



San Francisco Ethics Commission

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Date: May 9, 2022

To: Members of the Ethics Commission

From: Michael Canning, Acting Senior Policy Analyst

Re: **AGENDA ITEM 9 – Presentation and discussion on status of 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.**

Summary

This memo provides an update on the status of proposed amendments to strengthen the City’s gift and ethics laws under consideration as a draft ballot measure and regulation amendments. The City remains engaged in an ongoing meet and confer process regarding these proposed amendments. In response to stakeholder concerns shared regarding the potential impacts of the proposals and in light of the City’s and Commission’s racial equity goals, Staff is also including in this status report an overview of our work to date to consider the proposals through a racial equity lens. In addition, based on continued engagement with representatives from the nonprofit community, Staff is also presenting an additional exception to the restricted source rule.

Action Requested

The Commission to discuss and provide any feedback on the updates provided in this report.

Background

In January 2020, the U.S. Department of Justice began bringing 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:
 - City officials from soliciting or accepting gifts from restricted sources for any immediate family members of the official.
 - City officials from soliciting, coordinating, facilitating, or accepting gifts for other City officials.
 - The giving of gifts by lobbyists and permit consultants.
 - City officials from 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.
 - Any person or organization from acting as an intermediary for a restricted source gift.
- 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.
- 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.
- 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.

Note that the links provided above to the ballot measure, regulation amendments, and supporting documents are from February 2022 and do not reflect any of the revised recommendations that have been presented to the Commission at subsequent meetings (see the [Staff report dated March 14, 2022](#) and attachments for revised recommendations).

As of the publication of this memo, the meet and confer process with City bargaining units that began in November 2021 has not been concluded. Staff are continuing to work with the City’s Department of Human Resources (DHR) to engage in and complete this process. Revised versions of the measure and regulations reflecting those and any further amendments that may be proposed by Staff will be provided prior to the Commission acting on the measure and regulation amendments.

Considering the Proposed Reforms Through a Racial Equity Lens

As the Commission has been considering the recommendations associated with this project, multiple stakeholders who have provided comment on the pending proposals at Commission meetings have expressed the importance of applying a racial equity lens to policy proposals. In order to engage with these stakeholder concerns and embed racial equity considerations into the Commission’s ongoing policy work, Staff have been researching racial equity tools and applying them to the recommendations currently before the Commission. Considering this project’s recommendations through a racial equity lens will both make the current project stronger and serve as an opportunity for the Commission to identify, learn, and refine practices which can be integrated into future policy projects.

This section will review work the City and the Commission have been engaged in in recent years, define and highlight the importance of racial equity in local government, present ways that racial equity considerations can be integrated into the Commission’s policy work, discuss the current proposals through a racial lens, and look ahead towards potential next steps regarding the Commission’s work and racial equity.

Departmental Racial Equity Action Plans

In July of 2019, the City created the [Office of Racial Equity \(ORE\)](#) in response to the City’s growing racial disparities as a means to address the history of structural and institutional racism in San Francisco’s delivery of services to the public and the City’s own internal practices and systems. Creating ORE was the result of successful advocacy and organizing by Black City workers, labor leaders, and community members. With the establishment of ORE, San Francisco joined a national movement to address the government’s role in resolving the inequitable outcomes it created. The City’s Office of Racial Equity has the authority to enact a citywide racial equity framework and to direct departments to develop and implement mandated racial equity action plans.

On December 14th, 2020, the Ethics Commission voted unanimously to adopt its initial [Racial Equity Action Plan](#). This plan was developed by Staff with guidance from the City’s Office of Racial Equity and was focused on internal, overarching strategies regarding the City’s workforce, which is the focus of Phase 1 of the [City’s Racial Equity Framework](#). On May 2nd, 2022 Staff published an [updated Racial Equity Action Plan](#), along with a [Racial Equity Progress Report](#). Both items are also addressed in the Executive Director’s May monthly report to the Commission under Agenda Item 10 and are expected to be scheduled for more in-depth discussion at a future Commission meeting.

While the initial versions of the Commission’s racial equity action plans have been more focused on internal policies related to the department’s workforce, the Commission’s ongoing policy work presents opportunities to further advance racial equity goals through additional programmatic aspects of the Commission’s work.

What is Racial Equity and Why is it Important for Local Government?

