



San Francisco Ethics Commission

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Date: November 8, 2021

To: Members of the Ethics Commission

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

Re: **AGENDA ITEM 6 – Presentation and discussion of draft ordinance and regulation amendments to enact recommendations contained in “Report on Gift Laws Part A: Gifts to Individuals,” dated August 2, 2021, and “Report on Gift Laws Part B: Gifts to City Departments,” dated September 29, 2021.**

Summary

This memorandum summarizes the contents of a draft ordinance (**Attachment 1**) and a set of draft regulation amendments (**Attachment 2**) that would enact the recommendations from the second phase of the Commission’s review of the City’s government ethics laws. The second phase of the project addresses gift laws.

Action Requested

That the Commission discuss the draft ordinance and regulation amendments and provide any feedback that the Commission may have. Following this meeting, Staff will revise the draft ordinance and regulation amendments as needed and present a final version of both documents on which the Commission could take action, if it desired, at the regularly scheduled December 10th meeting. **The Commission may not vote on either the draft ordinance or draft regulation amendments at this time because of the need to meet and confer with employee bargaining units and to publicly notice the regulation amendments. Staff aims to complete both requirements prior to the December 10th Commission meeting.**

I. Background

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 officers 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.

This project's findings and recommendations regarding gifts were presented in two parts. The first part, "Report on Gift Laws Part A: Gifts to Individuals," was published on August 2, 2021 and presented at the Commission August 13th regular meeting.¹ The second part, "Report on Gift Laws Part B: Gifts to City Departments," was published on September 29, 2021 and presented at the Commission's October 8th regular meeting.² The reports recommended several changes to City law regarding gifts to prevent pay-to-play and other ethics problems, as well as measures to increase transparency into gifts to City departments.

II. Key Policy Objectives

San Francisco's restricted source rule prohibits every City officer and employee from soliciting or accepting a gift from any person or organization that (a) does business with the official's department, or (b) has sought to influence the official's actions in the last 12 months. This rule is a crucial guardrail to prevent pay-to-play and avoid the appearance of undue influence. It helps ensure that City officials act in the interest of the public rather than seeking to benefit those who provide them with gifts. The effectiveness of the rule is crucial to maintaining the public's trust in City government.

However, as detailed in Report on Gift Laws Part A, multiple shortcomings exist in City gift laws that cause them to be unnecessarily narrow, permissive, and 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 such rules. The laws should be strengthened by limiting exceptions and broadening the types of gifts to which the rules apply.

Further, as detailed in Report on Gift Laws Part B, several City departments have been observed to accept gifts from restricted sources and distribute them to City officials both within and outside of the department. This practice undermines the restricted source rule and creates the appearance of an improper relationship between City agencies and the entities that they do business with and regulate. Additionally, the existing laws that require departments to disclose all gifts from non-City sources are decentralized and fail to offer the public a sufficiently transparent view into who provides gifts to City government and which City officials are personally benefiting from these gifts. The laws should be strengthened by prohibiting the use of an intermediary, including a City department, to transmit an unlawful gift and by creating a centralized disclosure process for gifts to City departments.

The draft ordinance and set of draft regulation amendments would enact the recommendations contained in the two reports. The documents would also make minor clarifying amendments.

III. Summary of Provisions

The following sections summarize the provisions contained in the draft ordinance (**Attachment 1**) and set of draft regulation amendments (**Attachment 2**). They explain the legal effect that each provision would have and the policy objective underlying the provision.

A. Ordinance Provisions

The following table summarizes the provisions contained in the draft ordinance included as Attachment 1. The provisions that would enact the recommendations from the reports are summarized

¹ [Report on Gift Laws Part A: Gifts to Individuals.](#)

² [Report on Gift Laws Part B: Gifts to Departments.](#)

first. Additional clarifying amendments are summarized second. If and when the ordinance is approved, the departmental gift disclosure requirement in section 3.217 would become operative six months after approval. All other provisions would become operative 30 days after approval.

Table 1: Summary of Draft Ordinance Provisions

Section Number	Summary	Objective
Report Recommendations		
3.203	Creates definition of <i>doing business with the department</i> . Includes licenses, permits, and entitlements for use.	Doing business with a City department is one of two ways in which a person becomes a restricted source. The terms was previously defined only by regulation. In addition to contracting with the City, the definition includes seeking or obtaining a license, permit, or other entitlement for use from the City. These activities involve approvals with great monetary value and should be treated similarly to contracts for purposes of the restricted source rule.
3.203	Creates definition of <i>gift</i> .	The definition mirrors the definition of <i>gift</i> contained in state law, but omits state exceptions, which are largely inappropriate in the context of San Francisco's gift rules. Certain of the state exceptions are applied in the regulations, as described in the subsequent table below.
3.203	Expands definition of <i>restricted source</i> .	<p>(a) contains <i>doing business</i>, an existing component of the definition of <i>restricted source</i>.</p> <p>(b) extends the rule to prohibit gifts from a person to an officer if the officer's approval was required for a contract, license, permit, or entitlement for use that constitutes <i>doing business</i> with the City. This ensures that, in situations where a person is doing business with a City department but the business required approval by officers outside of the department (for example, a contract that was approved by the Board of Supervisors), the restricted source rule would still apply to gifts from the person to those officers. This is important since the same risks of pay-to-play and the appearance of corruption exist for such gifts.</p> <p>(c) extends the rule such that any affiliate of a restricted source is also a restricted source. Affiliates of an entity include its directors, officers, and major shareholders. Without this provision, even if a contracting entity is prohibited from making gifts to certain officials, its directors, officers, and owners would still be free to do so.</p>

