

Government Ethics and Conflict of Interest Review Project

Phase III: Strengthening Essential Ethics Provisions

San Francisco Ethics Commission

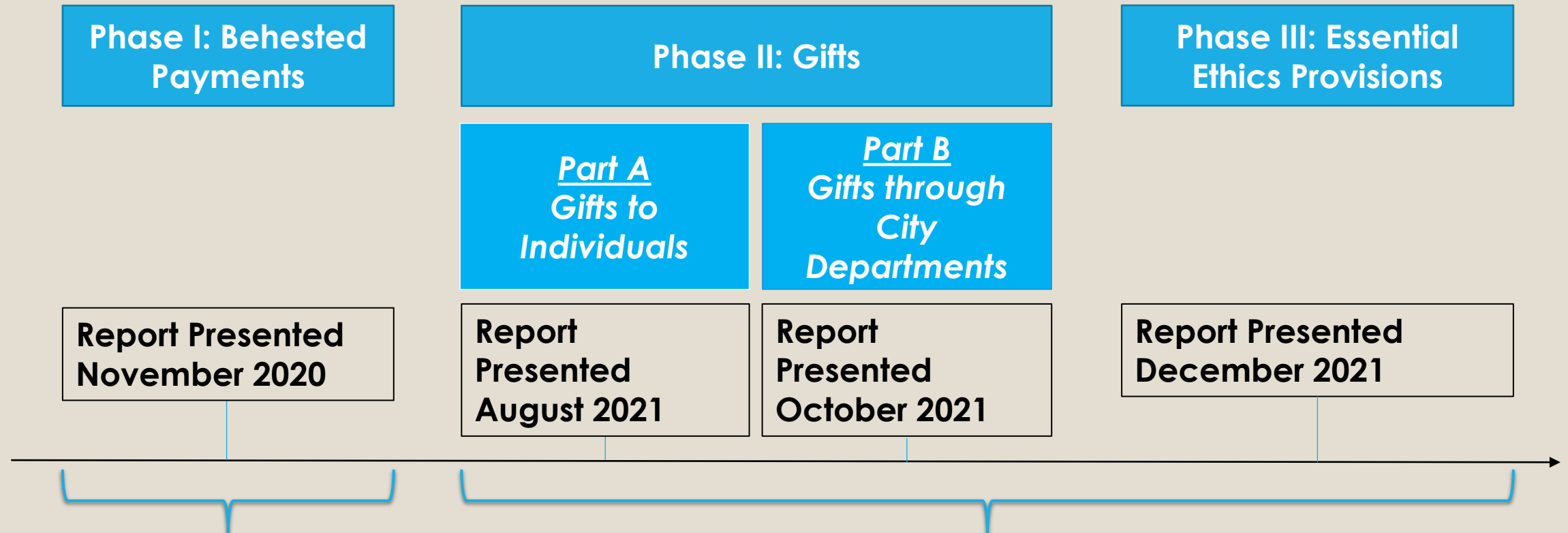
December 10, 2021

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Government Ethics and Conflict of Interest Review Project Status



- Agenda Item 6 – Ballot Measure
- File 201132 (Pending)

- Agenda Item 7 – Ballot Measure

Background – Federal Investigation

Federal criminal charges: **13** individuals

- **2** City Dept. Heads; **2** City Employee
- Plea Agreements: **8** individuals (**1** City employee)

Local criminal charges: **1** individual (former City employee)

City officers and employees resigned or terminated: **7**

Phase III – Overview

- Analyzes **fundamental provisions** of the City's ethics laws that are **essential to the overall effectiveness** of those laws
- Recommends a package of reforms to strengthen these essential provisions
 - Adapting laws for effectiveness
 - Building a better tone at the top through education and resources
 - Create consistency across laws
 - Strengthen enforcement

Recommendations

A. Strengthen City's Bribery Law

1. Define "bribe" broadly as "anything of value," rather than narrowly as a "gift."
 2. Prohibit bribery in cases where the payment is made to a third party, not the official in question.
 3. Prohibit the solicitation of bribes by City officials.
- These steps would bring SF's bribery law closely in line with the federal bribery law, which is stronger.

