



DAVID CHIU
City Attorney

MEMORANDUM

TO: ALL ELECTED CITY OFFICIALS
ALL CITY BOARD AND COMMISSION MEMBERS
ALL CITY DEPARTMENT HEADS

FROM: DAVID CHIU, City Attorney

DATE: April 15, 2024

RE: Proposition D – City Ethics Laws

On March 5, 2024, San Francisco voters approved Proposition D, which amends the City's Campaign and Governmental Conduct Code to revise City ethics laws. The changes adopted in Proposition D will become operative on October 12, 2024. The City Attorney's Office is distributing this memorandum to outline these amended ethics laws.

Proposition D changes local law in these six ways, as discussed below: (1) modifies the local gift rules concerning restricted sources, (2) rescinds each department's Statement of Incompatible Activities and establishes incompatibility rules that apply Citywide, (3) requires City departments to report to the Ethics Commission gifts the department receives, (4) requires all City employees who file a Statement of Economic Interest (Form 700) to complete an annual ethics training, (5) creates penalties for City employees and officers who fail to disclose personal, profession, or business relationships with persons who are the subject of a decision before the employee or officer, and (6) modifies the local definition of bribery.

This memorandum is a general guide to these new rules and is not a substitute for legal advice in particular circumstances. Please contact the City Attorney's Office or the San Francisco Ethics Commission in advance with any questions related to these provisions.

I. LOCAL RULE PROHIBITING GIFTS FROM RESTRICTED SOURCES

Local law currently prohibits City elected officials and members of City boards and commissions ("officers") and City employees from soliciting or accepting a gift from a restricted source. Generally, a restricted source is a person who is seeking or has a contract with the employee's or officer's department, or a person who has sought to influence the employee or officer in a governmental decision in the preceding 12 months.

Proposition D expands the City's restricted source rule to include a broader range of persons who qualify as a restricted source, expands the circumstances for when a gift from a restricted source is prohibited, and modifies exceptions to the rule.

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A. Definition of Restricted Source**1. Contractors and Persons Seeking City Contracts**

Proposition D expands the prohibition on accepting gifts from contractors and persons seeking contracts. Proposition D defines “contract” as any agreement with the City, including an amendment or modification of such agreement, for (1) the rendition of personal services, (2) the furnishing of any material, supplies, or equipment, (3) the sale or lease of any land or building, (4) a grant, loan, or loan agreement, or (5) a development agreement. The following are restricted sources:

- A party to a contract or a person seeking a contract with a department is a restricted source for all employees and officers of the department from the submission of a proposal until 12 months after the term of the contract ends or, if no contract is approved, 12 months after negotiations regarding the contract conclude.
- For members of boards and commissions, a restricted source also includes a party to a contract with any department that was approved by the board or commission of which the officer is a member until 12 months after the contract ends. The same rule applies to contracts approved by the Board of Supervisors. This includes contracts approved by the board, commission, or the Board of Supervisors even if the member did not participate in the approval.
- A restricted source under the preceding two bullets includes “affiliates.” Affiliates are members of the contractor’s board of directors or any of its principal officers, including its chairperson, chief executive officer, chief financial officer, chief operating officer, and any person with an ownership interest of more than 10%.

2. Persons Involved in Permit Proceedings

Proposition D expands the restricted source rule to apply to persons involved in certain permit proceedings. The restricted source rule will apply as follows as to persons seeking, obtaining, or possessing a non-ministerial license, permit, or other entitlement for use, including land use permits (“permits”):

- For permits that are appealable to or approved by a department head, a department’s board or commission, or the Board of Supervisors, the applicant or permittee is a restricted source for all officers and employees of the department from when the applicant initiates the proceeding until 12 months after the final decision to approve, extend, or deny the permit.
- For permits not covered by the preceding bullet, the applicant or permit holder is a restricted source to officers and employees who were personally and substantially involved in the proceeding from when the applicant initiates the proceeding until 12 months after the final decision to approve, extend, or deny the permit.

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- A restricted source under the preceding two bullets includes affiliates, as defined above.

3. Additional Categories of Restricted Sources

The following are also types of restricted sources under Proposition D:

- A person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action;
- For City officers, a registered lobbyist; and
- A permit consultant who has registered with the Ethics Commission, if the permit consultant has reported any contacts with the employee's or officer's department to carry out permit consulting services during the prior 12 months.

B. Circumstances When Gifts From Restricted Sources are Prohibited

Proposition D sets the following rules for restricted source gifts:

- City officers or employees may not solicit, coordinate, facilitate, or accept, a gift for themselves or for other City officers or employees from a person who is a restricted source for themselves or for the recipient of the gift.
- City officers and employees may not solicit or accept a gift from any person, including the City or a nonprofit organization, if a restricted source funded, provided, or directed the gift. This prohibition includes gifts of event tickets, work-related travel, or other goods or services a restricted source provides to a City department for use by the employee or officer.
- City officers and employees may not solicit or accept a gift from a restricted source for their family members.
- No person—regardless of whether that person is a City officer or employee—may accept or use a payment on condition or understanding that the payment will be used to provide a gift to an officer or employee, if the source of the payment is a restricted source for the officer or employee.
- Lobbyists and permit consultants may not make gifts directly or through an intermediary to City officers, employees, or their families if the lobbyist or permit consultant is a restricted source for such officer or employee.