The City’s Office of Racial Equity defines racial equity as:

“...a set of social justice practices, rooted in a solid understanding and analysis of historical and present-day oppression, aiming towards a goal of fairness for all. As an outcome, achieving racial equity would mean living in a world where race is no longer a factor in the distribution of opportunity. As a process, we apply racial equity when those most impacted by the structural racial inequities are meaningfully involved in the creation and implementation of the institutional policies and practices that impact their lives.”

The above definition underscores that racial equity is a combination of practices and processes, aimed at achieving fairness and having race no longer impact the distribution of opportunities for individuals and their communities. Local governments have a role to play in this work as these institutions have

been integral to the historical and present-day oppression Black, Indigenous, and people of color (BIPOC) communities face.

The [Government Alliance on Race and Equity \(GARE\)](#) is a national network of government working to achieve racial equity and advance opportunities for all, and it articulates the importance of government action this way:

“From the inception of our country, government at the local, regional, state and federal level has played a role in creating and maintaining racial inequity...despite progress in addressing explicit discrimination, racial inequities continue to be deep, pervasive and persistent across the country...Many current inequities are sustained by historical legacies and structures and systems that repeat patterns of exclusion...Local and regional government has the ability to implement policy change at multiple levels and across multiple sectors to drive larger systemic change.”

Embedding a Racial Equity Lens into the Commission’s Policy Work

Staff explored multiple frameworks and tools when looking for ways to integrate racial equity considerations into the Commission’s policy work. As Staff continues to explore and develop these processes, much of the current approach is being adapted from [GARE’s Racial Equity Toolkit](#). This resource describes racial equity tools as being designed to integrate explicit considerations of racial equity into decisions and that the use of such tools “can help develop strategies and actions that reduce racial inequalities and improve success for all groups.”

The racial equity toolkit is a series of questions focused on articulating the proposal being considered, reviewing available data, engaging with affected communities, considering who will benefit from or be burdened by the proposal, and determining how to mitigate any unintended consequences. Given the scope and severity of the allegations surfaced through the ongoing investigations of corrupt activity by City officials, employees, and contractors, there is a need for the Ethics Commission to take timely action to prevent such abuses in the future and build trust in City government. In situations such as this, where timely action is needed, the GARE toolkit suggests a narrower set of questions be asked, which even within a short timeframe can have a meaningful impact on the policies being considered.

The approach currently being applied by staff includes the following steps:

1. **Articulate Proposals:** Articulate the proposals currently being considered by the Commission as part of the current project. This creates a structure for considering the racial equity implications of each discrete policy change being considered. This structure can then be used to help further engage with stakeholders and generate clear, focused feedback.
2. **Identify Known Racial Equity Implications:** For each policy change being considered, explore the following questions, utilizing feedback shared from stakeholders regarding the proposals.
 - What are the racial equity impacts of this particular policy change?
 - Who will benefit from or be burdened by this policy change?

3. **Consider Mitigation Strategies:** For each policy change where there are known, potentially harmful racial equity implications, consider what could be done to mitigate any unintended consequences or address stakeholder concerns.
4. **Continue Engagement with Stakeholders:** Use this process to continue and grow engagement opportunities with stakeholders, both within this project as it potentially moves into the implementation and evaluation phases, and longer-term as the Commission looks ahead to future policy projects.

The approach outlined above is intended to evolve and be refined as it is used and as methods to regularly apply a racial equity lens become an institutionalized part of the Commission’s policymaking process. At this initial stage, there are elements of the process that are lacking and would benefit from additional resources and consideration in the future. Challenges associated with the current approach include:

- **The Need for Clearer Impact Indicators:** The bulk of policies being considered by the Commission are focused on ethics rules for City officials and changes to how those rules are administered. Much of the research and examples reviewed from other jurisdictions regarding racial equity reviews, however, are focused on health or social service programs or decisions that allocate resources throughout a jurisdiction. For these types of government decisions, it can be clearer how to determine what communities may potentially benefit from, or be harmed by, a particular decision. This is due in part because quantitative operational data, disaggregated by race, appears to be more readily available regarding these types of decisions. For example, for policy changes related to the delivery of social services to the public, more actionable data is likely available regarding who is currently utilizing the services and how that usage could change under a proposed policy. This sort of data is less available for rules that prohibit inappropriate behavior by City officials, and tools for gauging the racial equity impact of such rules appear to be less developed. This lack of quantitative operational data has led Staff to focus more on qualitative data generated through engagement with stakeholders. The lack of clear impact indicators has also led Staff to pursue mitigation strategies that are broader than what may be possible with more specific indicators. Identifying additional data sources, refining existing data collection methods, and developing clear impact indicators are areas that could be improved through ongoing work.
- **Limited Resources for Expanded Stakeholder Engagement:** Being able to fully engage stakeholders, especially those from traditionally marginalized communities, is a core component of infusing racial equity into a policymaking process. With additional staff and resources, more could be done to more broadly engage with stakeholders, build relationships with community groups (particularly those representing BIPOC communities), and increase the level of engagement the public has with the Commission’s policy work. This would be in addition to the interested persons meetings, Commission meetings, and one-on-one discussions between Staff and stakeholders that are already a part of the Commission’s policymaking process. To support this work, the Commission’s FY23-FY24 budget proposal includes a request for two new positions, one focused on expanding and deepening the Commission’s community engagement work in policy development and evaluation, and another that is focused on policy implementation.