Recommendations

B. Create Penalty for Failure to Disclosure Personal and Professional Relationships

- This disclosure requirement currently carries no penalty for non-compliance.

Recommendations

C. Extend Ethics Training Requirement (All Form 700 Filers)

- Currently, only elected officials, commissioners, and department heads are required by law to complete ethics training.
- Form 700 filers participate in making government decisions.

Recommendations

D. Codify Rules on Incompatible Activities

- 54 Departments have a Statement of Incompatible Activities (SIA) in place.
 - SIAs contain important ethics rules
- SIAs exclude most ethics rules
- SIAs vary between departments
 - Inconsistent rules and application
 - Lack of awareness, visibility

Recommendations

D. Codify Rules on Incompatible Activities

- Advance Written Determinations (AWDs) should not be available for the rules against activities subject to department review and selective assistance
- Ethics should create a short summary of laws to be used as compliance tool (not SIAs)

Recommendations

D. Codify Rules on Incompatible Activities

➤ Rules to be codified:

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

➤ SIAs would be discontinued

Recommendations

E. Strengthen and Harmonize Basic Provisions of the Code

1. Standardize Penalty Provisions

- Remove required mental states of “knowingly or negligently” from penalty provisions in
 - Article II, Chapter 1 (lobbyists),
 - Article III, Chapter 4 (permit consultants), and
 - Article III, Chapter 5 (major developers).
- Clarify existing penalties by adding clear penalty language to Article III, Chapter 1 (Form 700 filing)

These changes would enable more effective enforcement against violations of ethics laws.

Recommendations

E. Strengthen and Harmonize Basic Provisions of the Code

2. Standardize Legislative Amendment Requirements

- Require Ethics Commission and Board of Supervisors supermajority approval for legislative changes to:
 - Article III, Chapter 3 (Ethics Commission provisions),
 - Article III, Chapter 4 (permit consultants),
 - Article III, Chapter 5 (major developers), and
 - Article IV, Chapter 1 (whistleblower protection).

Ethics laws are inadequately protected from amendments that are not approved by the voters – Ethics Commission should be involved.

Recommendations

E. Strengthen and Harmonize Basic Provisions of the Code

2. Standardize Legislative Amendment Requirements

- Allow for legislative amendments to Article I, Chapter 5 (campaign consultants).
 - Supermajority approval of both the Ethics Commission and Board of Supervisors should be required.

This chapter cannot be amended legislatively at all, even with supermajority of both SFEC and BOS.

Recommendations

E. Strengthen and Harmonize Basic Provisions of the Code

3. Standardize E-filing Provisions

- Add a general e-filing provision to:
 - Article II, Chapter 1 (lobbyists),
 - Article III, Chapter 2 (conflicts of interest),
 - Article III, Chapter 4 (permit consultants), and
 - Article III, Chapter 5 (major developers).