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C. Exceptions to the Restricted Source Rule

Currently, the exceptions to the definition of “gift” under state law also apply to the restricted source rule. As of October 12, 2024, Proposition D removes state law exceptions by creating the following definition of gift for purposes of the restricted source rule and local law: “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. . . . Any gift exceptions established by State law shall not apply to ‘gift,’ as used in this Chapter.”

The Ethics Commission has adopted regulations that modify exceptions to the restricted source rule and establish new exceptions that will apply beginning October 2024, when Proposition D becomes operative. The following is a summary of some of the exceptions to the prohibition on accepting gifts from restricted sources included in the regulations:

- Routine Office Courtesies. Gifts, other than cash, that are routine office courtesies with an aggregate value of \$25 or less per occasion, up to four times per calendar year, that a restricted source provides without regard to official status at the restricted source’s place of business at times the officer or employee must visit the place of business to carry out City duties. Routine office courtesies include bottled water, coffee, small snacks, a pad of paper, and writing instruments, but not alcohol.
- Widely Attended Conferences. Free attendance at a widely attended convention, conference, seminar, symposium, or ribbon-cutting or ceremony, where attendance is appropriate to the officer’s or employee’s duties and the organizer of the event provides the free attendance voluntarily. This exception includes a waiver of all or part of an admission fee, local transportation, and food, refreshments, entertainment, or instructional materials provided to all attendees as an integral part of the event.
- Informational Materials and Conferences. Goods or services that serve primarily to convey information to the official to assist the official in performing official duties, such as books, reports, periodicals, audio or video recordings, or free or discounted admission to informational conferences or seminars.
- Gifts from Family. A gift from a family member, provided that the family member is not acting as an agent or intermediary for any restricted source. Family members are the employee’s spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed, and the spouse, or former spouse, of any such person other than a former in-law.

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- Speeches. Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech so long as the person who organizes the event provides the admission. This exception also applies to one staff member who attends to support the official making the speech.
- Ceremonial Role. A ticket provided to an official and one guest for admission to a facility, event, show, or performance for an entertainment, amusement, recreational, cultural, or similar purpose at which the official performs a ceremonial role on behalf of the official's agency. A "ceremonial role" is an act performed at an event by the official as a representative of the City at the request of the holder of the event or function where, at least for part of that event or function, the focus of the event is on the act performed by the official. Examples of a ceremonial role include: throwing out the first pitch at a baseball game; cutting a ribbon at an opening; making a presentation of a certificate, proclamation, award, or other item, such as the key to the City.
- Non-Profit Fundraisers. A single ticket provided by a non-profit organization to a fundraiser event hosted by the non-profit organization if the ticket is used by an official for whom attendance at the event is necessary to carry out the official's City duties. Purposes that are "necessary to carry out the official's City duties" may include attending an event to share information with other attendees, to build and maintain relationships with grant recipients or potential grant recipients for purposes of City business, or to show departmental support for City-funded projects, so long as such tasks are part of the official's City duties. The department may not use the ticket for employee appreciation or as a reward for public service. The department must publicly report tickets an employee or officer accepts under this exception as described in Section III below.
- Tickets to Art, Cultural, Sporting, and Entertainment Events. A single ticket to an art exhibit, performance, athletic, sporting, cultural, or other entertainment event or production provided by an organization holding the event if the ticket is used by an official for whom attendance at the event is necessary to carry out the official's City duties. Purposes that are "necessary to carry out the official's City duties" may include monitoring City-funded or permitted events, or assessing local events to inform future funding or permitting decisions, and ensuring proper use of City facilities, so long as such tasks are part of the official's City duties. Employees of departments that regularly fund or permit arts, recreational, and culture events and productions, may accept a single additional ticket for a guest to accompany them to the event or production. The department may not use the ticket for employee appreciation or as a reward for public service. The department must publicly report tickets an employee or officer accepts under this exception as described in Section III below.

The full list of exceptions is available at the following website: <https://sfethics.org/wp-content/uploads/2023/08/Attachment-2-Ethics-Commission-Regulation-Amendments-8.7.23.pdf>.

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Employees and officers who accept gifts under an exception to the restricted source rule must also ensure they comply with other applicable reporting requirements and gift limits.

The state law gift exceptions that as of October 12, 2024 no longer apply to gifts from restricted sources under Proposition D and the Ethics Commission's regulations include these nine categories of gifts: (1) gifts of travel funded by a 501(c)(3) non-profit organization for a legislative, governmental or public policy purposes; (2) gifts of travel to an employee or official for purposes of providing a speech or participating in a panel; (3) gifts of home hospitality; (4) gifts exchanged on birthdays or holidays of equal value; (5) gifts given in connection with a bona fide dating relationship; (6) gifts exchanged in the course of a social relationship where the parties rotate payments on a continuing basis; (7) benefits received as a guest attending a wedding; (8) wedding gifts; and (9) gifts from a long term, close personal friend unrelated to the official's position where the friend does not have business before the official's agency. As mentioned above, the Ethics Commission adopted a regulation with an exception for gifts from family members.