The challenges articulated above represent areas where there are opportunities for learning and growth as the Commission continues to engage in the important work of integrating racial equity into its policymaking process.

Review of Current Recommendations Through a Racial Equity Lens

Staff have been reviewing the 13 policy proposals, which encapsulate the recommendations being considered as a ballot measure and regulation amendments, through a racial equity lens as described above. The current status of this review is presented in **Attachment 1**. Importantly, the analysis contained here is not intended to be an exhaustive account of all potential racial equity issues or something to close off further discussion. This document is intended to capture the issues that have been surfaced thus far and to begin to create a structure for further engagement on these issues and other issues that the Commission may not yet be aware of. Infusing the Commission’s policy work with racial equity is an ongoing process, that will require continued engagement with stakeholders.

The bulk of the review reflected in the attachment focuses on potential harms and possible unintended consequences of the policy recommendations, as Staff have prioritized engaging with stakeholders on those matters as they have been raised in comments provided to the Commission. At the same time, it is also important to consider the benefits of these reforms and of stronger ethics rules generally, aim to reduce corruption and thereby also serve to improve racial equity and help realize the goal of fairness for all.

Research on the connection between ethics laws and racial equity appears to be limited, however there is reason to view them as related. For example, [research from Transparency International and the Equal Rights Trust](#) has found that corruption and discrimination can create a “vicious cycle” and that “communities already deprived of opportunities because of discrimination have their positions worsened by corruption, further deepening inequality within our societies.” In the context of San Francisco’s ongoing pay-to-play corruption scandal, it is reasonable to believe that members of the public, particularly those in traditionally marginalized communities, might be discouraged from engaging with City government based on the impression that they need to give gifts or otherwise curry favor with City officials in order to benefit from City programs. The reforms currently before the Commission are intended to both prevent future corruption and diminish the appearance of corruption, thereby making a more inclusive, welcoming City government, where people can expect to be treated fairly, regardless of racial identity.

There is also research on the racial equity impacts associated with undisclosed political spending that is of relevant interest to the proposals currently being considered by the Commission. [Research from Demos](#) articulates how government contractors and wealthy donors can use undisclosed political contributions to “reinforce systems of structural racism...maintain an unrepresentative government... [and waste] public dollars, which could have been allocated to programs that promote racial equity and dismantle systems of structural racism.” While the reforms currently before the Commission are not focused on traditional political spending, the same concerns should be considered in addressing the flow of gifts to City officials from those who do business with the City. More robust ethics rules, greater restrictions on gifts, and increased transparency regarding the sources of City funding are tools for ensuring City government works for everyone, not just a small minority of donors who may seek to

leverage their wealth and connections for favorable treatment by City officials. Recognizing and addressing obstacles that blunt equitable practices in local government helps promote trust in the fairness and responsiveness of government and encourages fuller public participation.

The proposals presented in **Attachment 1** reflect the policy changes currently before the Commission, which are being considered as a ballot measure and regulation amendments. Each proposal is only briefly summarized in the attachment, for more detailed explanations of the recommendations and the reasoning behind them, see the Commission’s reports on [gifts made to City officials](#), [gifts made to City departments](#), and [other essential ethics provisions](#).

Of the 13 proposals discussed in **Attachment 1**, based on the approach described above Staff identified two proposals with racial equity concerns associated with them and developed mitigation strategies to alleviate the concerns raised regarding both proposals. This analysis is not intended to suggest no other racial equity concerns may be present or may become clear in the future, rather it is intended to provide a snapshot of known issues and the steps taken to address them. This document is intended as a tool to facilitate further engagement with stakeholders and help structure additional feedback that may be provided.

