



California, San Francisco



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Lobbying

Definitions

Lobbyist means an individual who:

- makes 5 or more contacts in a calendar month with officers of the City and County on behalf of the individual's employer; or
- makes 1 or more contacts in a calendar month with an officer of the City and County on behalf of any person who pays or who becomes obligated to pay the individual or the individual's employer for lobbyist services. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.105.

The term *lobbyist* does not include the following:

- An individual is not a lobbyist if that individual is lobbying on behalf of a business of which the individual owns a 20% or greater share. S.F.

Client means the person for whom lobbyist services are performed by a lobbyist. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.105.

Lobbyist services means services rendered for the purpose of influencing local legislative or administrative action, including but not limited to contacts with Officers of the City and County of San Francisco. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.105.

Lobbyist employer includes, but is not limited to, a person that is: (a) required to provide an Internal Revenue Service Form W-2 wage and tax statement to an employee who performs lobbyist services; or (b) owned by a lobbyist and which performs and charges clients for lobbyist services, even if the person is not required to provide an Internal Revenue Service Form W-2 wage and tax statement to an employee who performs lobbyist services. Ethics Commission Regulation 2.105-2.

Local legislative or administrative action includes, but is not limited to, the drafting, introduction, consideration, modification, enactment, defeat, approval, veto, granting or denial by any Officer of the City and County of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement to use or contract. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.105.

Officer of the City and County includes:

- Any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of the S.F. Campaign and Gov't Conduct Code to file statements of economic interests; any person appointed as the CEO under any such board or commission; the head of each City department; the Controller; and the City Administrator, as well as any official body composed of such officers.
- Members of the Board of Education, Community College Board, First Five Commission, Law Library Board of Trustees, Local Agency Formation Commission, Health Authority Board, Housing Authority Commission, Parking Authority, Relocation Appeals Board, Successor Agency to the former Redevelopment Agency of the City and County of San Francisco, Oversight Board of the Successor Agency, Successor Agency Commission, Transportation Authority, Workforce Investment San Francisco Board as well as any official

body composed of such officers, and any person appointed as the chief executive officer under any such board or commission; the Zoning Administrator, the City Engineer, the County Surveyor, and the Bureau Chief of the Department of Public Works' Bureau of Street Use and Mapping. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.105.

- The Ethics Commission has informally advised that communications with City and County employees regarding matters that will ultimately need to be considered by an Officer of the City and County are likely to be considered contacts, while communications regarding ministerial matters or matters wholly within the discretion of the City and County employee will not.

Contact means any communication, oral or written, including communication made through an agent, associate or employee, for the purpose of influencing local legislative or administrative action. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.106.

- When a lobbyist communicates with multiple Officers of the City and County at the same time, each communication is considered a separate contact for each Officer. Ethics Commission Regulation 2.106-3.
- Where a communication covers multiple topics, each topic is considered a separate contact. Ethics Commission Regulation 2.106-3. However, various matters concerning a single real estate project are considered to be a single topic.
- Meeting or otherwise communicating multiple times in the same day with an officer to discuss the same local legislative or administrative action discussed earlier in the day constitutes one contact. Ethics Commission Regulation 2.106-3.
- Each letter, fax, e-mail, text message, or similar communication, or copies thereof sent to other recipients, that pertains to a single local legislative or administrative action constitutes a separate contact even if such letters, faxes, e-mails, text messages, or other communications are identical or substantially similar. Ethics Commission Regulation 2.106-3.
- The term contact includes direct communications with Officers of the City and County, as well as any communication for the purposes of influencing local legislative or administrative action with a member of the staff of an Officer of the City and County when it is understood, or could be reasonably expected, that the staff member will transmit the terms of the communication to an Officer of the City and County.

Ethics Commission Regulation 2.106-1.

