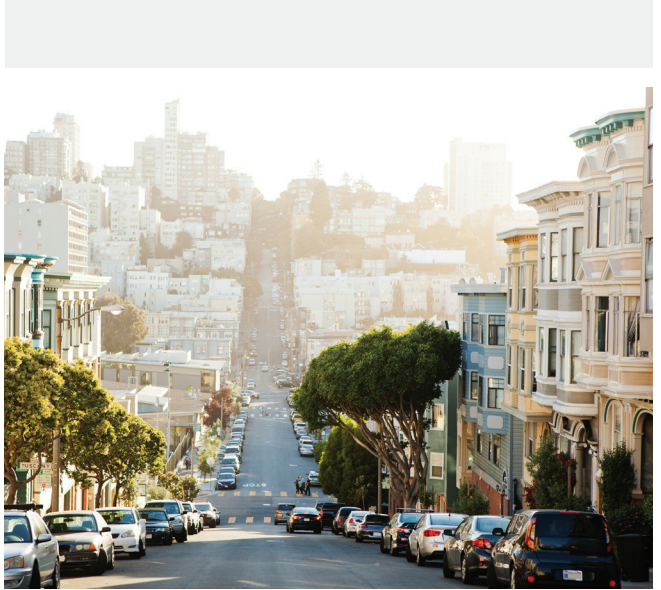




City & County of San Francisco  
Ethics Commission



# Information on 2024 Ballot Measure

## PROPOSITION D

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# Introduction

Proposition D will appear on the March 5, 2024 ballot for San Francisco voters. If approved, Proposition D will amend the [City's Campaign and Governmental Conduct Code](#), which contains the City's rules regarding election campaigns, lobbying, government ethics, conflicts of interest, and protections for whistleblowers.

## What would Proposition D do?

Proposition D would make several changes to City law, to:

- Clarify and expand the City's restricted source rule, which prohibits gifts to City officials from certain restricted sources, by removing exceptions and applying the prohibition to gifts from additional sources,
- Create a standardized disclosure requirement for payments made to City departments,
- Extend the annual ethics training requirement to all City officers and employees who participate in making governmental decisions,
- Standardize rules that are currently contained in departmental Statements of Incompatible Activities (SIAs), move them into the Code, and discontinue the departmental SIAs,
- Expand the City's anti-bribery prohibition, by removing exceptions so that anytime something of value is given to a City officer or employee for the purpose of influencing a government action it is considered a bribe,
- Allow for penalties to be imposed on a City officer or employee who

fails to disclose any personal, professional, or business relationships they have with people who are involved in decisions being made by the officer or employee,

- Standardize penalty provisions to make it clear that all violations of the Code are punishable unless otherwise specified and that proving intent or another particular mental state is not required,
- Allow the Ethics Commission to require electronic filing of public disclosures, and
- Protect ethics laws from legislative amendments by requiring joint approval from supermajorities of both the Ethics Commission and the Board of Supervisors (this does not affect the ability of voters to amend ethics laws through ballot measures).

Each of these changes is detailed in the sections below.

### **How was the measure placed on the ballot?**

Proposition D was placed on the ballot by a unanimous vote of the San Francisco Ethics Commission in August of 2023. The Commission's press release on this action can be [read here on the Commission's website](#).

### **What is the Ethics Commission?**

The San Francisco Ethics Commission was created directly by the City's voters with the passage of Proposition K in November 1993. Through its staff, the Commission is responsible for the independent and impartial administration and enforcement of laws related to campaign finance, public financing of candidates, governmental ethics, conflicts of interests, and registration and reporting by lobbyists, campaign consultants, permit consultants, and major developers.

The Commission’s mission is to practice and promote the highest standards of integrity in government. This is achieved by delivering impactful programs that promote fair, transparent, and accountable governmental decision-making for the benefit of all San Franciscans. Public service is a public trust, and the Commission’s aim is to ensure that San Franciscans can have confidence that the operations of the City and County, and the decisions made by its officers and employees are fair, just, and made without any regard to private or personal gain.