Next Steps Regarding Racial Equity

The [City’s Office of Racial Equity has a mandate to](#) “analyze and report on ordinances introduced at the Board of Supervisors in the areas of housing/land use, employment, economic security, public health and public safety that may have an impact on Racial Equity or Racial Disparities.” The proposals under consideration by the Ethics Commission are not going before the Board of Supervisors and do not appear to directly impact the areas listed above, so Staff are unaware of any requirement for ORE to perform any analysis on the proposals. However, Staff have shared the proposals with ORE so that ORE staff are aware of what the Commission is considering and have the opportunity to comment. Any feedback provided by ORE will be shared with the Commission in future updates from Staff.

As discussed above, Staff are eager to engage more with stakeholders on any racial equity issues that may be of concern regarding these proposals. To the extent additional issues are identified, recommendations can continue to be revisited as they were in removing liability for the giver of a restricted source gift and in creating exceptions for certain tickets based on equity issues raised. This additional feedback has been valuable now, as the Commission shapes provisions it is considering placing directly on the ballot, and will continue to be valuable going forward should the ordinance become law, both in shaping implementation and regulatory decisions, and in evaluating and analyzing the laws in the future.

Staff are committed to fully integrating a racial equity lens into the Commission’s policymaking process now and in the longer term, as new policy projects are launched. As new projects are identified and started, Staff will seek to identify lessons learned from this project regarding racial equity and work to determine how it can work to best integrate those lessons into future policy projects.

Proposed Restricted Source Exception

Based on continued engagement with stakeholders, Staff is recommending an additional exception to the restricted rule. The proposed exception would cover branded promotional items from nonprofit organizations of nominal value. This exception was crafted in response to concerns raised by stakeholders in the nonprofit community, who expressed concern over no longer being able to give gifts of nominal value to City officials for whom they are a restricted source. Nonprofit groups occasionally distribute branded materials to City officials and believe this to be an important aspect of how they raise awareness of their organizations, the services they provide, and the work they do with the City.

Current law exempts all non-cash gifts given by restricted sources, so long as they are valued at \$25 or less per occasion, limited to four occasions per calendar year. Staff continues to recommend getting rid of this general exception as it is overly broad and undermines the restricted source rule. However, a narrow exception to allow branded promotional items from nonprofits would allow nonprofit organizations to continue to distribute their promotional items, without undermining the overall rule.

The draft language for this exemption is presented below and has not yet been integrated into the draft regulation amendments before the Commission. As indicated above, as updated language Staff is proposing, this provision will be included in the final revised version of the proposed amendments brought forward for the Commission's action.

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

Branded promotional items from a nonprofit organization of nominal value. "Branded promotional items" can include pens, pencils, mouse pads, mugs, water bottles, calendars, t-shirts, hats, buttons, stickers, or similar items, which are branded with the nonprofit organization's name or logo, or the name or logo of a program or project of the nonprofit organization. "Nonprofit organization" means an organization with tax exempt status under 26 United States Code Section 501(c)(3).

Staff believes this narrow exemption, combined with the existing recommendations being considered by the Commission, will strengthen City ethics laws without hampering communication or collaboration between the City and nonprofit organizations. Staff welcomes additional feedback from the Commission and stakeholders regarding this exemption and the shared draft language.

Next Steps

As of the publication of this memo, the meet and confer process on the Commission's proposed ballot measure and regulation amendments on gifts and essential ethics laws has not been concluded. Staff will continue to work with DHR on the meet and confer process and will present to the Commission any recommended additional revisions once available. In addition, Staff will continue to seek feedback on and implement methods for further embedding a racial equity lens into the Commission's policy work going forward. Staff looks forward to feedback from the Commission and members of the public on the updates presented in this memo.

ATTACHEMENT 1

ATTACHMENT 1

Review of Proposals Currently Under Consideration by the Ethics Commission

5/9/2022

As detailed in the attached memo, the proposals presented below reflect the policy changes being considered by the Ethics Commission in May of 2022, which are being considered as a ballot measure and regulation amendments. Each proposal is briefly summarized below and is followed by a brief discussion of Racial Equity (RE) considerations examined. For more detailed explanations of the recommendations and the reasoning behind them, see the Commission’s reports on [gifts made to City officials](#), [gifts made to City departments](#), and [other essential ethics provisions](#).