		<p>(d) contains <i>attempts to influence</i> an official within the last 12 months, an existing component of the definition of <i>restricted source</i>.</p> <p>(e) relocates the lobbyist gift prohibition from section 2.115(a) to section 3.216(b) to consolidate it with similar rules.</p> <p>(f) would prohibit gifts from registered permit consultants to officials within permit-issuing departments. Like lobbyists, permit consultants are paid to influence the actions of City officials and should therefore be included in the restricted source rule.</p> <p>The definition of <i>restricted source</i> was previously located within section 3.216.</p>
3.216(b)(1)	Prohibits officials from soliciting or accepting a gift from a restricted source for themselves or for others.	(b)(1) contains the existing rule that officials are prohibited from soliciting or accepting a gift from a person they have reason to know is a restricted source. The amendment would additionally prohibit soliciting, accepting, or coordinating a gift to <i>other</i> City officials if the official has reason to know the source of the gift is a restricted source. This would address an observed practice that undermines the effectiveness of the restricted source rule.
3.216(b)(2)	Prohibits officials from accepting a gift from any person if they have reason to know the gift was paid for by a restricted source.	Officials are already prohibited from soliciting or accepting a gift from a person they have reason to know is a restricted source. But, the law fails to specify that officials cannot accept restricted source gifts that are first passed through a third party. If the official has reason to know that a gift originates from a restricted source, the gift should be prohibited. This includes gifts that are passed through City departments.
3.216(b)(3)	Prohibits officials from soliciting or accepting gifts for a family member from a source they have reason to know is a restricted source.	Officials are already prohibited from soliciting or accepting a gift from a person they have reason to know is a restricted source. The amendment would additionally prohibit soliciting or accepting a gift for the official's family member. This would preclude a potential work around to the rule that creates a danger of pay-to-play.
3.216(b)(4)	Prohibits restricted sources from giving gifts to officials.	Currently, only the solicitation or receipt of a restricted source gift by an official is prohibited. The ordinance would prohibit a person from <i>giving</i> a gift to a City official or the official's family member if the person has reason to know that they are a restricted source for the official. Unlaw gifts will be deterred more effectively if giving them is prohibited. The failure of a lobbyist or permit consultant to register as such would not

		allow that person to make gifts that would otherwise be prohibited.
3.216(b)(5)	Prohibits restricted sources from passing gifts through an intermediary.	The ordinance would prohibit a person from making a payment to an intermediary if (a) the person has reason to know the payment will be used to give a gift to a City official, and (b) the person has reason to know they are a restricted source for the official. This would prohibit restricted sources from circumventing the restricted source rule by passing gifts through a third party, including a City department.
3.216(b)(6)	Prohibits anyone from acting as an intermediary for a restricted source gift.	The ordinance would prohibit any person from accepting a payment with the understanding that the person will use the payment to give a gift to an official if the person has reason to know that the source of the payment is a restricted source for the official. This rule would help preclude a workaround to the rule by creating liability for those who knowingly act as a passthrough.
3.217	Requires department heads to disclose certain payments to City departments from non-City sources.	The ordinance would require each department head to disclose payments that their department receives from a source that is not a federal, state, or local government and for which the department does not provide equal consideration. The disclosure is due within 30 days of the payment and must include basic information about the gift and the source, including the names of all City officials who receive a personal benefit from the gift. The disclosure must be updated if the information required to be disclosed, such as how a gift was used, changes after the time of the initial filing.
Clarifying Amendments		
2.115(a)	Relocates lobbyist gift rule.	The lobbyist gift rule would be deleted from section 2.115(a) and added to section 3.216(b).
3.203	Creates definition of <i>contract</i> .	The term was previously undefined and is an important feature of the restricted source rule. The definition mirrors the definition of <i>contract</i> in Art. I, Ch. 1.
3.203	Creates definition of <i>family member</i> .	This term is used in the rule prohibiting restricted sources from giving gifts to an official's family members and the rule prohibiting officials from soliciting such gifts for family members.
3.203	Creates definition of <i>license, permit, or other entitlement for use</i> .	The definition uses the state definition of the same term, which is used in the state law prohibiting certain officials from accepting political contributions from individuals with matters before them (Gov. Code sec. 84308).
3.203	Creates definition of <i>payment</i> .	This term is a component in the definition of <i>gift</i> . The definition mirrors state law.

3.216(b)(1)-(2)	Relocates definitions of <i>restricted source</i> and <i>gift</i> .	These definitions are moved to section 3.203.
3.216(b)(7), (c) [new number]	Amends regulation authority.	This amendment would remove specific language about what gifts are exempted by regulation and instead give general authority to the Commission to exempt certain gifts (these exemptions are contained in the draft regulations below).
3.216(f)	Relocates reference to state gift aggregation regulation.	The lobbyist gift rule (2.115) already incorporates the state rule pertaining to the aggregation of gifts from related sources. The ordinance would move the reference to 3.216 so that it applies to all restricted source gifts. The aggregation principles help prevent circumvention of the rule by, for example, prohibiting a restricting source from using a separate entity that they control to give a prohibited gift.

