for free travel, accommodations, and food, which are significantly more valuable. Likewise, the fact that the restricted source is a nonprofit organization does not mitigate the potential for a gift to result in undue influence; nonprofits, like for-profit organizations, often</p>

⁷⁸ Cal. Gov. Code § 89506(a) (2021).

⁷⁹ Campaign & Gov. Conduct Code § 3.216(b)(2).

		<p>contract with government agencies and actively lobby for certain outcomes.</p> <p>While it may be appropriate to allow officials to accept certain travel payments in excess of the \$520 limit, it is not appropriate to additionally allow them to accept such payments from restricted sources. For this reason, state law does not allow state officials to accept these types of travel gifts from lobbyists;⁸⁰ it is a blind spot in San Francisco law that restricted sources are allowed to provide such gifts.</p>
2	Wedding Gifts	<p>Omit: This exception applies to wedding gifts received by an official or employee. Like the exception for travel payments, this exception allows for gifts that exceed the \$520 limit but still requires the gifts to be disclosed. Again, this exception was intended to allow for gifts over the limit, but not to allow for otherwise prohibited gifts; state law does not allow lobbyists to give wedding gifts to state officials.⁸¹ It is problematic and unsupportable that restricted sources are allowed to give wedding gifts to City officials and employees.</p>

2. The local exceptions to the restricted source rule are overly broad and should be narrowed in several ways.

In addition to the state exceptions discussed above, Ethics Commission regulations also create exceptions to the restricted source rule.⁸² Those exceptions apply to the following:

- a) Non-cash gifts of \$25 or less per occasion, up to four times per calendar year.
- b) 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.
- d) Meals from a member of the investment, financial, or banking community provided to officers and employees who are responsible for managing City investments.
- e) Meals or vessel boardings from a member of the maritime industry provided to officers and employees of the Port.
- f) 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.
- g) Items received by a City employee or officer associated with the City's Annual Joint Fundraising Drive.

⁸⁰ See FPPC Gift Guide, see note 69. ("In addition to being reportable and creating a conflict of interest issue for the official, these payments are still subject to the \$10 monthly limits on gifts from or arranged by lobbyists or lobbying firms").

⁸¹ See *Id.* at 7.

⁸² See Ethics Commission Regulation 3.216(b)-5.

Findings: Most of these exceptions are overly broad and undermine the purpose of the restricted source rule.

Four \$25 Gifts per Year

First, exception (a) allows officials and employees to accept non-cash gifts from restricted sources up to four times per year, as long as each gift is worth \$25 or less. This exception is based on language in the section of the Campaign and Governmental Conduct Code that creates the restricted source rule, section 3.216(b). The code states that “[t]he Ethics Commission shall issue regulations implementing this section, including regulations exempting voluntary gifts that are nominal in value such as gifts that are given by vendors to clients or customers in the normal course of business.”⁸³

However, the current exception for any gift of \$25 or less is much broader than what is envisioned in the code and allows for restricted source gifts that do not have any clear policy benefit. For example, The City Attorney found that DBI Director Hui accepted a meal from real estate developer Zhang Li (a restricted source for Hui) at the R&G Lounge in Chinatown. Hui claimed that the cost of the meal was \$30.⁸⁴ Had the meal cost \$25, it would not have violated the restricted source rule. This potential outcome is problematic: regardless of the cost of Hui’s meal, his acceptance of a gift from a developer seeking his approval on a project should be prohibited outright, regardless of whether Hui’s meal cost more or less than \$25.

A strict \$0 limit is preferable to a higher limit that allows some level of prohibited gifts to occur. In a recent presentation to the FPPC, Bob Stern, one of the driving forces behind the creation of the Political Reform Act and the first general counsel to the FPPC, stated that an outright ban on gifts from lobbyists would have been a better rule than the \$10 limit that still exists in California law. According to Stern, the \$10 limit allowed lobbyists to continue to make gifts to lawmakers and resulted in some lobbyists attempting to combine their limits to give even larger gifts.⁸⁵ The City’s restricted source rule would benefit from this lesson and would better achieve its purpose by imposing a strict \$0 limit on restricted source gifts and not allowing four \$25 gifts per year. This would make it clearer for City officials and employees, as well as for restricted sources, that gifts that violate the rule are not allowed. It would also better assure the public that restricted source gifts are dealt with in a strict manner that does not permit small routine gifts.

Although the general \$25 exception should be removed, a more limited exception that better matches the “normal course of business” rationale set forth in the Code could replace it. Los Angeles law includes a narrow exception to that City’s restricted source rule that allows for

⁸³ Campaign & Gov. Conduct Code § 3.216(b)(3).

⁸⁴ Hui Memorandum, *see* note 16, at 5—6.