Proposal #1: Create a local definition of ‘Gift’

The City currently uses the state’s definition of “gift” which includes state exceptions, which are largely inappropriate in the context of the City’s restricted source rule. The proposal will create a local definition of “gift” that largely mirrors the state definition, carry over certain state gift exceptions, but omit those that undermine the purposes of the restricted source rule, and amend existing local exceptions to the restricted source rule.

Racial Equity Considerations:

As the proposed local definition of “gift” largely mirrors the state definition, using a definition that lives in local law versus one that lives in state law is unlikely to raise racial equity concerns. It is regarding what exceptions should be applied to the definition of “gift” where the more substantive differences arise. It is in this area that two issues regarding the receipt of tickets have raised racial equity concerns. The first issue involves tickets to entertainment events and the second is related to tickets to non-profit fundraisers.

State law has a process for allowing tickets to be accepted and distributed by an official’s agency, instead of being accepted directly by the official. If this process is used, and the agency submits a Form 802, the tickets received and used are not considered gifts under the state’s definition. Under current law, this means that tickets reported by a department on a Form 802 are exempt from the restricted source rule. If this proposal were enacted, reporting tickets on the Form 802 would no longer exempt them from the restricted source rule.

Staff heard concerns that there are small theaters and other entertainment venues, many of which are owned or operated by BIPOC individuals or serving BIPOC communities that give tickets to City officials, who then attend the shows and make decisions that positively impact these entertainment venues.

Staff heard similar concerns regarding tickets to non-profit fundraisers and the need for City officials to be able to accept free tickets to non-profit fundraising events. Stakeholders expressed that it is important for City officials to be able to receive free tickets to non-profit fundraisers, so that City officials can share information with other attendees, build and maintain relationships with grant recipients or potential grant recipients for the purpose of City business, and show departmental support for City-funded projects. Concerns were raised that not allowing these tickets to be accepted would disproportionately hurt smaller non-profits that serve BIPOC communities.

Mitigation Strategies:

To allow City officials to continue to accept certain free tickets to entertainment events and non-profit fundraisers, Staff have revised their recommendations to include two new, narrowly tailored local gift exceptions. The exceptions would allow City officials to accept a single ticket from a restricted source, only if 1) attendance at the event is necessary to carry out the official’s City duties and 2) the official’s department discloses the receipt of the ticket, including why the ticket was given and which City official used it.

These two new exceptions are in addition to two of the state exceptions which are proposed to be copied into local law, which exempt tickets provided to City officials who are either making a speech or performing a ceremonial role at an event. City Departments could also purchase any tickets they need, which would avoid the need to use any of these exceptions and would not require entertainment venues and non-profit organizations to give away tickets, which otherwise could have been offered for sale.

Staff believes that the mitigation strategies articulated above address the known racial equity concerns that have been raised in relation to the creation of a local definition gift. Creating a local definition of ‘gift’ (opposed to continuing to use state’s definition) would also make it easier for the City to be responsive to any additional racial equity concerns identified in the future, as the local rules would no longer be subject to a state definition that is outside of the City’s control.

Proposal #2: 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.

This proposal would expand the City’s existing restricted source rule to prohibit:

- City officials from soliciting or accepting gifts from restricted sources for any immediate family members of the official.
- City officials from soliciting, coordinating, facilitating, or accepting gifts for other City officials.
- The giving of gifts by lobbyists and permit consultants.
- City officials from 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.
- Any person or organization from acting as an intermediary for a restricted source gift.

Racial Equity Considerations:

Staff had originally recommended amending the restricted source rule so that it would prohibit the *giving* of gifts by restricted sources, thus exposing restricted sources who gave unauthorized gifts to penalties. Staff heard concerns that expanding liability to the givers of restricted source gifts would potentially ensnare members of the public who were unaware of the rule and that members of BIPOC communities could be disproportionately impacted by this change. There were also concerns that the addition of liability for the *givers* of gifts would discourage members of the public and community-based organizations (particularly smaller organizations, serving BIPOC communities) from engaging with City departments.

Staff have not heard racial equity concerns regarding the other expansions of the restricted source rule (presented in the bullet points above).

