

LEGISLATIVE DIGEST

[Initiative Ordinance - Campaign and Governmental Conduct Code - Gift Prohibitions and Reporting, Bribery, Ethics Training, Incompatible Activities, and Amendment Process]

Ordinance amending the Campaign and Governmental Conduct Code to 1) expand gift prohibitions for City officers and employees; 2) expand rules prohibiting bribery; 3) require ethics training for Form 700 filers; 4) prohibit members of the public from acting as intermediaries for City officers and employees with respect to certain prohibited gifts; 5) impose personal liability on City officials for failure to disclose certain relationships; 6) create generally applicable incompatible activity rules; and 7) require Ethics Commission and Board of Supervisors super-majority approval for amendments to certain ethics-related ordinances; and appropriating \$43,000 from the General Reserve in Fiscal Year 2023-24 to fund administrative costs required to implement the ordinance.

Existing Law

1. Local Gift and Bribery Rules

In addition to State laws regarding gift disclosure and limits, San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) Section 3.216(b)-(c) generally prohibits City officers and employees from accepting gifts from (a) “restricted sources” and (b) their subordinates. A “restricted source” is (a) any person contracting with or seeking to contract with the officer’s or employee’s department, or (b) any person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.

The “restricted source” rule incorporates the California Political Reform Act’s definition of a “gift” and its gift exceptions, including exceptions established through Fair Political Practices Commission (“FPPC”) regulations. Thus, for example, the general gift exceptions established by FPPC Regulation 18942, the travel exceptions established by Government Code Section 89506, the FPPC Form 802 process for tickets distributed by City agencies established by FPPC Regulation 18944.1, and the exceptions for attendance at events established by FPPC Regulations 18946.2 and 18946.4 currently apply to the restricted source rule.

Separately, via regulation, the Ethics Commission has adopted exceptions to the restricted source rule and the rule prohibiting gifts from subordinates. See Ethics Commission Regulations 3.216(b)-5 and 3.216(c)-1.

Lastly, in addition to federal and State laws prohibiting bribery, C&GC Code Section 3.216(a) prohibits any person from offering, and any City officer or employee from accepting, any gift with the intent to influence the City officer or employee in the performance of any official act.

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2. Statements of Incompatible Activities

C&GC Code Section 3.218(a) generally prohibits City officers and employees from engaging in any employment or outside activity that their commission or department has identified as incompatible in a Statement of Incompatible Activities. Section 3.218(b) requires each City commission or department to adopt a Statement of Incompatible Activities.

Each Statement of Incompatible Activities is required to list the outside activities that are inconsistent, incompatible, or in conflict with the officer's or employee's duties. Such prohibited outside activities include: (1) the use of City resources for private gain or advantage; (2) the receipt or acceptance of gifts for the performance of an act that the officer or employee would be required or expected to provide in the regular course of his or her official duties; (3) activities that may be subject to the control, inspection, review, audit or enforcement of the officer's or employee's department; and (4) activities that impose outside time demands that interfere with an official's duties.

The Statements of Incompatible Activities also allow an officer or employee to request a determination that a proposed outside activity is not incompatible with the officer's or employee's duties through an "advance written determination" process. In general, each department head (or the department's head designee) handles requests for advance written determinations from employees, and each appointing authority handles requests from City officers. When a request for an advance written determination is approved, the officer or employee who requested it is immune from subsequent enforcement action for violating the Statement of Incompatible Activities for engaging in the outside activity disclosed in their request.

3. Ethics Trainings

Pursuant to State and local law, City elected officials, commissioners, and department heads must complete annual ethics trainings and file certificates regarding their completion. Cal. Gov. Code § 53235 (AB 1234); Ethics Commission Regulation 15.102-1.

4. Amendments to Campaign and Governmental Conduct Code

The voters previously approved and adopted several chapters of the Campaign and Governmental Conduct Code through ballot measures, and these chapters may only be amended as provided by those measures themselves. Article I, Chapter 1 (the Campaign Finance Reform Ordinance), Article III, Chapter 2 (the Government Ethics Ordinance), and portions of Article II, Chapter 1 (the Lobbyist Ordinance) may only be amended by a supermajority of the Board of Supervisors and Ethics Commission, or by the voters through a further ballot measure. Article I, Chapter 5 (the Campaign Consultant Ordinance) was also established by a voter-approved ballot measure but does not provide any mechanism for amendments other than a further ballot measure.