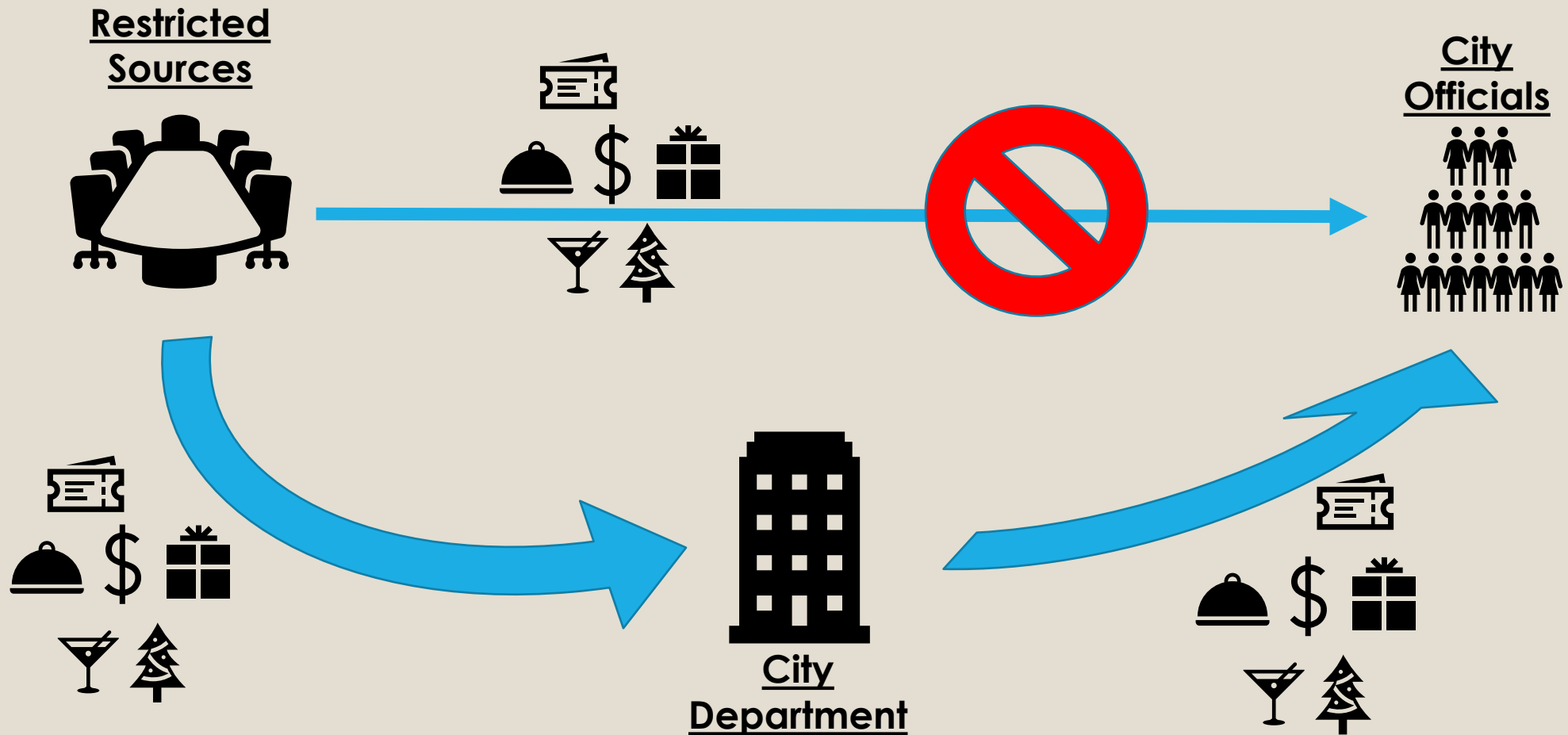
These amendments would make it clear that any current or future disclosures can be required in an electronic format.

- E-filing increases public access to information and eases compliance.