Mitigation Strategies:

Staff have revised their recommendation so that there is no longer liability for restricted sources who *give* gifts. The activity concerned (the flow of gifts from restricted sources to City officials) is still prohibited, but it would be the City officials who would potentially face penalties for violating the rule by soliciting or accepting such gifts, not the restricted source for *giving* the gifts. This revised recommendation was presented to the Commission through a [March 14th memo](#), which was subsequently discussed at the Commission’s March 18th meeting. Staff believes that removing the liability for the giving of gifts is the most effective way to address the racial equity concerns associated with this proposal, while still strengthen the restrict source rule.

As no racial equity concerns have been identified regarding the other aspects of this proposal (presented in the bullet points above), no additional mitigation strategies are needed at this time. Staff believes that the mitigation strategies articulated above address the known racial equity concerns associated with this proposal.

Proposal #3: Clarify how the restricted source rule applies to City Contractors.

The City’s restricted source rule prohibits City officials from soliciting or accepting gifts from any person “doing business with or seeking to do business with the department” of that City official. However, “doing business with the department” is currently only defined through Ethics Commission regulations and that definition uses the word “contract” without providing a definition. This proposal would codify the definition of “doing business with the department” and add a definition for “contract” to the code to clarify how the restricted source rule applies to City contractors.

Racial Equity Considerations:

No issues related to racial equity have been raised regarding this proposal and it is unclear how this proposal could negatively impact BIPOC communities.

Mitigation Strategies:

Given the nature of this proposal and the absence of concerns raised by stakeholders, no mitigation strategies are necessary at this time.

Proposal #4: Amend the restricted source rule to explicitly apply to individuals and entities that apply for or obtain a permit, license, or entitlement for use from a City department.

This proposal would amend the restricted source rule to explicitly apply to individuals and entities that apply for or obtain a permit, license, or entitlement for use from a City department. If the permit, license, or entitlement for use is approved by the department head, the department’s board of commission, or the Board of Supervisors, the individual or entity would become a restricted source for all City officials in that department, if not the individual or entity would only be a restricted source for officers and employees who were personally and substantially involved in the approval process.

Racial Equity Considerations:

No issues related to racial equity have been identified regarding this proposal and it is unclear how this proposal would negatively impact BIPOC communities. The proposal may expand the number of people and entities who are restricted sources, however being a restricted source should not harm the restricted source. Being a restricted source only means that certain City officials are prohibited from soliciting or accepting gifts from that source. Restricted sources should be able to expect the same level of service from City officials and City departments regardless of their ability to give gifts to City officials, so not being able to give such gifts should not diminish the ability of a restricted source to access City services. Also, with the proposed change discussed above in Proposal #2, which removes liability for restricted sources who attempt to give gifts to City officials, restricted sources would not face potential penalties for inadvertently giving, or attempting to give, a prohibited gift.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #5: Amend the restricted source rule to explicitly apply the rule to affiliates of an entity that is a restricted source.

This proposal would amend the restricted source rule so that the rule is explicitly applied to affiliates (directors, officers, and major shareholders) of an entity that is a restricted source.

Racial Equity Considerations:

No issues related to racial equity have been identified regarding this proposal and it is unclear how this proposal would negatively impact BIPOC communities. The proposal may expand the number of people or entities who are restricted sources, however, as discussed above in regard to Proposal #4, being a restricted source should not harm the restricted source, their ability to work with the City, or their ability to access City services.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #6: Create a single, standardized disclosure requirement for payments to City departments.

Existing City laws require departments to disclose all payments they receive from non-City sources in a variety of ways. These existing disclosures are ineffective, redundant, and present compliance challenges for departments. This proposal would create a single, standardized disclosure requirement for payments made to City departments.

Racial Equity Considerations:

It is unclear how creating a single, standardized disclosure for payments made to City departments would harm BIPOC communities and no stakeholders have expressed concerns regarding this proposal's racial equity impact.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #7: Amend regulations containing exceptions to the rule against gifts from subordinates.

Current law prohibits City officials from soliciting or accepting gifts or loans from their subordinates, however the existing local exceptions to this rule are overly broad. This proposal narrows the exceptions to the subordinate gift rule to reduce the potential for abuse.

Racial Equity Considerations:

No stakeholders have raised racial equity concerns regarding this proposal, and it is unclear how adjusting the limitations on what gifts a City official can accept from their subordinates would negatively impact BIPOC communities.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #8: Strengthen San Francisco’s bribery rule by incorporating elements of the federal bribery rule.

This proposal would strengthen the City’s bribery rule by:

- Defining “bribe” broadly as “anything of value,” rather than narrowly as a “gift” as it is currently.
- Prohibiting bribery in cases where the payment is made to a third party, not to the City official in question.
- Prohibiting the solicitation of bribes by City officials.