⁸⁵ BOB STERN, Presentation on the Origins and History of the Political Reform Act of 1974, [Fair Political Practices Commission, June 17, 2021](#). Regarding the creation of the Political Reform Act, Stern said, “we were not perfect. We wrote some provisions I would change today. First, I would change the \$10 lobbyist gift limit. It should have said ‘no gifts at all.’ But, we were concerned that a cup of coffee provided by a lobbyist to a public official would be a violation. So, we put in a monetary amount. ... It would have been much easier, however, just to ban the gifts, since we soon found out that lobbyists were providing gifts up to the limit or even combining the \$10 limit with other lobbyists.”

“[n]ominal and routine office courtesies received by a City official in a restricted source's place of business, as long as the courtesies are available to any person who visits that place of business.”⁸⁶

This exception would allow a City employee who is conducting a site visit or attending a meeting to accept a bottle of water, a snack, a pen, a pad of paper, or other incidental items that the business makes available to guests. These gifts help facilitate a visit and are unlikely to result in undue influence.

Unlimited Food and Drink Shared in a City Office

Second, exception (b) allows restricted sources to provide unlimited food and drink to City officials and employees in their offices. This broad exception has no clear policy purpose and is a glaring loophole in the restricted source rule. As discussed above, there have been multiple recent incidents in which restricted sources have provided City officials and employees with generous amounts of food and drink in spite of the restricted source rule. In particular, DPW held multiple holiday parties paid for by Recology and other DPW contractors. These events involved the provision of food and drink to City officials and employees by restricted sources.⁸⁷ These incidents did not appear to take place within a City office, and therefore the in-office exception was not applicable. However, it is not clear why these incidents should be considered appropriate *had* they taken place inside a City workplace.

Providing free food and drink to City employees at their place of work would seem to only deepen the appearance of a nexus between the gift giver and the business they seek from the department, thereby serving to heighten the appearance that the gift is provided to influence the employees in carrying out their official duties. This exception would allow a business bidding on a City contract to provide a catered meal to the department it seeks to contract with. It would also allow an individual lobbying a department for a particular outcome to send gift baskets of any value to be enjoyed by the staff. This clearly undermines the purpose of the restricted source rule by allowing gifts to be accepted in spite of their potential to create undue influence. It also complicates the rule and communicates to City officials and employees that restricted source gifts are not a serious issue.

Attendance at Conferences

Third, exception (c) allows restricted sources to give gifts of “[f]ree 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.”⁸⁸ This exception serves the valid policy purpose of allowing City officials and employees to accept free attendance at educational events that will help them develop knowledge and skills that will improve the performance of their City duties. However the exception fails to specify that the free attendance must be provided by the organizer of the event; as written, any restricted source could buy a ticket to such an event for an official or employee and thereby evade the restricted source rule. This limitation already exists in the state regulation that allows complimentary travel payments to exceed the \$520 gift limit if the expenses are for

⁸⁶ Los Angeles Municipal Code § 49.5.8(C)(5)(d).

⁸⁷ See June 29, 2020 Controller Report, see note 19.

⁸⁸ Ethics Commission Regulation 3.216(b)-5(c).

training and are paid for by the provider of the training.⁸⁹ This same limitation should exist for the local exception that serves the same purpose.

Free Meals from Industry Members

Fourth, exceptions (d), (e), and (f) allow certain City employees to accept free meals from certain restricted sources. Exception (d) allows City employees managing the City's investments and debt obligations to accept free meals from any "member of the investment, financial, or banking community" as long as the employee is accepting the meal to "cultivate or maintain a working relationship" with that "community" and City investments are discussed at some point during the meal. The restricted source must not be currently negotiating a contract with the department.⁹⁰ Exceptions (e) and (f) allow officials and employees of the Port and Airport, respectively, to accept free meals from restricted sources that are part of the maritime and aviation industries. Again, these meals must be accepted for the purpose of cultivating or maintaining industry relationships, departmental business must be discussed during the meal, and the restricted source must not be actively negotiating a contract with the department.⁹¹

These exceptions undermine the effectiveness of the restricted source rule by allowing City contractors to treat City officials and employees to free meals. As discussed above, free meals have been reported as frequently used by City contractors as a way to ingratiate themselves with City leadership and seek favorable outcomes. The City Attorney's report describes former DBI Director Tom Hui as having accepted free meals from developer Zhang Li and having discussed Zhang's project during the meals. Hui resigned after the City Attorney exposed his conduct in a report, and Hui later said of the meals "I should not have gone" and "I cannot defend it."⁹² No exception exists for officials at DBI to accept meals from restricted sources. Likewise, in the criminal complaint against former PUC General Manager Harlan Kelly, Kelly is alleged to have accepted numerous free meals from City contractor Walter Wong, despite the fact that Wong contracts with the PUC.⁹³ The law, however, provides no exception for PUC officials to accept meals from restricted sources. Public documents from the US Attorney's Office describe former DPW Director Mohammed Nuru as having accepted free meals from Paul Giusti, head of government affairs for Recology, an entity that contracts with and is regulated by DPW, and of accepting meals totaling \$20,000 from William Gilmartin, who was attempted to secure Nuru's support of various City contract bids.⁹⁴ No meal exception exists for DPW officials either.