## **Why did the Ethics Commission place Proposition D on the ballot?**

In 2020, the Ethics Commission identified a review of the City’s conflict-of-interest rules as its top policy priority. This was done in response to revelations of corrupt activity by numerous City officials and contractors doing business with the City (as used in this document, the term “City officials” refers to both City officers and employees). Numerous guilty pleas and convictions of high-level officials and contractors have revealed numerous recent 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.

Commission staff studied these instances of corruption, as well as related ethics issues facing the City, in multiple policy reports. The recommendations in these reports were the foundation for what is now Proposition D. For more information on the Commission’s policy project, including copies of detailed policy reports that led to Proposition D, visit the [Ethics Commission’s website](#).

The Commission voted to place Proposition D on the ballot to address known ethics issues identified through the recent corruption scandals and to help ensure that the processes of governmental decision-making in the City of San Francisco can be trusted by the public to consistently operate in a manner that provides fair, just, and equitable treatment for all.

## Gifts to City Officers & Employees

### **What is the City’s current rule regarding gifts from restricted sources?**

San Francisco City law currently prohibits all City officers and employees from soliciting or accepting a gift from anyone the officer or employee knows, or has reason to know, is a restricted source. The source of a gift is currently considered a “restricted source” if the source is either 1) a person contracting with or seeking to contract with the officer or employee’s department, or 2) a person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action. Separate from the restricted source rule, lobbyists are already prohibited from giving gifts to City officers and City officers are prohibited from accepting or soliciting gifts from lobbyists.

Through [San Francisco Ethics Commission Regulation 3.216\(b\)-5](#), the City has several exceptions to the restricted source rule, which identify types of payments that are not considered “gifts” for purposes of the City’s rule. Additionally, City code currently defines “gift” by reference to California law, which means that all of the [State’s general gift exceptions](#)

currently apply to the City’s gift rule. The State’s definition of “gift” and corresponding exceptions have been developed for State purposes (such as the State’s annual gift limit and the reporting of gifts through the Statement of Economic Interests (Form 700)). The State’s definition and exceptions have not been developed with the City’s restricted source rule in mind.

Applying the State’s gift exceptions to the City’s restricted source rule has resulted in exceptions being applied locally that undermine the City’s rule. Under existing law, all of the following gifts are exempt from the City’s restricted source rule, meaning City officers and employees can accept such gifts from people who contract with their departments or who have recently attempted to influence their government actions:

- Gifts received in the home of the restricted source,
- Gifts exchanged on birthdays, holidays, and other occasions where gifts are commonly exchanged,
- Gifts received as a wedding guest,
- Gifts given as an ‘act of neighborliness,’
- Gifts received from someone the City official is dating,
- Gifts received from long-time friends, and
- Gifts received because of an existing personal or business relationship unrelated to the official’s position.

A complete list of the State’s gifts exceptions is [available here](#).

## **How would Proposition D change the City’s gift rule regarding gifts from restricted sources?**

Proposition D would clarify and expand the City’s restricted source rule by:

### **Creating a definition of “gift” in San Francisco law:**

This new, local definition of “gift” would mirror the State’s definition but not include the State’s numerous gift exceptions. Instead of using the State’s gift exceptions, all future gift exceptions would be developed locally, by the Ethics Commission, for the purpose of implementing the City’s restricted source rule.

Separately, the Commission has already approved initial revised regulations that will only go into effect when, and if, Proposition D is approved by voters and goes into effect. These revised regulations can be reviewed here on the [Ethics Commission’s website](#).