Racial Equity Considerations:

No stakeholders have raised racial equity concerns regarding this proposal, and it is unclear how strengthening the City’s bribery rule would have a detrimental effect on BIPOC communities.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #9: Extend the annual ethics training requirement to all Form 700 filers.

Under current law, all City elected officials, members of boards and commissions, and department heads must complete an annual training on ethics laws and must certify completion of the training to the Ethics Commission. This proposal would extend the annual ethics training requirement to all Form 700 filers.

Racial Equity Considerations:

No stakeholders have raised racial equity concerns regarding this proposal, and it is unclear how requiring more City officials to be trained on the City’s ethics rules would negatively impact BIPOC communities.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #10: Codify rules contained in departmental Statements of Incompatible Activities into the Code and discontinue departmental Statements of Incompatible Activities.

Currently, each City department is required to adopt a Statement of Incompatible Activities (SIA) containing rules regarding activities that are prohibited and punishable as a violation of the Campaign and Governmental Conduct Code. In practice, SIAs have proven to be an ineffective tool for applying important ethics rules. This proposal would codify the rules currently found in departmental SIAs and apply them uniformly to all City officials. Additionally, instead of City officials receiving a copy of their department’s SIA each year, officials will receive a summary of relevant state and local ethics laws prepared by the Ethics Commission each year.

Racial Equity Considerations:

No stakeholders have raised racial equity concerns regarding this proposal, and it is unclear how moving rules from departmental SIAs into the Campaign and Governmental Conduct Code would exacerbate racial inequities.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #11: 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.

For three chapters of the Campaign and Governmental Conduct Code (those containing rules for lobbyists, major developers, and permit consultants), current law requires the mental state of ‘knowingly and negligently’ be established for applying administrative penalties. This is a departure from the other chapters of the law where administrative penalties are applied on a strict liability basis. This proposal removes this mental state requirement for these three chapters.

This proposal also clarifies that penalties are possible for City officials who fail to adequately disclose their personal financial interests and creates a penalty for City officials who fail to properly disclose a personal, professional, or business relationship with persons involved in a government decision.

Racial Equity Considerations:

It is unclear how holding lobbyists, major developers, and permit consultants to strict liability standard would harm BIPOC communities. Lobbyists, major developers, and permit consultants have a professional obligation to be aware of City ethics rules, being ignorant of such rules should not allow them to avoid penalties for violations of the law. Similarly, it is unclear how City officials potentially facing penalties for failing to properly make required disclosures of their financial interests or relationships would negatively impact BIPOC communities. Stakeholders have also not raised racial equity concerns regarding this proposal.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #12: Protect ethics laws from legislative amendments by requiring approvals by a supermajority of the Ethics Commission and Board of Supervisors for legislative amendments.

Some chapters of the Campaign and Governmental Conduct Code can be amended with only a simple majority of support from the Board of Supervisors. This proposal would protect additional chapters in the code from legislative amendments, by limiting future amendments to those approved by supermajorities of both the Board of Supervisors and the Ethics Commission. This proposal would not limit the ability of voters to amend the code through ballot measures.

Racial Equity Considerations:

No stakeholders have raised racial equity concerns regarding this proposal, and it is unclear how requiring Ethics Commission approval for legislative amendments to the Campaign and Governmental Conduct Code would negatively impact BIPOC communities.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.

Proposal #13: Add a general provision that allows the Commission to require electronic filing of public disclosures.

This proposal creates a general provision that allows the Ethics Commission the ability to require public disclosure forms to be filed electronically.

Racial Equity Considerations:

Stakeholders have not raised racial equity concerns regarding this proposal.

Known [racial disparities do exist regarding computer ownership and access to home broadband](#), and this could suggest requiring electronic filing could have racial equity implications. However, public disclosure statements required to be filed with the Ethics Commission are filed by City officials and designated employees, and persons who qualify as permit consultants, major developers, political campaigns, and lobbyists – all entities more likely to have access to the means necessary to file forms electronically. Ethics Commission forms can also be filed using tablets or mobile devices or using public computers like those available at City libraries. Electronic filing can also make it easier for filers to meet their filing obligations, by allowing statements to be filed at a location and time of day most convenient for the filer.

Mitigation Strategies:

Given the lack of known racial equity concerns with this proposal, no mitigation strategies are necessary at this time.