B. Regulation Amendments

The following table summarizes the provisions contained in the draft regulation amendments included as Attachment 2. The provisions that would enact the recommendations from the reports are summarized first. Additional clarifying amendments are summarized second.

Table 2: Summary of Draft Regulation Amendments

Regulation Number	Summary	Objective
Report Recommendations		
3.216(b)-5(a)	Narrows the exception for small non-cash gifts given on four occasions per year.	The amendment would narrow the existing exception to only permit officials to receive small non-cash gifts from a restricted if the gifts are routine office courtesies (like water, coffee, small snacks, or a pad of paper) that are offered during a site visit that is a necessary part of the official's duties. This would still enable officials to accept small items that facilitate the execution of City duties without creating the opportunities for abuse that exist with the current exception. The current exception has been used to justify gifts, such as expensive parties, that clearly undermine the intent of the rule.
3.216(b)-5(b) [former number]	Removes exception for unlimited food and drink consumed in City offices.	The amendment would remove the exception that allows City officials to accept unlimited food and drinks from restricted sources as long as it is consumed in a City workplace. This exception clearly undermines the restricted source rule.

3.216(b)-5(b) [new number]	Clarifies the exception for free attendance at conferences.	The amendment specifies that officials may accept free attendance at a widely attended conference from a restricted source, but only if the restricted source is the organizer of the event. This would prevent abuse of the exception whereby a restricted source could purchase attendance to a conference that they are not organizing and give it to an official. This was not the intent of the exception.
3.216(b)-5 (d)—(f) [former numbers]	Removes exceptions for free meals from industry representatives.	The amendments would remove the exceptions that allow certain City officials to accept free meals from members of the financial, maritime, and aviation industry. These gifts undermine the effectiveness of the restricted source rule and are not justified by operational needs. Departments can and should expend their own funds to cover the costs of employee meals that are necessary in order to carry out City operations. Departments should not rely on restricted sources to cover such costs.
3.216(b)-5 (d)—(l) [new numbers]	Applies appropriate state gift exceptions to restricted source rule.	The amendments would apply certain state law gift exceptions to the restricted source rule. By creating a definition of <i>gift</i> in the Campaign & Governmental Conduct Code (see summary of ordinance provisions above), state exceptions would no longer be incorporated in their entirety. This is necessary to uphold the effectiveness of the rule. Instead, only the exceptions that are appropriate and do not undermine the effectiveness of the restricted source rule would be incorporated in the regulations. These are the state exceptions for: <ul style="list-style-type: none"> • informational material; • gifts that are returned, donated, or paid for; • gifts from family members; • campaign contributions and payments for campaign activities; • inheritance; • disaster relief; • free admission to event where official makes a speech; and • free admission to event where official performs a ceremonial role.
3.216(c)-1 (b)(2)(B)(v); (b)(3)	Combines exception for occasions of <i>special personal significance</i> with exception for <i>occasions when gifts are traditionally given</i> .	The amendment would combine two existing exceptions. This would remove the ambiguity that exists around the concept of “occasions of special personal significance” by defining what those occasions are. It would also apply the \$25 limit that already applies to gifts given on occasions when gifts are traditionally given (such as holidays and birthdays). This would still allow subordinates to give small

		gifts to their supervisors to recognize births, adoptions, deaths, and marriages.
3.216(c)-1 (b)(2)(B)(xiv)	Removes exception for gifts from subordinate to supervisor's family member.	The amendment removes the exception for gifts to a supervisor's family member, which is a potential work around that undermines the purposes of the subordinate gift rule.
Clarifying Amendments		
3.216(b)-5; 3.215(c)-1	Changes <i>voluntary</i> to <i>unsolicited</i> .	The amendments use the word <i>unsolicited</i> in place of the word <i>voluntary</i> . The word is clearer and is defined to mean "not requested and [] given freely, without pressure or coercion." For gifts from subordinates, a gift is still unsolicited if an official other than the recipient requests a group of officials to make contributions to a group gift and the request "includes a statement that an employee may choose to contribute less or not at all."
3.216(b)-5	Relocates examples to relevant examples.	Currently, all examples appear at the end of regulation 3.216(b)-5. Each examples would instead directly follow the exception to which it corresponds.
3.216(c)-1 (a)(1)	Aligns restatement of subordinate gift rule with the code.	The regulation's current restatement of the subordinate gift rule does not align with the code. The amendment would ensure alignment.
3.216(c)-1 (b)(7) [new number]	Adds definition of subordinate officer.	Currently, the regulation only defines <i>subordinate employee</i> . However, the rule applies to both officers and employees. The amendment would create a definition of <i>subordinate officer</i> that mirrors the concept of <i>subordinate employee</i> .

ATTACHMENT 1

[Campaign and Governmental Conduct Code - Gift Prohibitions and Reporting]

Ordinance amending the Campaign and Governmental Conduct Code to impose gift prohibitions on City officers and employees and members of the public who do business with the City and to require additional gift reporting by City departments.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Article II, Chapter 1 of the Campaign and Governmental Conduct Code is hereby amended by revising Section 2.115, to read as follows:

SEC. 2.115. LIMITS AND PROHIBITIONS.