### **Expanding the definition of “restricted source”:**

Currently, a restricted source is either someone who is doing business with the officer or employee’s department (which is currently limited to contracting) or someone who has attempted to influence the officer or employee in the prior 12 months. Proposition D would expand this definition so that gifts are prohibited from the following restricted sources:

- A person doing business with the officer or employee’s department (see discussion below),
- A person seeking, obtaining, or possessing a license, permit, or other entitlement for use, in which the officer or employee was personally and substantially involved, for 12 months after the action was taken on the item,

- For members of boards and commissions, including the Board of Supervisors, a person doing business with any City department pursuant to a contract that requires the approval of the board or commission,
- An “affiliate” of an entity that qualifies as a restricted source under one of the preceding three bullets, with “affiliate” defined to include the entity’s board of directors, principal officers, or persons with a 10% or more ownership interest,
- A person who during the prior 12 months attempted to influence the officer or employee in any legislative or administrative action (already prohibited under current law),
- For City officers, a registered lobbyist; (already prohibited under current law, but in a different Code section), and
- Any permit consultant who has registered with the Ethics Commission, if the permit consultant has reported any contacts with the designated employee’s or officer’s department to carry out permit consulting services during the prior 12 months.

**Expanding the definition of “doing business with the department”:**

Under current law, a person is “doing business” with the City (and thus constitutes a restricted source) if they enter into, or perform pursuant to, a contract with the officer or employee’s department. Proposition D would clarify that this applies to contractors until the term of the contract ends, or, if no contract was ultimately approved, for 12 months after negotiations regarding the contract are terminated.



Proposition D would also expand “doing business” to include seeking, obtaining, or possessing a license, permit, or other entitlement for use issued by the officer’s or employee’s department, if the item is appealable to or approved by the department head, the department’s board or commission, or the Board of Supervisors. The restricted source rule would apply to such persons for 12 months after the license, permit, or other entitlement for use was issued or amended, or, if none was ultimately issued or approved, 12 months after the final decision regarding the matter was made.

**Expanding gift prohibitions for City officials:**

City officers and employees are currently prohibited from soliciting or accepting any gifts or loans from any person the officer or employee knows, or has reason to know, is a restricted source. If Proposition D is approved, this rule will be expanded so that City officers and employees may not (additions are *underlined*):

- Solicit, coordinate, facilitate, or accept any gift for themselves or any other City official if the officer or employee knows, or has reason to know, that the source of the gift is a restricted source.
- Solicit or accept a gift from any person, including a City department, if the officer or employee knows, or has reason to know, that the gift was funded, provided, or directed by a restricted source.
- Solicit or accept any gift from a restricted source for any of their family members.

### **Prohibiting gifts from lobbyists and permit consultants:**

Lobbyists are already prohibited from giving gifts to City officers, but Proposition D would relocate this rule so that it is included in the City's restricted source rule, which applies to both officers and employees, not just officers. Additionally, Proposition D would prohibit permit consultants from giving gifts to City officers or employees if the permit consultant knows or has reason to know they are a restricted source of the City officer or employee.

### **Prohibiting gifts from lobbyists and permit consultants through intermediaries:**

Proposition D would prohibit a lobbyist or permit consultant from making a payment to an intermediary if 1) the lobbyist or permit consultant knows or has reason to know the payment will be used to give a gift to a City official, and b) the lobbyist or permit consultant has reason to know they are a restricted source for the official.

### **Prohibiting individuals from acting as intermediaries for restricted source gifts:**

Proposition D would prohibit any person from accepting or using a payment on condition or with the agreement or mutual understanding that the payment will be used to make a gift to an officer or employee if the person knows or has reason to know that the source of the payment is a restricted source for the officer or employee.

### **Who could be subject to penalties for violating these gift rules?**

If Proposition D is approved, the following may be subject to penalties for violating the City's gift rules:

- **City officers and employees:** For soliciting, coordinating, facilitating, or accepting gifts for themselves or others from restricted sources.
- **Lobbyists and permit consultants:** For giving prohibited gifts to City officials, either directly or through an intermediary.
- **Gift Intermediaries:** For serving as an intermediary and providing prohibited gifts to City officials from restricted sources.