⁸⁹ 2 CCR 18950.1(c)(5).

⁹⁰ Ethics Commission Regulation 3.216(b)-5(d). This exception does not apply if the member of the financial industry is currently negotiating a contract with the employee's department. However, once the contract is approved or negotiations cease for another reason, free meals can again be accepted under the exception. This approach contradicts, for example, the approach taken by the contractor contribution rule, which prohibits political contributions from contractors from the time a contract bid is submitted until the term of the contract expires.

⁹¹ *Id.* at Regulation 3.216(b)-5(e)—(f). Like exception (d), these exceptions do not apply if the restricted source is currently negotiating a contract with the department.

⁹² Hui Memorandum, see note 16, at 6.

⁹³ Kelly Complaint, see note 5 at ¶¶ 10, 46, 55.

⁹⁴ U.S. Attorney May 27, 2021 Press Release, see note 14.

Lastly, according to the FBI complaint, Airport Commissioner Linda Crayton attended a dinner meeting with Nick Bovis and other individuals who she believed wanted to do business with the Airport. Crayton discussed with the group the Airport's contracting processes and her ability to affect those processes. It is not clear from the FBI's complaint who paid for the meal. Under exception (f), as an Airport Commissioner, Crayton was allowed to accept free meals from restricted sources if she met the terms of exception (f): cultivating relationships with the aviation industry, discussing that relationship over the meal, and no negotiation is ongoing for a City contract.

Although it does not appear that exception (f) applied in Crayton's situation, the danger created by the industry meal exceptions is clear: it allows officials in some departments to accept free meals from those doing or seeking to do business with their department based on a theory that it is necessary to cultivate or maintain industry contacts or conform to private industry norms. However, given the City's policy interests in ensuring the actions of city officials align with the public trust and ending the corrupting influence this practice has been demonstrated to have had in San Francisco, it should be unnecessary for officials to depend on outside sources, especially those who do business with the City, to cover the costs of those meals. Notably, the City's policies allow departments to expend funds on work-related meals that officials and employees must attend.⁹⁵ This should be sufficient to allow officials and employees to get reimbursed for meals that they must purchase in order to carry out their duties. The best policy outcome would be to remove all three of the industry meal exceptions.

Staff engaged with senior management at the Port and confirmed that the department does not anticipate utilizing the exception to accept meals from maritime industry representatives. The Port does however anticipate the need to board vessels operated by companies doing business with the Port. If boarding these vessels is a necessary part of the official's duties and does not convey a personal benefit to the official, these boardings and trips would not be considered gifts and would not necessitate a gift exception (since they would not be subject to the restricted source rule). Given this, removing the exception entirely is appropriate. This would mean that any vessel boarding or trip provided by a restricted source that confers a personal benefit would be prohibited. This would still allow for Port officials to board vessels to accomplish City business, so long as a personal benefit is not received.

Although Staff also recommends removing the Airport meal exception, a viable alternative exists in which a narrowed version of the exception could be retained. Staff engaged with senior management at the Airport and discussed the Airport's need for the exception allowing for free meals from aviation industry representatives. The Airport uses the exception to accept free meals from non-US airline companies that are exploring running flights out of SFO. According to the Airport, such meals are a customary part of forming a relationship between an airport and a new airline, especially when the airline is based in another country; the inability to accept such meals allegedly may harm SFO's ability to compete for new flights. On balance, it would better serve the purposes of the restricted source rule to prohibit such meals entirely, since the airlines are

⁹⁵ See SAN FRANCISCO OFFICE OF THE CONTROLLER, [Accounting Policies & Procedures](#), August 2020, at ¶ 4.8.4. "Officers or employees may be reimbursed for reasonable work-related costs, minor and non-recurring goods up to \$200 from any single vendor, with proper approval from Department Head or authorized designee." This includes food, subject to departmental policy. *Id.* at ¶ 4.8.4.2 (Food).

restricted sources. However, this exception could be narrowed to only permit activities that achieve the Airport's goals while still limiting the danger of corrupt behavior. The exception, if retained, should be narrowed to permit only one meal per year to be accepted, only from a non-US airline carrier that is not currently operating out of SFO, limited to only the Airport director and up to three additional staff members, and limited to meals valued at \$100 per person or less.

Recommendations: The following table lists all of the local gift exceptions and recommends which exceptions should be retained, reformed, or removed.