~~(a) **GIFT PROHIBITION.**~~

~~(1) No lobbyist shall make any gift, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County. No lobbyist shall make any payment to a third-party for the purpose of paying for a gift or any part of a gift, including any gift of travel, to an officer of the City and County, or to a parent, spouse, domestic partner registered under state law, or dependent child of an officer of the City and County.~~

~~(2) No officer of the City and County may accept or solicit any gift, including any gift of travel, from any lobbyist for the officer's personal benefit or for the personal benefit of the officer's parent, spouse, domestic partner registered under state law, or dependent child. No officer of the City~~

1 ~~and County may accept or solicit any gift, including any gift of travel, from a third party if the officer~~
2 ~~knows or has reason to know that the third party is providing the gift or gift of travel on behalf of a~~
3 ~~lobbyist.~~

4 ~~(3) **Exception for gifts of food or refreshment provided by 501(c)(3) nonprofit**~~
5 ~~**organizations.** Notwithstanding the prohibitions set forth in subsections (1) and (2), lobbyists may offer~~
6 ~~gifts of food or refreshment worth \$25 or less per occasion, and officers of the City and County may~~
7 ~~accept such gifts, if the lobbyist is a 501(c)(3) nonprofit organization, the gift of food or refreshment is~~
8 ~~offered in connection with a public event held by the 501(c)(3) nonprofit organization, and the same~~
9 ~~gift of food or refreshment is made available to all attendees of the public event.~~

10 ~~(4) **Aggregation of gifts.** For purposes of the gift limits imposed by subsections (1)–(3),~~
11 ~~gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may~~
12 ~~hereafter be amended.~~

13 ~~(b)~~ (a) **FUTURE EMPLOYMENT.** No lobbyist shall cause or influence the introduction
14 or initiation of any local legislative or administrative action for the purpose of thereafter being
15 employed or retained to secure its granting, denial, confirmation, rejection, passage, or defeat.

16 ~~(e)~~ (b) **FICTITIOUS PERSONS.** No contact lobbyist shall contact any officer of the City
17 and County in the name of any fictitious person or in the name of any real person, except with
18 the consent of such real person.

19 ~~(d)~~ (c) **EVASION OF OBLIGATIONS.** No lobbyist shall attempt to evade the
20 obligations imposed by this Chapter through indirect efforts or through the use of agents,
21 associates, or employees.

22 ~~(e)~~ (d) **CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.**

23 (1) No lobbyist shall make any contribution to a City elective officer or candidate
24 for City elective office, including the City elective officer's or candidate's controlled
25 committees, if that lobbyist (A) is registered to lobby the agency of the City elective officer or

1 the agency for which the candidate is seeking election or (B) has been registered to lobby that
2 agency in the previous 90 days.

3 (2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to
4 influence, as required by Section 2.110(b), the lobbyist may not make a contribution to any
5 City elective officer or candidate for City elective office, or any City elective officer's or
6 candidate's controlled committees.

7 ~~(f)~~ (e) **BUNDLING OF CAMPAIGN CONTRIBUTIONS - PROHIBITIONS.**

8 (1) No lobbyist shall deliver or transmit, or deliver or transmit through a third
9 party, any contribution made by another person to any City elective officer or candidate for
10 City elective office, or any City elective officer's or candidate's controlled committees, if that
11 lobbyist (A) is registered to lobby the agency for which the candidate is seeking election or the
12 agency of the City elective officer or (B) has been registered to lobby that agency in the
13 previous 90 days.

14 (2) If a lobbyist has failed to disclose which agencies the lobbyist attempts to
15 influence, as required by Section 2.110(b), the lobbyist may not deliver or transmit, or deliver
16 or transmit through a third party, any contribution made by another person to any City elective
17 officer or candidate for City elective office, or any City elective officer's or candidate's
18 controlled committees.

19 ~~(g)~~ (f) **AGGREGATION OF AFFILIATED ENTITY CONTRIBUTIONS.** For purposes of
20 the contribution limits imposed by subsections (e) and (f), the contributions of an entity whose
21 contributions are directed and controlled by any lobbyist shall be aggregated with
22 contributions made by that lobbyist as set forth in Section 1.114(c).

23 ~~(h)~~ (g) **REGULATIONS.** The Ethics Commission may adopt regulations implementing
24 this Section 2.115, but such regulations may not establish any exceptions from the limits and
25 prohibitions set forth therein.

Section 2. Article III, Chapter 2 of the Campaign and Governmental Conduct Code is hereby amended by revising Section 3.203 and 3.216, and by adding Section 3.217, to read as follows:

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter 2 the following words or phrases are used, they shall mean:

“Affiliate” shall mean 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, and any person with an ownership interest of more than 10% in the entity.

* * * *

“Contract” shall mean any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco for:

(a) the rendition of personal services,

(b) the furnishing of any material, supplies or equipment,

(c) the sale or lease of any land or building,

(d) a grant, loan, or loan guarantee, or

(e) a development agreement.

“Doing business with the department” shall mean:

(a) being a party to or seeking to become a party to a contract with the department, until 12 months after the term of the contract ends or, if no contract is approved, 12 months after negotiations regarding the contract terminate; or

(b) seeking, obtaining, or possessing a license, permit, or other entitlement for use issued by the department, until 12 months after the date the license, permit, or other entitlement for use was issued, extended, or otherwise approved or, if no license, permit, or other entitlement for use was issued or approved, 12 months after the day the final decision not to issue or approve was made.