## Gifts to City Departments

### **How are gifts to City Departments currently required to be disclosed?**

Under current law, when a City department receives a gift, there are three separate public disclosure requirements that are applicable for most gifts, depending on the size of the gift. The Administrative Code requires departments to report gifts promptly to the Controller's Office and to annually disclose gifts to the Board of Supervisors. Additionally, the Sunshine Ordinance requires departments to disclose gifts of more than \$100 on the department's website.

There are currently no consequences for department heads who fail to ensure their departments report gifts to their departments as required.

### **What changes would Proposition D make regarding the disclosure of gifts to City departments?**

If approved, Proposition D would establish a new disclosure requirement, which is intended to satisfy all of the existing disclosure

requirements and provide the public with a centralized point of gift disclosure by all City departments. Instead of disclosing gifts in three separate locations, departments would be able to disclose all of their gifts through this new disclosure process and the data would be publicly accessible in a single location.

Additionally, Proposition D would place the responsibility of properly disclosing gifts to City departments on the department head or their designee. If the department head or their designee does not timely report the gifts to their department, the department head may be subject to discipline by the department head's appointing authority.

## Ethics Training Requirements

### **What are the current ethics training requirements for City officials?**

Per State and local law, City elected officers, commissioners, and department heads are required to complete an annual ethics training and certify their completion. No ethics training requirement applies to City employees.

### **How would Proposition D change ethics training requirements for City officials?**

Proposition D would expand existing training rules and require that all City officers and employees who participate in making government decisions, and who are thus already required to disclose their financial interests, be trained annually on ethics rules. The Ethics Commission would administer this training and determine its content.

Additionally, Proposition D would require each City department to annually distribute a summary of relevant State and local ethics laws to its officers and employees. This summary of ethics laws would be created and maintained by the Ethics Commission.

## Statements of Incompatible Activities

### **What are Statements of Incompatible Activities and how would Proposition D change them?**

Currently, each City department is required to have a Statement of Incompatible Activities (SIA), which is intended to be a tool for identifying and prohibiting non-City activities that are incompatible with the duties of their City officials. While departments have the ability to customize their SIA, each of the 57 separate SIAs generally contain the same rules with little variation. The SIAs also restate some, but not all, of the ethics rules in State and local law that City officials must follow. Additionally, departmental SIAs allow City officials to request Advanced Written Determinations (AWDs), which are official determinations by the official's City department as to whether a given activity would violate the department's SIA.

Proposition D would standardize and codify the rules commonly found in departmental SIAs. If approved by the voters, these standardized rules would uniformly apply to all City officers and employees across all City departments. These city-wide rules would replace rules currently found in the departmental SIAs, and the measure would repeal the existing departmental SIAs.

Proposition D would specify that City officers and employees are prohibited from engaging in the following activities:

1. **Activities Subject to their Department’s Jurisdiction:** Prohibits officers and employees from engaging in activities that are subject to the control, inspection, review, audit, permitting, enforcement, contracting, or are otherwise within the responsibility of their department. This includes, but is not limited to:
  - a. contracting with their department or serving on the board of directors of an entity that contracts with their department,
  - b. acquiring an ownership interest in real property, if they have personally and substantially participated in the permitting or inspection of that property within the 12 months prior to the acquisition, and
  - c. having a financial interest in any financial projects issued or regulated by their department.
2. **Selective Assistance:** Prohibits officers and employees from providing special assistance or advice that is not generally available to all persons, which would provide an advantage to any person who is doing business or seeking to do business with the City.
3. **Use of City Resources:** Prohibits officers and employees from using City time, facilities, equipment, or supplies for private gain or advantage.
4. **Use of Prestige of Office:** Prohibits officers and employees from using any marker (badge, uniform, business card, etc.), prestige, or influence of their City position for private gain or advantage.