Table 5: Local Gift Exceptions and Recommendations

	Exception	Recommendation
(a)	Gifts valued at \$25 or less per occasion, up to four times per source during a calendar year	Reform: This exception should be narrowed to only allow for nominal and routine office courtesies received by a City official or employee in a restricted source's place of business, as long as the courtesies are available to any person who visits that place of business. Such courtesies should be limited to goods valued at \$10 per visit.
(b)	Food and drink, without regard to value, to be shared in the office	Remove: This exception is overly broad and unnecessary, and it should be removed. It allows restricted sources to spend an unlimited amount of money on food and drink for City employees, so long as the food and drink are consumed in the office. This type of gift would not be permitted if it occurred outside of the office, so it should not be allowed just because it happens in a City office.
(c)	Free attendance at a widely attended event	Reform: This exception should be narrowed such that it only applies if the organizer of the event is the one providing the free admission.
(d)	Voluntary meals from members of the investment, financial, or banking communities	Remove: This exception is unnecessary and creates opportunities for undue influence or the appearance thereof.
(e)	Voluntary meals or vessel boardings/trips that do not extend overnight from members of the maritime industry (Port only)	Remove: This exception is unnecessary to permit routine Port business and instead creates opportunities for undue influence or the appearance thereof.
(f)	Voluntary meals from members of the aviation industry (Airport only)	Remove (or Reform): The exception for meals paid for by members of the aviation industry creates opportunities for undue influence or the appearance thereof and should be removed. Alternatively, should the Commission conclude as a matter of policy that the restricted source rule should allow for some flexibility for the City's airport officials, Staff would recommend reforming this exception by narrowing it to 1) permit meals paid for only by non-US airline carriers that are not

		currently servicing SFO, 2) permit only one such meal per year, 3) limit the exception to only the Director and up to three additional Airport staff, and 4) limit the value of the meal to \$100 per person.
(g)	Items of any value received by a City employee or officer in a random drawing associated with the City's Annual Joint Fundraising Drive	Retain: A gift received from a bona fide random drawing does not raise policy concerns warranting any change to this exception.

3. The restricted source rule fails to clearly prohibit the giving of a prohibited gift, the use of an intermediary, or gifts made to an official or employee's immediate family members. The rule should be clarified to explicitly prohibit this conduct.

Findings: As discussed, the Campaign and Governmental Conduct Code prohibits City officials and employees from *soliciting or accepting* a gift from a restricted source. However, the code fails to prohibit other aspects of a prohibited gift. Specifically, the code does not contain any rule against a restricted source *giving* a prohibited gift. There is also no prohibition in the restricted source rule against the use of an intermediary to give or receive a gift from a restricted source. There is also no prohibition in the restricted source rule against a restricted source giving a gift to a close family member of an official or employee, or against an official or employee soliciting a restricted source gift for a close family member. These shortcomings limit the effectiveness of the restricted source rule and are inconsistent with other similar rules.

Giving a Restricted Source Gift

First, the restricted source rule does not prohibit the giving of a prohibited gift. Other similar local rules prohibit both the receipt and the giving of a prohibited payment. As discussed above, the lobbyist gift rule prohibits City officials from accepting gifts from a registered lobbyist. The rule also prohibits lobbyists from giving gifts to an official. Likewise, in the campaign finance context the code prohibits certain candidates from soliciting or accepting political contributions from certain city contractors.⁹⁶ That rule also prohibits the contractors from making the contributions.⁹⁷ The same is true for the rule against contributions from parties to land use decisions; both the receiving and the giving of the contribution are prohibited.⁹⁸ This common feature of rules that prohibit certain payments is an important way to further ensure that the payments do not occur. Creating liability for the person making the payment further discourages the conduct and creates repercussions for all parties involved. Creating legal liability for the person making the payment also makes a rule more enforceable. It is a notable gap in the law that restricted sources face no liability for giving gifts that are illegal for officials and employees to accept, and renders the restricted source rule less effective as a result.

⁹⁶ Campaign & Gov. Conduct Code § 1.126(d).

⁹⁷ *Id.* at § 1.126(b).

⁹⁸ *Id.* at § 1.127(b), (c).

Use of an Intermediary

Second, the restricted source rule does not explicitly prohibit the use of an intermediary to disguise the true source of a gift. By contrast, the lobbyist gift rule states that “[n]o lobbyist shall make any payment to a third-party for the purpose of paying for a gift or any part of a gift ... to an officer of the City and County”⁹⁹ Additionally, the lobbyist gift rule states that “[n]o officer of the City and County may accept or solicit any gift ... from a third-party if the officer knows or has reason to know that the third-party is providing the gift ... on behalf of a lobbyist.”¹⁰⁰ This feature of the lobbyist gift rule helps ensure that lobbyists and officials are not able to knowingly use an intermediary to give or receive a gift that is prohibited by law. Similarly, campaign finance laws prohibit the use of an intermediary to launder a contribution to avoid contribution rules.¹⁰¹ Although it is possible that a state laws on the use of intermediaries for gifts may address this issue in part,¹⁰² it is nonetheless a shortcoming of the restricted source rule that the use of an intermediary is not explicitly prohibited.