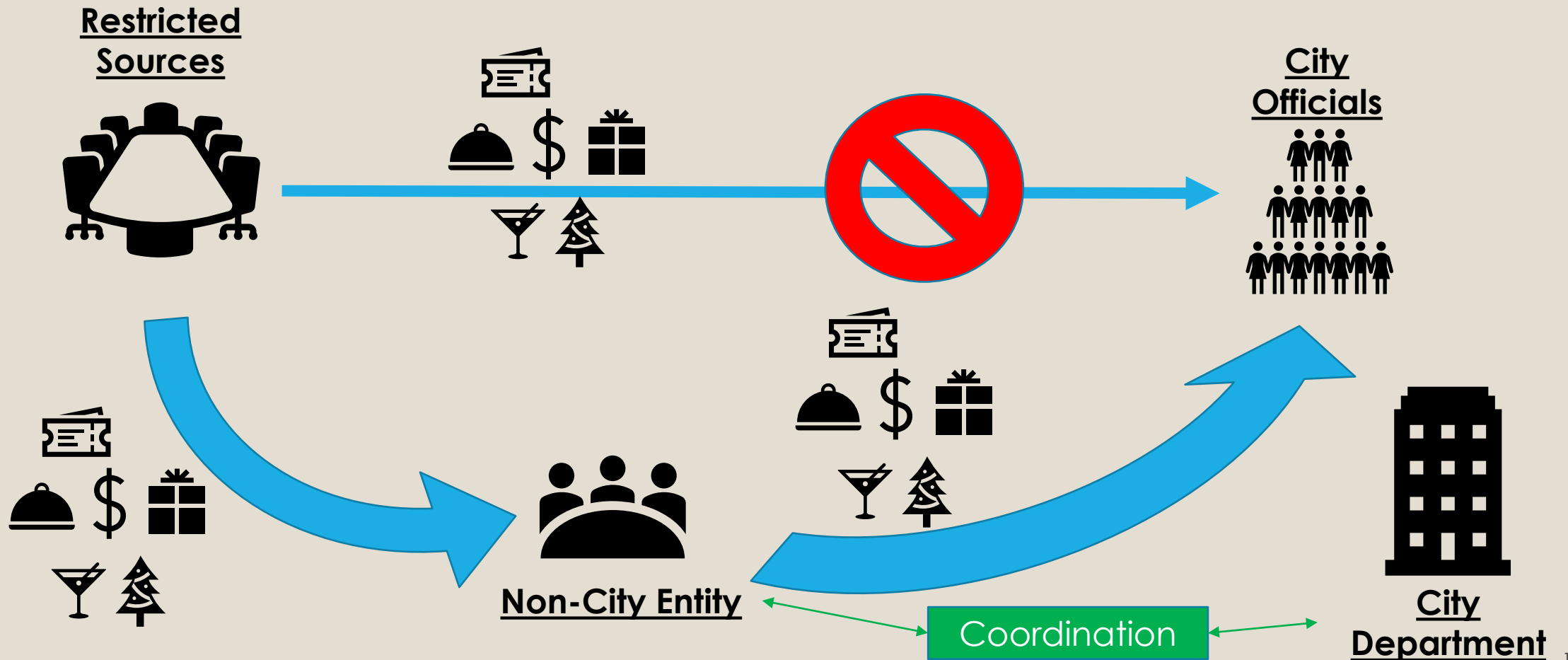
Phase II Recommendations

- A. Reform gift exceptions – loopholes, not intended for this purpose, etc.
 - Create a definition in San Francisco law, limit exceptions to the ones that make sense for RSR
- B. Prohibit gifts through depts and other intermediaries – undermines rule, workaround
 - Expand RSR to account for these practices
- C. Disclosure of gifts to dept – three ineffective disclosures
 - A single, centralized, electronic disclosure to increase public info and improve compliance

Findings – Gifts Through Departments



Findings – Gifts Through Non-City Entities



Findings



These practices undermine the restricted source rule

Create danger and appearance of pay-to-play and undue influence



These are not necessarily violations of current law.

Ballot Measure

- The recommendations presented in Phases II and III are of **critical importance** and, if the Commission approves them, should be **enacted without delay**
- The recommendations have undergone **broad stakeholder engagement**
- The recommendation to change how certain chapters of the Code can be amended **can only be enacted through a voter approved measure**
- A measure **engages voters** in the process of improving ethics and rebuilding trust

Regulation Amendments

Gifts

- Reform local gift exceptions to better achieve the intended purposes of the restricted source rule
- Clarify subordinate gift rule exceptions

These regulations are freestanding from the measure; would enact important reforms on their own, and would continue to provide needed clarity following adoption of the ballot measure

“Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis.”

*San Francisco Government Ethics Ordinance
Findings and Purpose (§ 3.200)*

