



San Francisco Ethics Commission

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Attachment 1: Summary of Draft Measure Provisions

Section Number	Summary	Details
Report Recommendations		
1.503	Establishes a legislative amendment process limited to amendments approved by a supermajority of both the Ethics Commission and Board of Supervisors.	This chapter, which regulates campaign consultants was created through a ballot measure but provides no mechanism for legislative amendments. This makes it difficult for needed updates or improvements to be made to the chapter to ensure that it continues to be effective. The voters’ power to change the chapter would not be affected.
2.135	Adds a provision that allows the Commission to require electronic filing of public disclosures.	This chapter, which regulates lobbyists, does not currently contain explicit language stating that the Commission may require disclosures be made electronically.
2.145	Removes required mental states of “knowingly or negligently” from penalty provision.	This chapter, which regulates lobbyists, attaches a prerequisite mental state to violations in order for those violations to result in administrative penalties. This standard is a departure from how administrative penalties are applied in other chapters: administrative penalties are typically applied on a strict liability basis in other chapters.
2.100 <i>et seq.</i>	Re-authorizes chapter in order to effectuate amendment provision.	This chapter already contains a provision (2.103) that requires legislative amendments to be approved by a supermajority of both the Board of Supervisors and the Ethics Commission, an important safeguard to protect ethics laws. But, it is not clear that the provision applies to all of the lobbyist chapter. The chapter would be re-authorized by the draft measure to ensure that the legislative amendment provision applies to all sections of the chapter. The text of the chapter has not been changed except as noted above. This would not affect the power of the voters to amend the chapter in any way.
3.1-102 & 3.1-102.5	Adds a penalty provision.	This chapter, which contains rules regarding the disclosure of personal financial interests, including the requirement that City officers and certain City employees file the Form 700, does not currently mention penalties, even though they can be imposed under the Charter. The absence of a penalty

		provision has the potential to mislead Form 700 filers into thinking that there are no penalties for failure to timely report all relevant financial interests or vote without having properly filed.
3.203	Creates definition of <i>affiliate</i> .	This concept mirrors the same terms as it is used in the campaign finance context and is important to apply the rule to gifts from individuals who are doing business with a department through a business entity.
3.203	Amends definition of <i>anything of value</i> .	This concept is the basis for the definition of gift. It should therefore not contain a reference to state or local gift exceptions, as those are applied elsewhere in City law.
3.203	Creates definition of <i>appointed department head</i> .	This concept is used in the new draft rules regarding incompatible activities that involve excessive time demands or would result in regular disqualifications.
3.203	Creates definition of <i>contract</i> .	This concept is one of the bases for what makes a person a restricted source. Currently, “doing business” is only defined in regulations, and the measure would codify a definition of doing business, which includes contracting with the City.
3.203	Creates definition of <i>department head</i> .	This term is used in Art. III, Ch. 2 in the draft rule regarding incompatible activities and the new centralized disclosure of gifts to City departments.
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	Creates definition of <i>license, permit, or other entitlement for use</i> .	This category of City approvals mirrors what is defined in state law as triggering the rule against soliciting contributions (Gov. Code § 84308). It is used in the definition of <i>doing business</i> , an element of <i>restricted source</i> .

3.203	Creates definition of <i>payment</i> .	This term is a feature of the definition of <i>gift</i> and is used in the draft gift rules.
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>
3.205	Extends annual ethics training requirements to all Form 700 filers.	Not all Form 700 filers are currently required to complete an annual training on ethics laws and certify completion of the training to the Ethics Commission. This change will also require every

		department, board, commission, and agency of the City to annually provide to its officers and employees with a summary of relevant state and local ethics laws to be created by the Ethics Commission.
3.214(b)	Creates a penalty for failure to disclose a personal, professional, or business relationship with persons involved in a government decision.	The Code currently explicitly states that there is no penalty associated with failure to comply with this section. Deleting this language stating that there is no penalty associated with failure to comply would allow for penalties against an official who made a decision involving someone with whom they had a personal, professional, or business relationship and failed to disclose that relationship.
3.214(c)	Specify that the Ethics Commission may issue regulations on how the required disclosure must be made and archived.	Departments should be given guidance on how to store 3.214 disclosures and how to make them available to the public.
3.216(a)	Define "bribe" broadly as "anything of value," rather than narrowly as a "gift."	The current bribery rule only prohibits bribes that also meet the definition of <i>gift</i> . This is problematic because the definition of gift is subject to many exceptions, which should not be applied to bribes. Anytime a payment is made with the intent to influence an official act, the payment should be considered a bribe.
3.216(a)	Prohibit bribery in cases where the payment is made to a third party, not the official in question.	The current bribery rule does not explicitly prohibit payments made to third parties, even when those payments are made with the intent to influence a City official.
3.216(a)	Prohibit the solicitation of bribes by City officials.	San Francisco does not currently prohibit the solicitation of bribes. A prohibition on the solicitation of bribes would be consistent with federal law.
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	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

	to know the gift was paid for by a 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 by the fifteenth of the month following receipt the payment and must include basic information about