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The remainder of the C&GC Code was adopted through the City's legislative process and can be amended by future legislation, without any special vote thresholds or the need for further ballot measures.

5. Disclosure of Gifts to Departments

Gifts to departments, as opposed to personal gifts given directly to specific City officers and employees, are subject to several reporting requirements:

- The Sunshine Ordinance requires departments to report gifts exceeding \$100 in value to carry out any City function by posting the information on the department's website. Admin. Code § 67.29-6.
- Departments must report annually to the Board of Supervisors, during the first two weeks of July, regarding the receipt and disposition of any gifts received by the department in the previous fiscal year, regardless of amount. Admin. Code § 10.100-305(c).
- Departments must also report any such gifts to the Controller. *Id.* § 10.100-305(a).

In general, departments must also seek Board of Supervisors' approval for acceptance of any gifts worth more than \$10,000. *Id.* § 10.100-305(b).

Currently, there are no penalties for department heads who fail to ensure that their departments report gifts as required by the Administrative Code.

6. Disclosure of Relationships

Campaign and Governmental Conduct Code Section 3.214 requires City officers and employees to disclose on the public record any personal, professional, or business relationship 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. If the governmental decision is not made during a public meeting, including staff-level decisions made by a department head or City employee, the disclosure should be made through a memorandum kept on file at the officer's or employee's department.

Ethics Commission Regulation 3.214-5(b) establishes the following definitions for the types of relationship that officers and employees must disclose:

- Personal relationship: personal relationship is a relationship involving a family member or a personal friend, but does not include a mere acquaintance.
- Professional relationship: professional relationship is a relationship with a person based on regular contact in a professional capacity, including regular contact in conducting volunteer and charitable activities.

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- Business relationship: an officer has a business relationship with a person if, within the two years prior to the decision, the person was a client, business partner, colleague, or did business with the officer or employee's business.

Currently, a City official who fails to disclose such a relationship in the course of the official's involvement in a government decision is not subject to any penalties. But a court may void a government decision when the officer or employee fails to make the disclosure if the court determines the failure to disclose was willful and that the officer or employee failed to render the decision primarily for the benefit of the City.

Amendments to Current Law

1. Local Gift and Bribery Rules

The proposed measure would amend the restricted source rule to include a broader range of entities that would qualify as a "restricted source." A restricted source would include:

- a person "doing business" with or seeking to do business with the department of the officer or employee;
- for members of boards and commissions, including the Board of Supervisors, a person doing business with any City department pursuant to a contract that required the approval of the board or commission;
- 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, until 12 months after the date the license, permit, or other entitlement for use was issued, extended, amended, or otherwise approved or, if no license, permit, or other entitlement for use was issued or approved, 12 months after the day the final decision not to issue or approve was made;
- 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 knowingly attempted to influence the officer or employee in any legislative or administrative action;
- for officers, a registered lobbyist; or
- any permit consultant who has registered as a permit consultant 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.

"Doing business" is defined as:

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- being a party to or seeking to become a party to a contract with the department, until 12 months after the term of the contract ends or, if no contract is approved, 12 months after negotiations regarding the contract terminate; or
- seeking, obtaining, or possessing a license, permit, or other entitlement for use issued by the department, and appealable to or approved by the department head, the department's board or commission, or the Board of Supervisors, until 12 months after the date the license, permit, or other entitlement for use was issued, extended, or otherwise approved or, if no license, permit, or other entitlement for use was issued or approved, 12 months after the day the final decision not to issue or approve was made.

The restricted source rule would also expand to prohibit the following:

- no City officer or employee may solicit, coordinate, facilitate, or accept, any gift for themselves or for any other City officer or employee from a person who the officer or employee knows or has reason to know is a restricted source for themselves or for the recipient of the gift;
- no City officer or employee may solicit or accept a gift from any person, including any gift obtained through 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;
- no City officer or employee may solicit or accept any gift from a restricted source for any of their family members;
- no lobbyist or permit consultant may offer or make a gift to any officer or employee, or any of the officer's or employee's family members, nor direct the offer or making of any gift by any other person, if the lobbyist or permit consultant knows or has reason to know that they are a restricted source for the officer or employee;
- no lobbyist or permit consultant may make a payment to an intermediary, including any City department, if the lobbyist or permit consultant knows or has reason to know that the intermediary will use the payment to provide a gift to any City officers or employees and that they are a restricted source for the officers or employees; and
- no person – regardless of whether that person is a City officer or employee – may accept or use a payment on condition or with the agreement or mutual understanding that the payment will be used for 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.