Additionally, the restricted source rule does not explicitly state that it is unlawful for City officials and employees to act as an intermediary, delivering a gift to another City official or employee from a source that the intermediary knows or has reason to know is a restricted source for the recipient. An example of this conduct is when Mohammed Nuru used monetary payments from Recology to fund a holiday party for DPW employees; Recology was a restricted source for all DPW employees, and Nuru acted as an intermediary for all of them to receive gifts from Recology. Although this conduct may already be punishable as aiding and abetting a violation of the restricted source rule by the recipient,¹⁰³ the law should be more explicit that this conduct is prohibited. The effectiveness of the restricted source rule would be strengthened by adding this language, rather than relying on separate provisions of law to prohibit gifts that pass through intermediaries.

Gifts to Family Members

Third, the restricted source rule does not explicitly prohibit gifts to an official or employee’s immediate family members. Although state regulations may be sufficient in some cases to treat gifts to an official’s family member as gifts to the official,¹⁰⁴ this concept is not included within the restricted source rule itself. By contrast, the lobbyist gift rule prohibits gifts from lobbyists to a City official, “or to a parent, spouse, domestic partner registered under state law, or dependent child” of an official.¹⁰⁵ Officials are likewise prohibited from asking a lobbyist for a gift for themselves “or

⁹⁹ *Id.* at § 2.115(a)(1).

¹⁰⁰ *Id.* at § 2.115(a)(2).

¹⁰¹ *Id.* at § 1.114(c).

¹⁰² See, e.g., 2 CCR 18945 (stating that a person who makes a payment to an official is merely an intermediary for, and not the source of, that gift under certain circumstances); Cal. Gov. Code § 87210, 87313 (requiring disclosure of an intermediary used to make a gift).

¹⁰³ See Campaign & Gov. Conduct Code § 3.236. “No person shall knowingly and intentionally provide assistance to or otherwise aid or abet any other person in violating any of the provisions of this Chapter.”

¹⁰⁴ See 2 CCR 18943 (setting forth circumstances in which a gift to the spouse or child of an official will be treated as a gift to the official).

¹⁰⁵ Campaign & Gov. Conduct Code § 2.115(a)(1).

for the personal benefit of the officer's parent, spouse, domestic partner registered under state law, or dependent child."¹⁰⁶ This feature of the law addresses the reality that gifts made directly to an official are not the only gifts that can create or appear to create undue influence; gifts to the official's immediate family members can have the same effect.

The ongoing federal corruption investigation has shown that restricted sources can seek to provide benefits to the family members of City officials and employees. Walter Wong admitted to paying for costs associated with a trip to China not only for Harlan Kelly (for whom Wong was a restricted source) but also for Kelly's wife, City Administrator Naomi Kelly, and the couple's children.¹⁰⁷ Similarly, although it may not constitute a gift under state law, Paul Giusti allegedly secured a paid position for Mohammed Nuru's son at Recology and later at an affiliated nonprofit.¹⁰⁸ Likewise, the City Attorney discovered that Tom Hui solicited Walter Wong's assistance in securing paid positions for his son and his son's girlfriend.¹⁰⁹

These incidents show how benefits provided to an official's immediate family are benefits to the official as well. This fact is already recognized in the lobbyist gift rule. It is also why the Form 700 requires that a filer report their own financial interests as well as certain financial interests of their spouse, registered domestic partner, and dependent children.¹¹⁰ Such family financial interests can also give rise to a conflict of interest under state law.¹¹¹ For these reasons, the restricted source rule falls short by failing to explicitly prohibit gifts from a restricted source to an official or employee's immediate family. The effectiveness of the restricted source rule would be strengthened by extending the restriction to gifts to immediate family members.

Recommendations: The restricted source rule should be amended to (1) prohibit the giving of a restricted source gift, (2) prohibit the use of an intermediary to circumvent the restricted source rule, (3) prohibit City officials and employees from acting as an intermediary for a restricted source gift, and (4) prohibit restricted sources from giving gifts to the immediate family members of an official or employee (and prohibit the official or employee from soliciting such gifts).¹¹²

¹⁰⁶ *Id.* at § 2.115(a)(2).

¹⁰⁷ Kelly Complaint, *see* note 5.

¹⁰⁸ Giusti Complaint, *see* note 12, at ¶¶ 88-110.

¹⁰⁹ Hui Memorandum, *see* note 16, at 9—10.

¹¹⁰ *See* FAIR POLITICAL PRACTICES COMMISSION, [2020/2021 Form 700 Statement of Economic Interests Reference Pamphlet](#).

¹¹¹ *See* Cal. Gov. Code § 87103 (2021) (“[a] public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, [or] a member of his or her immediate family For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official”).

¹¹² Members of a City official's family would not face liability under the proposed rule if they accept a gift from a source that is a restricted source for the official in question; only the official and the restricted source could face liability.