II. INCOMPATIBLE ACTIVITY RULES

Currently, each City department has a Statement of Incompatible Activities ("SIA") that identifies non-City activities that are incompatible with the duties of the department's officers and employees. Under Proposition D, each department's SIA will automatically sunset when the measure becomes operative on October 12, 2024. In place of the SIAs will be Section 3.218 of the Campaign and Governmental Conduct Code that sets incompatibility rules for all City officers and employees. Many of the rules in Section 3.218 are included in existing departmental SIAs. Departments may adopt policies that set additional department-specific incompatibility rules, subject to meet and confer with the labor unions of the department's employees.

Under Proposition D the following are prohibited incompatible activities:

- **Activities Subject to Department's Jurisdiction.** City officers and employees may not engage in activities subject to the control, inspection, review, audit, permitting, enforcement, contracting, or are otherwise within their department's responsibility. This prohibition specifically includes:
 - Contracting with their department or serving on the board of directors of an entity that contracts with their department;
 - 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 before the acquisition; and
 - Having a financial interest in any financial products issued or regulated by their department.

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- **Selective Assistance.** City officers and employees may not provide special assistance or advice 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.
- **Improper Use of City Resources.** City officers and employees may not use City time, facilities, equipment, or supplies for private gain or advantage.
- **Improper Use of Prestige of Office.** City officers and employees may not use any marker (e.g., badge, uniform, business card, etc.), prestige, or influence of their City position for private gain or advantage.
- **Use of City Work Product.** City officers and employees may not sell, publish, or otherwise use non-public materials that were prepared using City resources in exchange for anything of value and without appropriate City authorization.
- **Acting as an Unauthorized City Representative.** City officers and employees may not hold themselves out as a representative of their departments, unless duly authorized to do so.
- **Compensation for City Duties or Advice.** City officers and employees may not accept payment from anyone other than the City to perform a specific service or act they would be expected to perform in the regular course of their City duties or to provide advice about City processes.
- **Lobbying Activity.** City officers and employees may not accept payment from anyone other than the City in exchange for communicating with any other City officer or employee within their department, with the intent to influence any administrative or legislative action.
- **Activities With Excessive Time Demands or That Require Regular Disqualification.** City employees may not engage in outside activities that impose excessive time demands that materially impair their performance of City duties or that regularly disqualify them from their City assignments or responsibilities.

The Ethics Commission intends to adopt regulations to implement these rules.

III. REPORTING GIFTS TO THE ETHICS COMMISSION

Proposition D requires departments to publicly report the following information to the Ethics Commission concerning gifts the department received within 15 calendar days after the end of the month the department received the gift:

- the source, date, and value of the gift;
- a description of any goods or services received, if applicable;
- the purpose and use of the gift;
- the name of any City officer or employee who received a personal benefit from the gift or through the City's use of the gift;
- a description and valuation of the personal benefits any City officer or employee received through the department's use of the gift;
- a description of any contract that the donor has with the department;

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- a description of any license, permit, or other entitlement for use that the donor is seeking from the department or has been issued by the department to the donor within the last 12 months; and
- a description of any financial interest the donor has involving the City.

The department head must ensure the department complies with this disclosure requirement and may be subject to discipline by their appointing authority if the department fails to comply. The Ethics Commission will create a form for departments to make this report. This reporting requirement is in addition to other gift reporting required by local law.

IV. ETHICS TRAININGS FOR ALL EMPLOYEES WHO FILE A FORM 700

Proposition D requires all City employees who file a Statement of Economic Interests (Form 700) to complete an ethics training administered by the Ethics Commission within 30 days of assuming office and then annually after. The annual training must be completed by April 1 each year, except an employee who assumes office between October 1 and March 30 and timely completes the training is not required to complete the training again until April 1 of the following year. This training requirement continues to apply to City officers and department heads. An employee or officer who fails to complete the training may be subject to monetary penalties.

Every City department must also annually distribute to all officers and employees by April 1 each year a summary of relevant State and local ethics laws created by the Ethics Commission.

V. PENALTIES FOR FAILURE TO DISCLOSE RELATIONSHIPS

City officers and employees are required to disclose on the public record 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 requirement applies if, as a result of the relationship, the public could reasonably question the ability of the officer or employee to act for the benefit of the public. Disclosure on the public record means inclusion in the minutes of a public meeting, or if the decision is not made at a public meeting, recorded in a memorandum kept on file at the offices of the City officer or employee's department, board, or commission. Proposition D authorizes the Ethics Commission to impose penalties on City officers and employees who fail to make these disclosures.

VI. LOCAL DEFINITION OF BRIBERY

Proposition D modifies the local definition of bribery to prohibit:

- 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

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- 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.

VII. CONCLUSION

We encourage you to reach out in advance to the City Attorney’s Office or the Ethics Commission with any questions concerning Proposition D. Additionally, the Ethics Commission will prepare additional guidance materials and training regarding Proposition D and its implementing regulations.