



# San Francisco Ethics Commission

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Date: February 22, 2022

To: Members of the Ethics Commission

From: Michael Canning, Policy Analyst

Re: **AGENDA ITEM 3 – Public hearing, discussion, and possible action on proposed amendments to strengthen City’s gift and ethics laws under consideration as 1) potential Ethics Commission ballot measure and as 2) amended Ethics Commission regulations.**

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## Summary

This memo provides summary background for the Ethics Commission’s special meeting on Friday, February 25, 2022, at which the Commission will further engage with members of the public on the Commission’s draft ballot measure and amended regulations that are designed to strengthen city gift and ethics laws.

## Action Requested

The Commission invites the participation of members of the public, representatives from nonprofit organizations, and other key stakeholders to provide public comment at its February 25 special meeting. The proposed ballot measure and regulations have been noticed on the meeting agenda for public hearing, discussion, and possible action to enable the Commission to take action should it wish to do so at that time.

## Background

In January 2020, the U.S. Department of Justice began to bring criminal corruption charges against multiple City officials, employees, and contractors. The charges allege numerous instances in which individuals seeking favorable outcomes from City government provided things of value to City officials in an attempt to influence the actions of those officials.

In response, the Ethics Commission conducted a comprehensive review of the City’s ethics laws in phases 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 can be addressed and the laws strengthened. These reforms have been proposed to address demonstrated shortcomings in the City’s ethics laws and help prevent future acts of corruption like those alleged in the ongoing federal corruption investigation.

- The first phase of the project addressed the issue of [behested payments](#), which are payments made at the behest of a government official to a third party. That work [resulted in legislation enacted](#) in December 2021 that now bans the solicitation of behested payments by City officials

and employees who are required to file the Form 700 Statement of Economic Interests from soliciting behested payments from those who have official business before their department or who have otherwise sought to influence them.

- The second and third phases of the project resulted in policy reports and recommendations to strengthen City laws that govern [gifts made directly to City officials](#), [gifts made through City departments](#), and [other essential ethics provisions](#).

The recommendations contained in the last three reports that stemmed from Phase II and III of the Commission's project are the basis for a proposed [ballot measure](#) and [regulation amendments](#). For additional reference, the Commission has produced a [summary chart listing the proposed changes](#) that details the sections of the San Francisco Campaign and Governmental Conduct Code that would be changed by the proposed ballot measure and regulation amendments.

These proposed changes would clarify and expand aspects of the City's restricted source rule, which limits gifts to City officials from those doing business with their department and those who have recently attempted to influence them. The changes would also strengthen the City's bribery rule and expand the number of City officials required to complete annual ethics training. A brief, high-level overview of the recommendations is provided below.

#### Gift-Related Recommendations (Phase II)

- Create a definition of *gift* in the Campaign and Governmental Conduct Code.
  - Regulations would include certain state law gift exceptions but omit those that undermine the purposes of the restricted source rule.
  - Regulations containing local exceptions to the restricted source rule would be amended.
- Expand the application of the restricted source rule to prohibit other aspects of a gift transaction beyond the receipt or solicitation of the gift by an official, including:
  - Restricted sources giving gifts to an official or the immediate family members of an official (and officials soliciting such gifts).
  - The use of an intermediary by the source or recipient of a gift to circumvent the restricted source rule.
  - Any person or organization acting as an intermediary for a restricted source gift.
  - Any official accepting anything from a City department or non-City organization or person that bestows a personal benefit on the official if the official knows or has reason to know that the true source of the gift is a restricted source.
- Clarify how the restricted source rule applies to City contractors.
- Amend the restricted source rule to explicitly apply to individuals and entities that apply for or obtain a permit, license, or other entitlement for use from a City department.
- Amend the restricted source rule to explicitly apply the rule to affiliates (directors, officers, and major shareholders) of an entity that is a restricted source.
- Prohibit gifts from permit expeditors to officials and employees in departments that issue permits.
- Create a single, standardized disclosure requirement for payments to City departments.
- Amend regulations containing exceptions to the rule against gifts from subordinates.