4. The application of the restricted source rule to City contractors, permittees, and other individuals or entities needs to be clarified. The language of the rule should more explicitly state that it applies to all persons who pursue or enter into agreements with the City and all persons affiliated with a business entity that is a restricted source.

Findings: The restricted source rule fails to explicitly state how the rule applies in several common situations.

First, the rule lacks a clear, comprehensive definition of “doing business.” As discussed, any person “doing business with or seeking to do business with” a department is a restricted source for any official or employee in that department. But, Ethics Commission regulations define *doing business* merely as “entering into or performing pursuant to a contract with the department of the officer or employee.”¹¹³ This definition uses the word *contract* without defining it. It also fails to define what it means to “seek” to do business with a department. By contrast, the concept of *City contractor* is well defined in the campaign finance context. Article I, Chapter 1 of the Code provides a detailed definition of *contract* and *proposal* that provide much greater clarity about when an individual becomes subject to the contractor contribution rule. This clarity is lacking in the restricted source rule.

Second, the restricted source rule fails to explicitly clarify how it applies to individuals who are associated with an entity that is itself a restricted source. For example, if a corporation enters into a contract with a City department, the corporation is a restricted source. But, the law fails to explicitly state that owners, directors, and officers of that corporation are also restricted sources. If the rule were not to apply to such individuals, an absurd result would follow whereby such individuals would be free to give gifts. For example, this result would allow the CEO of a company to give a gift to a department head even though the company contracts with the department led by the department head. The contractor contribution rule addresses this issue by clearly stating that all *affiliates* of a contracting entity are subject to the rule as well. This includes “any member of an entity’s board of directors or any of that entity’s principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 10% in the entity ...”¹¹⁴ The restricted source rule fails to include this kind of clarifying language about high-level individuals associated with an entity.¹¹⁵ This creates a potential for confusion about the application of the rule.

Finally, the restricted source rule fails to explicitly state how it applies to individuals and entities that are seeking City permits or licenses or that are the subject of other administrative proceedings. Such individuals are already identified as a category under state law, and City

¹¹³ Ethics Commission Regulation 3.216(b)-1.

¹¹⁴ Campaign & Gov. Conduct Code § 1.126(a)—(b).

¹¹⁵ In fact, the regulations supporting the restricted source rule add confusion by stating that “[a] person shall not be deemed a restricted source *solely* because that person is employed by a restricted source, provided that the gift is neither paid for by the employer nor provided at the direction of the employer.” Regulation 3.216(b)-4 [emphasis added]. This regulation does not preclude the rule applying to an employee of a restricted source, like a CEO, but seems to suggest that more than a mere employment relationship must be present. The regulation fails to specify what that additional element is.

appointed officials are prohibited from soliciting certain campaign contributions from such individuals who have an official matter before them.¹¹⁶ Individuals seeking permits and licenses have played a major role in the alleged corrupt activities described above. Zhang Li provided gifts to Hui and Nuru because he sought necessary permits for a major development project in the City.¹¹⁷ Similarly, a different developer provided a large loan to DBI building inspector Bernard Curran around the same time Curran approved multiple projects for the developer. These sources were not necessarily City contractors, so the application of the restricted source rule to them is not clear. However, such individuals clearly have valuable, official business before the department in question, and gifts given in this context raise the same dangers of pay-to-play as gifts from City contractors. This omission in the definition of *restricted source* is another area of weakness that should be remedied to strengthen the effectiveness of the law.

Recommendations: To strengthen the effectiveness of the City's restricted source rule, the rule should be updated to:

- clearly define when an individual or entity is subject to the rule because of City contracting;
- clearly apply to all individuals who are owners, directors, or officers of an entity that is a restricted source; and
- clearly apply to all individuals and entities that are seeking permits, licenses, or entitlements for use or who are the subject of other City administrative proceedings.

5. The local exceptions to the subordinate gift rule are overly broad and should be narrowed in several ways.

The subordinate gift rule prohibits City officers and employees from accepting gifts from subordinate employees. As discussed, City law helpfully contains a local definition of *gift* for purposes of this rule. However, Ethics Commission regulations create numerous exceptions to the subordinate gift rule, and some of them are overly broad.

First, gifts from subordinates are allowed if the gift is given to an immediate family member of the superior officer or employee and not enjoyed by the officer or employee himself or herself.¹¹⁸ As discussed in the previous subsection, gifts to an individual's immediate family members can have substantially the same effect as a gift made directly to the individual.¹¹⁹ Although this exception was likely created to allow for gifts when a subordinate has become close with a supervisor's family members, the value of creating an exception this narrow circumstance is outweighed by the much broader potential for abuse that undermines the rule.