5. **Use of City Work Product:** Prohibits officers and employees from selling, publishing, or otherwise using, in exchange for anything of value and without appropriate authorization, any non-public materials that were prepared on City time or using City resources.
6. **Acting as an Unauthorized City Representative:** Prohibits officers and employees from holding themselves out as a representative of their departments, unless authorized to do so, including the use of City letterhead, title, e-mail, business card, or other resources for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when they are not.
7. **Compensation for City Duties or Advice:** Prohibits officers and employees from accepting payment from anyone other than the City for the performance of a specific service or act they would be expected to render or perform in the regular course of their City duties or for providing advice about City processes.
8. **Lobbying Activity:** Prohibits officers and employees from accepting payment from anyone other than the City in exchange or communicating with any other City officer or employee within their department, with the intent to influence any administrative or legislative action. This rule would be in addition to an existing rule that prohibits City officers from being paid to communicate with any other City officer or employee (from any department) with the intent to influence them.

Additionally, City appointed department heads and employees would be prohibited from engaging in activities that impose excessive time demands or regularly disqualify them from their City assignments or responsibilities.

The ability to seek an Advanced Written Determination would only be retained for the rules against excessive time demands and regular disqualifications. For the other rules, City officials would need to request advice from the Ethics Commission to determine if any potential future conduct would be prohibited.

## Bribery Rule

### **How would Proposition D change the City's Bribery rule?**

In addition to federal and State anti-bribery laws, City Code currently prohibits any person from offering or giving, and any City officer or employee from accepting, any gift with the intent to influence any official act of the officer or employee.

Proposition D would change the City's bribery rule so that it is no longer limited to "gifts" and instead applies to "anything of value" that is solicited or offered with the intent to influence.

Proposition D would prohibit City officials from soliciting bribes, whereas the current rule only prohibits accepting bribes. People would also be prohibited from agreeing to provide a bribe, instead of just being prohibited from offering and providing the bribe.

Proposition D would also clarify that a payment, or potential payment, can be bribe even if the person receiving the payment is someone other than the City official.



If Proposition D is enacted, the City's bribery rule would be expanded to prohibit, both:

- City officers and employees from soliciting or accepting, for the benefit of any person, anything of value (including campaign contributions) with the intent that they will be influenced or rewarded for the performance of any official act; and
- all persons from offering, providing, or agreeing to provide, anything of value (including campaign contributions) with the intent to influence or reward a City official for the performance of any official act.

any individual who is the subject of, or has an ownership or financial interest in, the subject of a governmental decision being made by the officer or employee.

# Penalties for Failing to Make Required Disclosures

## **How are certain relationships currently required to be disclosed?**

The City's Campaign and Governmental Conduct Code currently requires City officers and employees to disclose on the public record, any personal, professional, or business relationships with any individual who is the subject of, or has an ownership or financial interest in, the subject of a governmental decision being made by the officer or employee.

Currently, if a City official fails to disclose such a relationship, a court may, in some situations, void the government decision that was made, but the City official is not subject to any penalties for their failure to disclose.

## **How would Proposition D change how certain relationships would be required to be disclosed?**

If approved, Proposition D would allow for penalties to be imposed on City officers and employees who fail to disclose their personal, professional, or business relationships with any person who is the subject of, or has an ownership or financial interest in, the subject of a governmental decision being made by the officer or employee. This would be accomplished by removing the language that currently specifies no penalties may be imposed for violations of this rule, which would allow penalties to be applied to this section, as they are for the rest of the rules in this chapter of the City Code.

Proposition D would also specify that the Ethics Commission may adopt regulations regarding how this required disclosure must be made and archived.

## General Penalty Provisions

Currently, most chapters of the City’s Campaign and Governmental Conduct Code apply administrative penalties on a strict liability basis, meaning that the Ethics Commission does not need prove a specific mental state existed, in order to issue penalties against the violator. However, three of the Code’s chapters attach a prerequisite mental state to violations in order for violations to result in administrative penalties. These chapters require the person who violated the rules to have done so “knowingly or negligently” in order for administrative penalties to be possible. The three chapters with this mental state requirement are the chapters containing the City’s rules regarding lobbyists, permit consultants, and major developers.