For the restricted source rule, the definition of what constitutes a "gift" would no longer mirror the definition established in State law. Likewise, exceptions established under State law, including FPPC regulations, would no longer apply. But the Ethics Commission plans to adopt certain of these exceptions through regulation and may continue to establish gift exceptions through regulation.

The proposed measure would also expand the local bribery rule to prohibit:

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- any City officer or employee from soliciting for the benefit of any person, or accept, anything of value or campaign contribution from any person, with the intent that the City officer or employee will be influenced or rewarded thereby in the performance of any official act; and
- any person from offering, providing, or agreeing to provide anything of value or campaign contribution to any person, with intent to influence or reward thereby any City officer or employee in the performance of any official act.

2. Statements of Incompatible Activities

The proposed measure would replace department-specific Statements of Incompatible Activities with a single set of incompatibility rules that applies to all City officers and employees. The proposed incompatibility rules would generally prohibit:

- engagement in activities that are subject to the control, inspection, review, audit, permitting, enforcement, contracting, or are otherwise within the responsibility of the officer or employee's department;
- contracting with one's own department or having a financial interest in or serving on the board of directors for an entity that contracts with one's own department;
- selective assistance that is not generally available to all persons, in a manner that confers an advantage on any person who is doing business or seeking to do business with the City;
- use of City resources or office for private gain or advantage;
- use of non-public materials that were prepared on City time or while using City facilities for anything of value and without appropriate authorization;
- acting as an unauthorized City representative;
- private compensation for City duties or advice;
- payment for lobbying other City officers or employees in the same department; and
- engagement in activities that either impose excessive time demands or that disqualify the officer or employee from their City assignments or responsibilities on a regular basis.

An "advance written determination" would only be available to address outside activities that impose excessive time demands or result in regular disqualification. The other incompatible activities addressed in Section 3.218 would be strictly prohibited.

3. Ethics Trainings

Section 3.205 of the proposed measure would require all City officers and employees who file a Form 700 to undergo an annual ethics training. The Ethics Commission would administer this training and determine its content. Every City department would also be required to annually distribute a summary of State and local ethics laws to be created by the Ethics Commission.

4. Amendments to Campaign and Governmental Conduct Code

The proposed measure re-enacts the entirety of Article II, Chapter 1 (the Lobbyist Ordinance), Article III, Chapter 3 (regarding the Ethics Commission), Article III, Chapter 4 (regulating permit consultants), Article III, Chapter 5 (regulating developer disclosures), and Article IV, Chapter 1 (the Whistleblower Ordinance) and adds provisions requiring that further amendments to these provisions may only be made by a super-majority of the Board of Supervisors and Ethics Commission, or a further ballot measure. The proposed measure also adds a provision to Article I, Chapter 5 (the Campaign Consultant Ordinance) to permit further amendments approved by a super-majority of the Board of Supervisors and Ethics Commission.

5. Disclosure of Gifts to Departments

Section 3.217 of the proposed measure would impose an additional reporting requirement for City departments – although the Ethics Commission plans to implement this additional reporting in a manner that could satisfy the other pre-existing Administrative Code requirements. The responsibility for the additional reporting would fall on the department head, and the department head would be subject to potential discipline by the department head's appointing authority if the department fails to comply with this reporting requirement (also, the department head would be subject to this potential discipline, even if the department head delegated the reporting responsibilities to a subordinate).

The additional reporting would require disclosure of:

- the name of the source of the payment;
- the date of the payment;
- the total value of the payment;
- if the payment includes goods or services, a description of the goods or services;
- the purpose and use of the payment;
- the name of any City officer or employee that receives a personal benefit from the gift or through the City's use of the gift;
- a description and valuation of the personal benefits received by any City officer or employee through the department's use of the gift;
- a description of any contract that the payor has with the department;
- a description of any license, permit, or other entitlement for use that the payor is currently seeking from the department or has been issued by the department within the last 12 months to the payor; and
- a description of any financial interest the payor has involving the City.

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6. Disclosure of Relationships

The proposed measure would impose penalties 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 officers or employees.

Background Information

The Ethics Commission may, by a four-fifths vote of its members, submit initiative ordinances relating to conflicts of interest, campaign finance, lobbying, campaign consultants or governmental ethics directly to the voters. Charter § 15.102.

In connection with these legislative changes, the Ethics Commission plans to adopt proposed changes to its regulations implementing the expanded ethics training requirements, the restricted source rule, and the rule prohibiting gifts from subordinates.

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