1 * * * *

2 “Family member” shall mean an immediate family member, sibling, parent, grandparent,
3 grandchild, aunt, uncle, niece, nephew, or sibling of a spouse or registered domestic partner. Each
4 term shall be inclusive of relationships established by birth, adoption, or marriage.

5 “Gift” shall mean any payment that confers a personal benefit on the recipient, to the extent
6 that consideration of equal or greater value is not received and includes a rebate or discount in the
7 price of anything of value unless the rebate or discount is made in the regular course of business to
8 members of the public without regard to official status. Any person, other than a defendant in a
9 criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the
10 burden of proving that the consideration received is of equal or greater value. Any gift exceptions
11 established by State law shall not apply to “gift,” as used in this Chapter.

12 * * * *

13 “License, permit, or other entitlement for use” shall mean business, professional, trade, and
14 land use licenses and permits and other entitlements for use, including land use entitlements, as defined
15 in California Government Code Section 84308 and its implementing regulations, as amended from time
16 to time, provided that “entitlement for use” shall not include any contracts as that term is defined in
17 this section.

18 * * * *

19 “Payment” shall mean a payment, distribution, transfer, loan, advance, deposit, gift or other
20 rendering of money, property, services or anything else of value, whether tangible or intangible.

21 “Restricted source” shall mean:

22 (a) a person doing business with or seeking to do business with the department of the officer or
23 employee;

1 (b) for members of boards and commissions, including the Board of Supervisors, a person
2 doing business with any City department pursuant to a contract that required the approval of the board
3 or commission;

4 (c) an affiliate of an entity that qualifies as a restricted source under (a) or (b);

5 (d) a person who during the prior 12 months knowingly attempted to influence the officer or
6 employee in any legislative or administrative action;

7 (e) for officers, a registered lobbyist; or

8 (f) for officers and employees of the Department of Building Inspection, the Entertainment
9 Commission, the Planning Department, or the Department of Public Works, a registered permit
10 consultant that has contacted the department of the officer or employee during the prior 12 months to
11 help a permit applicant obtain a permit.

12 13 **SEC. 3.216. GIFTS.**

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

17 (b) ~~General gift restrictions~~ **Restricted Source Rules.** In addition to the gift limits,
18 prohibitions, and reporting requirements imposed by the Political Reform Act and this Code
19 and any subsequent amendments thereto, the following shall be prohibited: ~~no officer or~~
20 ~~employee of the City and County shall solicit or accept any gift or loan from a person who the officer~~
21 ~~or employee knows or has reason to know is a restricted source, except loans received from~~
22 ~~commercial lending institutions in the ordinary course of business.~~

23 (1) No City officer or employee may solicit, coordinate, facilitate or accept, any gift for
24 themselves or for any other City officer or employee, any gift from a person who the officer or
25

1 employee knows or has reason to know is a restricted source for themselves or for the recipient of the
2 gift.

3 (2) No City officer or employee may solicit or accept a gift from any person, including a
4 City department, if the officer or employee knows or has reason to know that the gift was funded or
5 provided by a restricted source.

6 (3) No City officer or employee may solicit or accept any gift from a restricted source
7 for any of their family members.

8 (4) No person may offer or make a gift to any officer or employee, or any of the officer's
9 or employees' family members, if the person knows or has reason to know that they are a restricted
10 source for the officer or employee. For purposes of this subsection (b)(4), a person who is required to
11 register as a lobbyist or permit consultant but fails to do so shall be considered a restricted source for
12 any official for whom, had the person properly registered, the person would be considered a restricted
13 source.

14 (5) No person may make a payment to an intermediary, including any City department,
15 if the person knows or has reason to know that the intermediary will use the payment to provide a gift
16 to any City officers or employees and that the person is a restricted source for the officers or
17 employees.

18 (6) No person may accept a payment on condition or with the agreement or
19 understanding that the person will use the payment to give a gift to a City officer or employee if the
20 person knows or has reason to know that the source of the payment is a restricted source for the officer
21 or employee.

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

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

6 (37) **Regulations.** The Ethics Commission may issue regulations implementing
7 this section, including regulations exempting ~~voluntary~~ certain ~~gifts that are nominal in value such~~
8 ~~as gifts that are given by vendors to clients or customers in the normal course of business.~~

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

15 * * * *

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

18 (f) **Aggregation of Gifts.** For purposes of this Section 3.216, gifts shall be aggregated as set
19 forth in California Code of Regulations, Title 2, Section 18945.1, as amended from time to time.

20
21
22 **SEC. 3.217. DISCLOSURE OF GIFTS TO THE CITY.**

23 (a) **Disclosure Requirement.** The department head or other official with responsibility for
24 overseeing any City department that receives any payment from a non-City source for which equal or
25

1 greater consideration is not provided by the department must disclose the payment to the Ethics
2 Commission.

3 (b) **Contents.** The disclosure required in subsection (a) must include the following:

4 (1) the name of the source of the payment;

5 (2) the date of the payment;

6 (3) the total value of the payment;

7 (4) if the payment includes goods or services, a description of the goods or services;

8 (5) the purpose and use of the payment;

9 (6) the name of each City officer or employee that receives a personal benefit from the
10 gift or the through the City's use of the gift;

11 (7) a description and valuation of the personal benefits received by each City officer or
12 employee through the department's use of the gift;

13 (8) a description of any contracts that the payor has with the department;

14 (9) a description of any licenses, permits, or other entitlements for use that the payor is
15 currently seeking from the department or has been issued by the department within the last 12 months
16 to the payor; and

17 (10) a description of any financial interest the payor has involving the City.