Proposition D would remove the mental state requirement from these three chapters, so that administrative penalties could be applied on a strict liability basis, making it possible for administrative penalties to be awarded for any violations, without the need to prove a particular mental state existed.

## Electronic Filing

Some, but not all, chapters of the Campaign and Governmental Conduct Code that contain disclosure requirements, also contain general electronic filing provisions, which explicitly state that the Ethics Commission may require the disclosures to be made electronically. E-filed disclosures make it easier for the public to access disclosed information and can be easier to file than hardcopy forms.

Proposition D would add similar general e-filing provisions to four chapters that currently do not have such provisions. The four chapters that would be amended contain the City's rules regarding lobbyists, conflicts of interest and other prohibited activities, permit consultants, and major developers. If approved, Proposition D would add language explicitly stating that the Ethics Commission may require electronic filing of the disclosures in these chapters.

## Future Legislative Amendments

Any provision of any chapter of the Campaign and Governmental Conduct Code can be amended by the voters through a ballot measure. Such measures can be placed on the ballot through the voter initiative process, by the Board of Supervisors, or by the Ethics Commission. This voter amendment power is guaranteed through the City's Charter and Proposition D would not change this power.

Separate and apart from amendments by voters, nearly all chapters of the Code can also be amended legislatively, without voter approval. The ability to enact legislative amendments can be an important

tool for keeping ethics rules strong, current, and responsive to the changing needs of the City. However, many chapters of the Code do not have specific amendment provisions, which means that those chapters can be amended by a simple majority vote of the Board of Supervisors. While other chapters can only be legislatively amended by supermajorities of both the Ethics Commission and the Board of Supervisors. The chapter regarding campaign consultants can only be amended by ballot measure.

Proposition D would amend chapters of the Code to require that any future legislative amendments be approved by supermajorities of both the Ethics Commission and the Board of Supervisors. This amendment standard would be applied to the chapters regarding lobbyists, the Ethics Commission, permit consultants, major developers, whistleblower protections, and campaign consultants. If approved, Proposition D would allow for these chapters to be amended legislatively, but only if the higher standard of joint approval from both the Ethics Commission and the Board of Supervisors can be reached.

## Additional Information

### **When would the changes in Proposition D go into effect?**

If approved by voters in March 2024, the operative date of Proposition D would be six months and 10 days after the official vote count is certified by the Board of Supervisors. The time before the operative date will be used by the Ethics Commission to train City officials and other stakeholders on the upcoming changes and to prepare for the overall implementation of Proposition D.

## How much would Proposition D cost?

Proposition D would appropriate \$43,000 from the City's General Reserve fund to cover the administrative costs required for the Ethics Commission to implement the ordinance in Fiscal Year 23-24. In subsequent years, \$25,000 would be requested for ongoing costs. These costs are associated with technology needs stemming from the expanded ethics training requirement and the new method for reporting gifts to City departments.

## Will the Ethics Commission be considering regulations to help implement Proposition D?

Yes, when the Ethics Commission voted to place Proposition D before voters, the Commission simultaneously voted to approve [regulations regarding the annual ethics training requirement and the City's gift rules](#), as they would potentially be amended by Proposition D. These regulations were approved in August of 2023, but will only become operative when, and if, Proposition D is approved by voters and becomes operative.

Additionally, the Ethics Commission is currently working on potential regulations for the section of Proposition D regarding incompatible activities. Regulations from this process may also be approved by the Commission in the future, such that they would only become operative when, and if, Proposition D is approved by voters and becomes operative.

The Ethics Commission's regulation-making process is an ongoing and important tool for clarifying and implementing the City's ethics rules. As such, the Commission may consider additional regulations regarding the

implementation of Proposition D at any time, as determined necessary or beneficial.

### **Have additional questions?**

If you have questions regarding Proposition D, please visit [sfethics.org/PropD](https://sfethics.org/PropD) or contact Michael Canning ([Michael.A.Canning@sfgov.org](mailto:Michael.A.Canning@sfgov.org)), with the San Francisco Ethics Commission.



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