Second, a gift of any value from a subordinate may be accepted if it is "given in recognition of an occasion of special personal significance."¹²⁰ The regulation states that "[a]n occasion of special personal significance is any occasion that does not typically occur on a regular basis and that is of

¹¹⁶ Cal. Gov. Code § 84308 (2021).

¹¹⁷ Hui Memorandum, see note 16, at 5—6.

¹¹⁸ Ethics Commission Regulation 3.216(c)-1(b)(2)(B)(xiv)

¹¹⁹ See 2 CCR 18943 (treating gifts to an official's family members as gifts to the official).

¹²⁰ *Id.* at Ethics Commission Regulation 3.216(c)-1(b)(2)(B)(v).

personal significance to the recipient of the gift, as opposed to a general holiday or recurring event such as a birthday. Examples of such an event include marriage, birth or adoption of a child, graduation or illness.”¹²¹ Importantly, this exception allows a gift of any size to be accepted. And, the circumstances under which such gifts can be made are broad and vague; many occasions could be considered personally significant for different people. This makes the exception open for abuse in a manner that undermines the rule itself.

By contrast, another similar exception is appropriately limited to occasions when gifts are traditionally given, such as Christmas, Chanukah, and birthdays.¹²² And, this exception only applies to gifts of \$25 or less. This exception does not create a significant opportunity for abuse because it is more limited and specific in terms of when a gift may be given and caps the value of the gift at \$25.

Recommendations: The exception for gifts given by a subordinate to the family members of an official or employee should be removed. The exception for gifts given in recognition of occasions of special personal significance should be removed. Some of the life events that qualify as an “occasion of special personal significance” under the regulation should be added to the exception for “gifts given on occasions when gifts are traditionally given.” These should include marriage, birth or adoption of a child, and bereavement following the death of a family member. Doing so will end the vagueness of the “special personal significance” exception and will also impose the \$25 limit on such gifts.

6. Gifts from permit expeditors to certain officials and employees are problematic and should be prohibited.

Findings: A permit expeditor, also known as a permit consultant, is an individual who receives compensation for communicating with certain City departments “to help a permit applicant obtain a permit.”¹²³ Permit expeditors must register with the Ethics Commission and file regular reports in which they disclose their contacts with City officers and employees and the compensation they have been promised for doing so.¹²⁴ In this sense, permit expeditors are regulated in a similar manner to lobbyists. Both are individuals who are paid by clients to influence the outcomes of City processes, and both must file periodic reports so that the public can be aware of their activities. In fact, some individuals are both permit consultants and lobbyists, and they are allowed to file both of their disclosures on a single form.¹²⁵

However, whereas lobbyists are prohibited from giving gifts to any City officials, no such rule exists for permit expeditors. The lobbyist gift rule exists because such gifts carry a high risk of pay-to-play or outright bribery. These same policy considerations apply to gifts given by permit expeditors to officials or employees in the departments that handle permits.

¹²¹ *Id.* at Regulation 3.216(c)-1(b)(4).

¹²² *Id.* at Regulation 3.216(c)-1(b)(2)(B)(iii), (b)(3).

¹²³ Campaign & Gov. Conduct Code § 3.405. The departments are the Department of Building Inspection, the Entertainment Commission, the Planning Department, and the Department of Public Works.

¹²⁴ *Id.* at § 3.410.

¹²⁵ Ethics Commission Regulation 2.110-6.

The risks of allowing gifts from permit expeditors are clear. The City Attorney found that DBI Director Hui and DPW Director Nuru, both heads of departments that process permit applications, shared three to four meals with permit consultant Walter Wong to discuss a development project in the City. Wong invited Hui to the dinner by contacting him at his personal email address.¹²⁶ Although it is possible that any gifts from Wong to Hui or Nuru would have been prohibited under the restricted source rule, this may not be the case in all instances. Permit expeditors are not usually City contractors, so only their attempts to influence City officers would make them a restricted source. By contrast, the lobbyist gift rule prohibits all gifts from lobbyists to officers, regardless of whether the lobbyist is also a restricted source for a particular officer on account of a recent attempt to influence that officer. This preventative approach of prohibiting all gifts from professional influencers is more appropriate and effective than relying on the restricted source rule, which is only triggered (for individuals other than contractors) by actual attempts to influence. In this sense, gifts from permit expeditors are less effectively regulated than gifts from lobbyists. This gap in the law fails to address the kind of conduct illustrated by the meals involving Walter Wong and City department heads.

Recommendation: Gifts from permit expeditors to officials and employees in departments that issue permits should be prohibited. The rule should closely mirror the lobbyist gift rule. The receipt, solicitation, and giving of such gifts should all be prohibited. The use of an intermediary to circumvent the rule should be prohibited. And, gifts from permit expeditors to immediate family members of officials and employees should also be prohibited.

C. Summary of Recommendations – Gifts to Individuals

This subsection summarizes the recommendations made above in a basic list format. The list separates legislative recommendations and regulatory recommendations.