18 (c) **Deadline for Initial Filing.** The disclosure required in subsection (a) must be filed within
19 30 days of the receipt of the payment by the department.

20 (d) **Supplemental Filings.** If any of the information disclosed by the department in the initial
21 filing made pursuant to subsection (c) changes after the time of the initial filing, the filer must submit a
22 supplemental filing within 30 days that describes those changes.

23 (e) **Form.** The disclosures required by this Section 10.100-305.5 must be made in a form and
24 format prescribed by the Ethics Commission and may include an electronic format.

1 (f) **Exception – Payments from Government Agencies.** Payments from local, state, and
2 federal government agencies to City departments are not subject to the disclosures required in this
3 Section 10.100-305.5.

4
5 Section 3. Effective and Operative Dates.

6 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
7 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
8 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
9 Supervisors overrides the Mayor's veto of the ordinance.

10 (b) Operative Dates.

11 (1) This ordinance's amendments to Sections 2.115, 3.203, and 3.216 of the
12 Campaign and Governmental Conduct Code shall become operative on the effective date of
13 this ordinance.

14 (2) This ordinance's addition of Section 3.217 of the Campaign and
15 Governmental Conduct Code shall become operative six months after the effective date of
16 this ordinance.

17
18 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the "Note" that appears under
23 the official title of the ordinance.

1 Section 6. Amendments - Voting Requirements. As required by Campaign and
2 Governmental Conduct Code Section 3.204, the Board of Supervisors may only amend the
3 amendments set forth in Section 2 of this Ordinance, if all of the following conditions are met:

4 (a) the amendment furthers the purposes of this Chapter;

5 (b) the Ethics Commission approves the proposed amendment by at least a four-fifths
6 vote of all its members;

7 (c) the proposed amendment is available for public review at least 30 days before the
8 amendment is considered by the Board of Supervisors or any committee of the Board of
9 Supervisors; and

10 (d) the Board of Supervisors approves the proposed amendment by at least a two-
11 thirds vote of all its members.

ATTACHMENT 2

Conflict-of-Interest Project Phase II: Gifts

Draft Regulation Amendments

Regulation 3.216(b)-5. Gifts from Restricted Sources—Exemptions

The following are not gifts subject to the ~~ban~~ rules contained in section 3.216(b).

~~(a) Voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion, provided that no officer or employee may receive gifts from any restricted source under this exception on more than four occasions during a calendar year. For the purpose of this subsection, a gift card or gift certificate is a cash gift.~~

(a) Gifts, other than cash, that constitute routine office courtesies with an aggregate value of \$10 or less per occasion provided to an officer or employee by a restricted source at the restricted source's place of business at such times that the officer or employee must visit the restricted source's place of business in order to carry out City duties. Gifts received by any officer or employee under this exception from any single restricted source must not exceed four occasions during a calendar year. Routine office courtesies include bottled water, coffee, small snacks, a pad of paper, and writing instruments. Routine office courtesies do not include alcohol.

Example: An employee of a department must visit the place of business of a company doing business with the department in order to assess the company's compliance with the laws administered by the department. During the site visit, the employee may accept routine office courtesies that are offered such as coffee, tea, juice, pastry or bagels, as long as their aggregate value does not exceed \$10 per employee for the duration of the visit, provided that the employee has not already accepted such routine office courtesies from the restricted source on four occasions during the calendar year.

~~(b) Voluntary gifts, of food and drink, without regard to value, to be shared in the office among officers and employees.~~

~~(c)~~ Free attendance at a widely attended convention, conference, seminar, or symposium where attendance is appropriate to the official duties of the officer or employee and the ~~donor~~ organizer of the event provides the free attendance ~~voluntarily~~ unsolicited. A gift is unsolicited if it is not requested and is given freely, without pressure or coercion.

(1) "Free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event. "Free attendance" may also include attendance at meet-and-greet or hospitality sessions and meals offered in connection with the convention, conference, seminar, or symposium where networking or discussion opportunities may enable the officer or employee to establish working relationships that may inure to the benefit of the City. The term does not include entertainment collateral to the event.

(2) A "widely attended" event is an event that is open to individuals from throughout a given industry or profession, or an event that is open to individuals who represent a range of persons interested in a given matter.

(3) An officer or employee who attends such an event may not accept an an sponsor's event organizer's offer of free attendance at the event for an accompanying individual.

Example: Staff of a City department are invited to attend a conference on best practices in the industry that is organized by a restricted source. The event organizer provides free attendance to the department's staff without the department asking for free attendance. Staff may accept free attendance to the conference. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

(d) Voluntary meals from a member of the investment, financial, or banking community provided to officers and employees who are responsible for managing investments or debt obligations on behalf of the City, provided that (i) such meals are necessary to discuss City investments or financial transactions in order to cultivate and maintain working relationships between the City and the investment, financial, or banking community; (ii) management of the City's investments or debt is discussed during the meal; and (iii) the person providing the meal is not negotiating a contract with the department of the officer or employee. For the purpose of this subsection, "investment, financial, or banking community" includes investment managers; firms that market and sell municipal securities in the tax-exempt and taxable markets including entities that support financing transactions such as bond insurers, rating agencies, credit banks, bond and disclosure counsel, financial advisors, feasibility consultants and trust agents; the custodian bank; and consultants who contract to assist the business of the retirement trust. For the purposes of this subsection, "negotiating a contract" means communicating with the department of the officer or employee regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the department makes the proposal until the date of the approval of the contract or the date that the person or the department communicates to the other party that negotiations for the contract have terminated.