		<p>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.</p>
<p>3.218</p>	<p>Codify the following rules that appear in most Statements of Incompatible Activities:</p> <ol style="list-style-type: none"> 1) Activities Subject to the Department’s Jurisdiction 2) Selective Assistance to Persons Seeking to Do Business with a City Department (including contractors and applicants for a license, permit, or other entitlement for use) 3) Use of City Resources 4) Use of Prestige of Office 5) Use of City Work Product 6) Acting as an Unauthorized City Representative 7) Compensation for City Duties or Advice 8) Lobbying Other Officials within the Department 9) Excessive Time Demands and Regular Disqualifications 	<p>These rules represent the standard ethics rules that appear in most Statements of Incompatible Activities. By codifying the rules in the Code, the rules will apply uniformly across all City departments, eliminating unnecessary divergences and enabling broader awareness and compliance. Advanced Written Determinations would remain available for the rule against excessive time demands or regular disqualification, but would no longer be available for the rule against activities subject to review by the official’s department of the rule against providing selective assistance.</p>

	Discontinue departmental Statements of Incompatible Activities.	
3.234	Adds a provision that allows the Commission to require electronic filing of public disclosures.	This chapter, which contains Conflicts-of-Interest and Ethics rules, does not currently contain explicit language stating that the Commission may require any disclosures be made electronically.
3.303	Protect ethics laws from amendment by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.	There is currently no provision in this chapter regarding amendments, which means a simple majority vote from the Board of Supervisors is sufficient to amend the chapter. The voters' power to change the chapter would not be affected. In order to carry out this change, all provisions of the chapter need to be reauthorized, so the chapter is reprinted in the draft measure in its entirety. The text has not been changed unless noted in this chart.
3.403	Protect ethics laws from amendment by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.	There is currently no provision in this chapter regarding amendments, which means a simple majority vote from the Board of Supervisors is sufficient to amend the chapter. The voters' power to change the chapter would not be affected. In order to carry out this change, all provisions of the chapter need to be reauthorized, so the chapter is reprinted in the draft measure in its entirety. The text has not been changed unless noted in this chart.
3.415	Removes required mental states of "knowingly or negligently" from the penalty provision.	This chapter, which regulates permit consultants, attaches a prerequisite mental state to violations in order for those violations to result in administrative penalties. This standard is a departure from how administrative penalties are applied in other chapters: administrative penalties are typically applied on a strict liability basis in other chapters.
3.425	Adds a provision that allows the Commission to require electronic filing of public disclosures.	This chapter, which regulates permit consultants, does not currently contain explicit language stating that the Commission may require disclosures be made electronically.
3.505	Protect ethics laws from amendment by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.	There is currently no provision in this chapter regarding amendments, which means a simple majority vote from the Board of Supervisors is sufficient to amend the chapter. The voters' power to change the chapter would not be affected. In order to carry out this change, all provisions of the chapter need to be reauthorized, so the chapter is reprinted in the draft measure in its entirety. The text has not been changed unless noted in this chart.

3.525	Adds a provision that allows the Commission to require electronic filing of public disclosures.	This chapter, which regulates major developers, does not currently contain explicit language stating that the Commission may require disclosures be made electronically.
3.530	Removes required mental states of “knowingly or negligently” from the penalty provision.	This chapter, which regulates major developers, attaches a prerequisite mental state to violations in order for those violations to result in administrative penalties. This standard is a departure from how administrative penalties are applied in other chapters: administrative penalties are typically applied on a strict liability basis in other chapters.
4.103	Protect ethics laws from amendment by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.	There is currently no provision in this chapter regarding amendments, which means a simple majority vote from the Board of Supervisors is sufficient to amend the chapter. The voters’ power to change the chapter would not be affected. In order to carry out this change, all provisions of the chapter need to be reauthorized, so the chapter is reprinted in the draft measure in its entirety. The text has not been changed unless noted in this chart.
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>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.
3.216(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.

A. 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)	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

[new numbers]		<p>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:</p> <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 occasions when gifts are traditionally given.	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> .
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