Legislative Recommendations

1. **Create a definition of *gift* in the Campaign and Governmental Conduct Code that applies to the restricted source rule.**
 - a. This definition should largely mirror the basic definition contained in California Government Code section 82028.
 - b. Regulations will contain certain exceptions to this definition, as listed below.
2. **Expand the application of the restricted source rule to cover other aspects of a gift beyond the receipt or solicitation of the gift by an official or employee.** The rule should also prohibit:
 - a. The giving of a restricted source gift.
 - b. The use of an intermediary by the source or recipient of a gift to circumvent the restricted source rule.
 - c. Any official or employee from acting as an intermediary for a restricted source gift.
 - d. Restricted sources from giving gifts to the immediate family members of an official or employee (and prohibit the official or employee from soliciting such gifts).

¹²⁶ Hui Memorandum, *see* note 16, at 5.

3. **Amend the restricted source rule to clarify how the restricted source rule applies to City contractors.**
 - a. Provide a comprehensive definition of *doing business* that aligns with the definition of *City contractor* used in the campaign finance context.
4. **Amend the restricted source rule to explicitly apply the rule to affiliates of an entity that is a restricted source. This should include:**
 - a. Directors of the entity, or those with an equivalent role.
 - b. Officers of the entity, or those with an equivalent role.
 - c. Major shareholders in the entity, or equivalent forms of ownership in the entity.
5. **Amend the restricted source rule to explicitly apply to individuals and entities that apply for, or are the subject of a City proceeding involving, a:**
 - a. Permit,
 - b. License, or
 - c. Other entitlement for use.
6. **Prohibit gifts from permit expeditors to officials and employees in departments that issue permits.**
 - a. Prohibit the receipt or solicitation of such gift by an official or employee.
 - b. Prohibit the giving of such gift by a permit expeditor.
 - c. Prohibit the use of an intermediary by the source or recipient of a gift to circumvent the rule.
 - d. Prohibit any official or employee from acting as an intermediary for a gift from a permit expeditor.
 - e. Prohibit giving of gifts by permit expeditors to immediate family members of officials and employees (and solicitation of such gifts by officials and employees).

Regulatory Recommendations

7. **Amend the existing local exceptions to the restricted source rule.**
 - a. Narrow the \$25 exception only to routine office courtesies provided at a restricted source's place of business, limited to non-cash goods valued at \$10 or less per visit.
 - b. Remove the exception for unlimited food and drink in a City office.
 - c. Narrow the exception for free attendance at conferences to instances where the event organizer provides the free attendance.
 - d. Remove the exception for free meals from finance and banking industry representatives.
 - e. Remove the Port exception for meals and vessel boardings provided by maritime industry representatives.
 - f. Remove the Airport exception for free meals from aviation industry representatives. Alternatively, narrow the exception to only permit meals paid for by non-US airline carriers that are not currently servicing SFO, limited to one meal per year, and limited to only the Airport Director and up to three additional staff.
8. **Add some, but not all, of the state gift exceptions to the restricted source rule regulations.** The exceptions should be limited to:
 - a. Informational material
 - b. Gifts from immediate family members
 - c. Campaign contributions

- d. Inheritance
 - e. Disaster assistance
 - f. Event admission for making a speech
 - g. Campaign activity payments
 - h. Event admission for performing a ceremonial role
9. **Amend the local exceptions to the subordinate gift rule.**
- a. Remove the exception for gifts given by a subordinate to the family members of an official or employee.
 - b. Remove the exception for gifts given in recognition of occasions of special personal significance.
 - c. Add some of the life events that currently qualify as an occasion of special personal significance to the exception for gifts given on occasions when gifts are traditionally given. These should include marriage, birth or adoption of a child, and bereavement following the death of a family member.

IV. Recommended Process and Next Steps

This report will be presented by Staff at the Ethics Commission's monthly meeting on August 13. Following the Commission's review and discussion of the findings and recommendations contained in this report, Staff recommends that the Commission take action at that meeting to approve in concept the legislative and regulatory proposals it believes are warranted to strengthen the City's laws with regard to gifts to individuals.

A companion report to this report will discuss gifts to City departments and present Staff findings and recommendations. Staff plans to present this report at a future Commission meeting for discussion and Commission action to approve in concept proposals it believes are warranted to strengthen the effectiveness of local ethics laws with regard to gifts made through City departments.

After both reports have been reviewed by the Commission and the Commission has decided which legislative proposals it wishes to pursue, Staff will collaborate with the City Attorney's office to produce a single draft ordinance that combines the Commission's legislative recommendations contained in both reports. Staff will then present this ordinance to the Commission for its consideration and approval. Similarly, after the Commission has considered both reports, Staff will work with the City Attorney's office to prepare a consolidated set of regulation amendments.

Staff will continue to engage with City departments, the Board of Supervisors, and community stakeholders as this project progresses.