(e) Voluntary meals or vessel boardings or vessel trips that do not extend overnight from a member of the maritime industry provided to officers and employees who are responsible for managing the Port's maritime commerce portfolio, provided that (i) such meals or vessel boardings or trips are necessary to cultivate and maintain working relationships between the Port and the maritime industry; (ii) management of the Port's maritime commerce portfolio is discussed during the meal, vessel boarding or trip; and (iii) the person providing the meal, or vessel boarding or trip is not negotiating a contract with the Port at the time of the meal or vessel boarding or trip. For the purposes of this subsection, "maritime industry" means individuals and entities engaged in: cruise and cargo shipping; ship repair; commercial and sport fishing; ferry and excursion operations; harbor services such as pilots, tugboats, barges, water taxis, lay berthing and other ship services; terminal management; stevedoring and longshore labor; facility and ship security. "Managing the Port's maritime commerce portfolio" includes: managing and marketing the Port to the maritime industry; promoting Port maritime facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the City's cruise and cargo terminals, ferry terminals, shipyards and dry docks, Fisherman's Wharf and Hyde Street commercial fishing harbors, excursion terminals and harbor service facilities for pilots, tugboats, barges, water taxis, lay berthing and other ship services. For the purposes of this subsection, "negotiating a contract" means communicating with the Port regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the Port makes the proposal until the date of the approval of the contract or the date that the person or the Port communicates to the other party that negotiations for the contract have terminated.

(f) Voluntary meals from a member of the aviation industry provided to officers and employees who are responsible for managing and marketing the Airport to the aviation industry, provided that (i) such meals are necessary to cultivate and maintain working relationships between the Airport and aviation industry representatives; (ii) the aviation industry's business relationship with the Airport is discussed during the meal; and (iii) the person providing the meal is not, at the time of the meal, negotiating contract benefits on terms that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. For the purposes of this subsection, "aviation industry" means individuals and entities engaged in: air cargo shipping; general and business aviation and commercial airlines; air tourism; airline service related associations and agencies; joint marketing programs with non-competitive airports to enhance air service to the public; and facility and airline security. "Managing and marketing the Airport" includes: managing and marketing the Airport to the aviation industry; promoting Airport facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the Airport's airfield, facilities and terminals. For the purposes of this subsection, "negotiating contract benefits" means communicating with the Airport regarding a proposal to adopt or change a material term of an existing or prospective contract to include commercial benefits that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. A person is "negotiating contract benefits" from the date that the Airport considers the proposal until the date of the approval of the contract or the date that the Airport communicates to the other party that negotiations for the contract benefits have terminated.

(g) Items of any value received by a City employee or officer in a random drawing associated with participation in the City's Annual Joint Fundraising Drive under Administrative Code Chapter 16, Article V (also known as Combined Charities Fundraising Drive).

Example: An employee donates to the City's Combined Charities Fundraising Drive. The employee's name is entered in a drawing with all other donors, and the employee wins a \$50 gift certificate in the drawing. The gift certificate was provided to the City by a company doing business with the employee's department. Even though the company that provided the gift certificate is a restricted source, the employee may accept the gift as a reward or benefit associated with participation in the fundraising drive.

Example: A restricted source sends five pizzas to a department as a goodwill gesture. Because this is a gift to the office, staff may share the pizza.

Example: A restricted source sends two opening day Giants ballgame tickets to a staff person. The staff person may not accept the tickets because their value exceeds \$25.

Example: A restricted source sends a baseball cap to the department head. The department head may accept the baseball cap because its value is \$25 or less, provided that the department head has not already accepted gifts with a value of \$25 or less from the restricted source on four occasions during the calendar year.

Example: Staff of a department are invited to a morning training event that is sponsored by a restricted source. Staff who attend the session may accept food and beverages that are offered at the event such as coffee, tea, juice, pastry or bagels, because their value do not exceed \$25, provided that such staff has not already accepted such food and beverages from the restricted source on four occasions during the calendar year.

Example: Staff of a City department are invited to attend a forum on best practices in the industry that is sponsored by a restricted source. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

Example: An employee donates to the City's Combined Charities Fundraising Drive. The employee's name is entered in a drawing with all other donors, and the employee wins a \$50 gift certificate in the drawing. The gift certificate was provided to the City by a company doing business with the employee's department. Even though the company that provided the gift certificate is a restricted source, the employee may accept the gift as a reward or benefit associated with participation in the fundraising drive.

(d) Informational material as defined by California Code of Regulations Title 2, regulation 18942.1.

(e) A payment that is not used and that, pursuant to California Code of Regulations Title 2, regulation 18941, is returned, donated, or for which reimbursement is paid.

(f) A payment from: the official's spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph.

(g) A campaign contribution required to be reported under Title 9 of the California Government Code.

(h) Any devise or inheritance.

(i) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.

(j) Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in California Code of Regulations Title 2, regulation 18950 (b)(2)), so long as the admission is provided by the person who organizes the event. For purpose of this subdivision, "nominal" means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.