### Essential Ethics Provision Recommendations (Phase III)

- Strengthen San Francisco’s bribery rule by incorporating elements of the federal bribery rule.
- Strengthen the requirement that a City official disclose any personal, professional, or business relationship with persons involved in a government decision the official will make.
- Extend the annual ethics training requirement to all Form 700 filers.
- Codify rules contained in departmental Statements of Incompatible Activities into the Code and discontinue departmental Statements of Incompatible Activities.
- Standardize penalty provisions to make it clear that all violations of the Code are punishable and that proving a particular mental state is not required.
- Protect ethics laws from legislative amendments by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.
- Add a general provision that allows the Commission to require electronic filing of public disclosures.

To illustrate only the Code sections actually being changed and excluding sections that are just being reauthorized as they already appear in the Code, the Commission has produced a [condensed version of the measure](#). The condensed version is intended to serve only as a discussion tool and to make it easier for readers to identify the changes that would result in the law should the measure be enacted. The [full version of the measure](#) shows the changes that would be made, including the entirety of the stricken and reauthorized language that must be adopted procedurally to achieve the substantive changes proposed.

### Special Meeting on February 25<sup>th</sup>

The Commission has scheduled this special meeting to provide an additional focused opportunity for the Commission to further engage with members of the public on the pending proposals. The Commission encourages and welcomes all comment from members of the public, representatives of nonprofit, neighborhood, and other public interest organizations, City officials, and other key stakeholders. In particular, the Commission is interested to hear comment on and discuss the following policy questions:

- **Should the *giving of gifts by restricted sources to City officials subject the giver of an unlawful gift to potential penalties?***  
Under current law, City officials are prohibited from accepting or soliciting gifts from restricted sources. The proposed ballot measure would create a prohibition on the *giving* of such gifts by restricted sources, with the restricted source *giver* of the gift being liable for potential penalties for violations of the rule.
- **Should the City’s restricted source rule allow City officials to accept free or reduced-price tickets from restricted sources?**  
Current law allows City officials to accept from a restricted source tickets to events if they are making a speech or performing a ceremonial role. Additional provisions are being considered that would allow City officials to accept free tickets to nonprofit fundraisers and arts/entertainment events under certain conditions when the events are attended as part of the

official's governmental role. Should these kinds of exemptions be added? If so, under what conditions?

- **Should affiliates of nonprofit entities be considered restricted sources?**

The measure would extend the restricted source rule to affiliates of entities that are restricted sources. This would mean that if an entity is a restricted source, so would the entity's director, board members, and owners. Should board members of nonprofit organizations be considered affiliates for the purpose of the restricted source if their organization is a restricted source?

- **Should applying for a license, permit, or other entitlement for use make a person a restricted source for the issuing department?**

The proposed measure and regulation amendments would specify that someone applying to receive a license, permit, or other entitlement for use would become a restricted source for that department, unless such approval is solely ministerial, secretarial, manual, or clerical.

To ensure the proposals are effective in strengthening the City's ethics rules and promote the highest standards of integrity in government, the Commission is interested in hearing from stakeholders about how they believe these proposals would impact their work, and if the proposals should be amended, in what ways.

For purposes of this special meeting, the Commission has invited City officials who have provided feedback on the proposal to participate in the special meeting to enable the full Commission to hear their views in greater depth and to field potential questions from Commissioners.

Also, for purposes of this special meeting, the Ethics Commission will extend the time limit for public comment at this meeting to five minutes per speaker, after which Commissioners may ask follow-up questions of the speakers.

### **Next Steps**

State law requires that the City meet and confer with employee bargaining units prior to undertaking certain actions that would impact City employees. The City's Department of Human Resources and the City Attorney's Office have advised that the Commission must meet and confer with employee bargaining units before taking action on the proposed ballot measure and regulation amendments.

As of the distribution of the special meeting agenda on February 22<sup>nd</sup>, the meet and confer process has not been concluded. Should the meet and confer process remain ongoing at the time of the February 25<sup>th</sup> special meeting, it is likely that the City Attorney's Office and DHR would again advise that the Commission not vote on the proposals at that time.

If the meet and confer process concludes before the Commission's special meeting on February 25<sup>th</sup>, and if that concluded process were to result in any Staff proposals to change the provisions pending before the Commission, Staff will distribute those updated recommendations as soon as they become available for the Commission's consideration to enable it to act should it wish to do so before the March 4 deadline to place a measure on the June 2022 ballot.