




DENNIS J. HERRERA  
City Attorney

## MEMORANDUM

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

FROM: DENNIS J. HERRERA, City Attorney 

DATE: March 15, 2019

RE: New City Conflict of Interest and Ethics Laws

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In May 2018, the Ethics Commission, Board of Supervisors, and Mayor approved a series of amendments to the City's Campaign and Governmental Conduct Code. Some of these provisions went into effect on June 30, 2018; the remainder of the changes went into effect on January 1, 2019. These new rules largely apply to City elective officers and commissioners. Consistent with advice we have previously given since the amendments were enacted, the City Attorney's Office is distributing this memorandum to outline these new conflict of interest and ethics laws, and also to remind you of existing rules that apply to City officials.

A further overview of conflict of interest and ethics laws governing the conduct of City officers and employees is available in the Good Government Guide posted on the Good Government section of our website at [www.sfcityattorney.org](http://www.sfcityattorney.org). 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.

Rules that became operative on June 30, 2018:

- Fundraising for nonprofit organizations. Section 3.207(a)(1)<sup>1</sup> prohibits elected officials and commissioners from using their public positions or offices to seek or obtain anything of value to benefit themselves, their immediate families, or organizations with which they are associated. For the purposes of this provision, a City officer is "associated" with an organization if the officer, or a member of the officer's immediate family, is a director, officer, or trustee, owns or controls 10% of the entity, or is an agent or employee of the organization. Section 3.207(a)(1)'s prohibition would potentially apply to fundraising for the benefit for nonprofit organizations. For example, if you serve on the board of directors of a nonprofit organization or an honorary committee member for a fundraising event, you should consult with either the City Attorney's Office or the Ethics Commission before the organization solicits donations and references your City position or title.
- Exchanging official actions for campaign contributions. Section 3.207(a)(2) prohibits elected officials and commissioners from giving, offering, promising to give, or withholding their vote, influence, or official action with respect to any pending matter in exchange for a campaign contribution.

<sup>1</sup> Section references are to the San Francisco Campaign and Governmental Conduct Code.

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- Exchanging official actions for anything of value. Section 3.207(a)(3) prohibits elected officials and commissioners from soliciting or accepting anything of value for the purpose of influencing their votes, official actions, or judgment.
- Asking subordinates to volunteer on campaigns. Section 3.231(a) prohibits elected officials and commissioners from asking any of their subordinate employees to volunteer on political campaigns for or against any ballot measure or candidate. A “subordinate employee” means any employee for whom you have the responsibility of directing or evaluating the employee’s performance or any of that employee’s supervisors. For example, for a commissioner, a “subordinate employee” would be any employee of the department that the commissioner oversees.
- Fundraising for appointing authorities. Section 3.231(b) prohibits commissioners from engaging in political fundraising for the benefit of their appointing authorities, any political committees controlled by their appointing authorities, or candidates for the offices held by their appointing authorities. But commissioners can continue to make their own contributions to their appointing authorities.

Rules that became operative on January 1, 2019:

- Contractor contribution ban - amendments. Amendments to Section 1.126 extend the length of the City’s existing contractor contribution ban from six months after the date of contract approval to 12 months after that date. The amendments also specify that development agreements are among the types of contracts that trigger this contribution ban. The amendments also impose new notification requirements on prospective City contractors, and City agencies attempting to enter into such contracts. We encourage you to contact the Ethics Commission with any questions about these notification requirements.
- Recusal procedures. Section 3.209 specifies recusal procedures for commissioners who have a financial conflict of interest arising from pending matters, including public disclosure of the conflict and leaving the room during discussion, voting and any other disposition of the matter. The amendments would also require commissioners who have recused themselves to file an Ethics Commission form within 15 calendar days after the date of the meeting at which the recusal occurred. Commissioners file the form even if the member did not attend the meeting that would require recusal.
- Local behested payment reporting. A “behested payment” is a donation solicited directly or indirectly by an official for a legislative, governmental or charitable purpose. A behested payment can include, for example, a donation solicited by a City official for the benefit of a local nonprofit organization or a City department. Section 3.610 requires elected officials and commissioners to file local behested payment SFEC Form 3610b for any behested payments of \$1,000 or more from an interested party made 1) during the pendency of certain matters before the official or official’s commission, 2) within six months of the conclusion of such a matter, or 3) during the 12 months prior to the commencement of such a matter. Under this rule, an “interested party” is any party or participant in a proceeding regarding administrative

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enforcement, a license, a permit, or other entitlement for use before an officer or any board or commission on which the officer sits.

- Local behested payment reporting – donors. Section 3.620 requires certain donors who have made behested payment(s) totaling \$10,000 or more in a calendar year to file a report with the Ethics Commission providing information about the proceeding(s) in which they were involved, the outcome(s) sought, and any contact(s) they made in relation to such proceedings.
- Local behested payment reporting – recipients of behested payments. Section 3.630 requires entities who have received behested payment(s) totaling \$100,000 or more in a calendar year to file a report with the Ethics Commission providing information about the use of those behested payments and the City decisions in which they are involved.

In addition to these new rules, there are a number of other state and local ethics laws that apply to elected officials and commissioners. We also write to remind you about the following existing conflict of interest and ethics laws:

- Prohibition on contracting with the City. Section 3.222 generally prohibits elected officials and commissioners from contracting with the City, the School District, the Redevelopment Agency, the Housing Authority or the Community College District. This provision applies to any contract or subcontract of \$10,000 or more per year, regardless of whether it is related to the business of the officer's board or commission. Among other exclusions, this rule does not apply to contracts: (a) with nonprofit organizations, or (b) entered into before a commissioner was appointed.
- Compensated advocacy ban. Section 3.224 prohibits elected officials and commissioners from directly or indirectly communicating, for compensation, with any other City officer or employee on behalf of a client or employer with the intent to influence a government decision. Under this rule, for example, commissioners cannot be paid to lobby other City officers or employees. There are exceptions to the rule, including for communications made on behalf of a business, union, or organization of which the officer is a member or full-time employee.
- Failure to File a Form 700, or an Ethics and Sunshine Training Declaration Form. Section 3.1-102.5(c) provides that if a commissioner has failed to timely file a Form 700 or an Ethics and Sunshine Training Declaration Form, that commissioner may not participate in or vote on matters appearing on a meeting agenda until the Form 700 or Ethics and Sunshine Training Declaration Form is filed.
- Appointments and nominations. Section 3.208 provides that elected officials and commissioners may not solicit or accept, any money or anything of value in consideration for the person's, or any other person's, nomination or appointment to any City office, employment, promotion, or for other favorable employment action.
- Annual gift limit. Elected officials and commissioners are subject to an annual, cumulative gift limit from a single source within their Form 700 disclosure category (as specified in Article III, Chapter 1 of the Campaign and Governmental Conduct Code). As of January 1, 2019, this annual gift limit increased to \$500.