(k) Payments for campaign activities as specified in California Code of Regulations Title 2, regulation 18950.3.

(l) A ticket provided to an official and one guest of the official for the admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of the official's agency, as defined in California Code of Regulations Title 2, regulation 18942.3, so long as the official's agency complies with the posting provisions set forth in California Code of Regulations Title 2, regulation 18944.1, subdivision (d).

Regulation 3.216(c)-1: Gifts from Subordinates

(a) Prohibition on gifts.

(1) For the purposes of section 3.216(c), a City officer or employee may not solicit or accept from a subordinate or employee under his or her supervision or from any candidate or applicant for a position as a subordinate or employee under his or her supervision any gift, as defined in subsection (b) of this section.

(2) Gifts permitted under this section remain subject to any other applicable laws and rules, including but not limited to state and local limits on gifts to designated employees (Cal. Gov't Code § 89503; C&GCC § 3.1-101), the City's prohibition on gifts given in exchange for appointments or promotions (C&GCC § 3.208), and the City's prohibition on bribery (C&GCC § 3.216); the City's limits on gifts from restricted sources (C&GCC § 3.216); the City's limits on gifts from lobbyists (C&GCC § 2.115), and any departmental rules on gifts.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Applicant or candidate. An applicant or candidate for a position as a subordinate means any person who has communicated, orally or in writing, to a City officer or employee acting in an official capacity, that the person wants to be considered for the position.

(2) Gift.

(A) Except as provided in (B), a gift is 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.

(B) The following, ~~voluntarily given~~ when unsolicited, are not gifts within the meaning of this section.

(i) Gifts, other than cash, with an aggregate value of \$25 or less per occasion, given on occasions on which gifts are traditionally given.

(ii) Gifts, such as food and drink, without regard to value, to be shared in the office among employees.

(iii) Personal hospitality provided at a residence that is of a type and value customarily provided by the employee to personal friends.

(iv) Items given in connection with the receipt of personal hospitality if of a type and value customarily provided by the employee on such occasions.

~~(v) A gift of any value given in recognition of an occasion of special personal significance.~~

(vi) A gift of any value given in recognition of an occasion that terminates a subordinate relationship.

(vii) Informational material that serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties and may include books, reports, pamphlets, calendars, or periodicals.

(viii) Gifts from an individual's spouse, domestic partner, child, parent, grandparent grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse or domestic partner of any such person, provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

~~(viii)~~ Campaign contributions required to be reported under the Government Code, Title 9, Chapter 4 (commencing with Section 84100) and the Campaign and Governmental Conduct Code, Article I (commencing with Section 1.100).

(ix) Any devise or inheritance.

(xi) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(xii) A gift that, within 30 days of receipt of the gift, the donor either pays for, returns unused, or donates unused to a government or a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(xiii) A ticket to a fundraiser for an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or for a political committee or candidate.

~~(xiv) A gift given directly to members of the immediate family of an officer or employee, provided that the gift is not used or disposed of by the officer or employee or given to the officer or employee by the recipient family member for the officer's or employee's disposition or use at the discretion of the officer or employee. A gift is given directly to a family member of the officer or employee if the family member's name or designation appears in the address or communication tendering or offering the gift and the gift is intended for the family member's use and enjoyment. A gift given to the family member of an officer or employee will be considered a gift to the officer or employee if the officer or employee exercises discretion and control over who will use the gift. If the officer or employee enjoys a direct benefit from a gift to the immediate family of the officer or employee, the full value of the gift will be attributable to the official.~~

(3) Occasion on which gifts are traditionally given. An occasion on which gifts are traditionally given ~~includes any~~ is a holiday traditionally associated with gift giving, such as Christmas and Chanukah, as well as birthdays, marriage, birth or adoption of a child, or bereavement following the death of an immediate family member or thanking a person for a kindness or good deed.

~~(4) Occasion of special personal significance. An occasion of special personal significance is any occasion that does not typically occur on a regular basis and that is of 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.~~

(45) Occasion that terminates a subordinate relationship. An occasion that terminates a subordinate relationship is any event severing the relationship, including but not limited to retirement, transfer, or promotion.

(56) Receipt of gift. A gift is received when a person exercises control over the gift.

(67) Subordinate employee. 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.

(7) Subordinate officer. An officer is a subordinate of (a) any other officer whose position, or a board on which the officer sits, is the appointing authority for the officer in question, and (b) any officer whose position, or a board on which the officer sits, is the appointing authority for the appointing authority for the officer in question.

Example: The City Administrator is the appointing authority for a department head. The department head is therefore a subordinate to the City Administrator. Additionally, because the Mayor is the appointing authority for the City Administrator, the department head is also a subordinate to the Mayor.

(8) Value. The value of a gift is determined by the actual value or where the actual value is unknown, making a reasonable good faith estimate of the fair market value of the item or service, comparing where possible similar items or services.

(9) ~~Voluntarily Unsolicited~~. A gift is ~~given voluntarily unsolicited~~ if it is not requested and is given freely, without pressure or coercion. A contribution to a gift from multiple persons is given voluntarily unsolicited if the recipient of the gift did not request the contribution and it is made in an amount determined by the employee or subordinate. A contribution to a gift from multiple persons will be presumed to have been given voluntarily unsolicited if the request for the donation-contribution is made by an officer or employee other than the recipient and includes a statement that an employee may choose to contribute less or not at all.