The following activities do not count as contacts, either for purposes of registration or for purposes of reporting:

- A party or prospective party to a contract that:
 - Provides oral or written information in response to a request for proposals, request for qualifications, or other similar request, provided that the information is directed to the department or official specifically designated in the request to receive such information;
 - Negotiates the terms of the contract with the City after being selected to enter into the contract; or
 - Communicates in connection with the administration of an existing contract between the party and the City.
 - *A party or prospective party* includes that party's officers or employees; a subcontractor listed in the contract, bid, or proposal; or that subcontractor's officers or employees. A party or prospective party does not include any other agent or associate, including any outside consultant or independent contractor. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.106.
- Providing oral or written testimony that becomes part of the record of a public hearing.
- Providing written information in response to an oral or written request made by an Officer of the City and County, provided that the written information is a public record available for public review.
- Providing oral or written information pursuant to a subpoena, or otherwise compelled by law or regulation.
- Submitting a written petition for local legislative or administrative action, provided that the petition is a public record available for public review.
- Making an oral or written request for a meeting, or any other similar administrative request, if the request does not include an attempt to influence local legislative or administrative action.
- Appearing before an officer of the City and County pursuant to any procedure established by law or regulation for levying an assessment against real property for the construction or maintenance of an improvement.

- Providing purely technical data, analysis, or expertise in the presence of a registered lobbyist;
- Disseminating information or material on behalf of an organization or entity to all or a significant segment of the organization's or entity's employees or members;
- Appearing as a party or a representative of a party in an administrative adjudicatory proceeding before a City agency or department;

The following activities do not count as contacts for purposes of lobbyist registration, but are required to be included as contacts on reports made by a registered lobbyist:

- Providing oral information to an officer of the City and County in response to an oral or written request made by that officer.
- Making an oral or written request for the status of an action.
- Participating in a public interested persons meeting, workshop, or other forum convened by a City agency or department for the purpose of soliciting public input. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.106.

Implications of Lobbying

Registration Requirements

Lobbyists are required to register within 5 business days of qualifying as a lobbyist. At the time of registration, the lobbyist is required to indicate the identity of his or her client, but the client is not required to separately register. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.110(a).

Reporting Requirements

Lobbyists are required to submit a lobbying report on a monthly basis, by the 15th of each month. On each lobbyist report, lobbyists are required to report contacts with Officers of the City and County, the subject matter of the lobbying, the amount of economic consideration received for lobbying, activity expenses, and certain political contributions made, delivered or arranged by the lobbyist or lobbyist employer, among other things. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.110(c), Ethics Commission Regulation 2.110-4.

Relevant Prohibitions

Lobbyists are subject to restrictions regarding giving gifts with a value of more than \$25 to Officers of the City and County, as discussed in the gift section, below. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.115.

Persons who qualify as campaign consultants, individuals who have an ownership interest in a campaign consultant, or employees of a campaign consultant are prohibited from lobbying any Officer of the City and County who is a current or former client of the campaign consultant on behalf of another person or entity. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.117.

If a lobbyist either directly employs or recommends, requests, or causes a client of the lobbyist to employ an Officer of the City and County, an immediate family member or registered domestic partner of such Officer, or full-time employee of the City and County, the lobbyist is required to file a statement with the Ethics Commission. A statement is also required to be filed if an employee of a lobbyist is appointed to City or County Office. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.120.

Training Requirement

Lobbyists are required to complete an online lobbyist training session within one year of the lobbyist's initial registration. Thereafter, lobbyists may be required to attend additional training sessions as required by the Ethics Commission. In connection with this requirement, lobbyists are obligated to submit a signed declaration that they have completed the training by the applicable deadline. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.116.

Key Questions

Subsidiary Registration

As noted above, San Francisco defines lobbyist employer to include a person that is required to provide an Internal Revenue Service Form W-2 wage and tax statement to an employee who performs lobbyist services. The term client, in turn, means the person for whom lobbyist services are performed by a lobbyist. San Francisco appears to observe the corporate form in connection with these requirements, though it has yet to issue detailed guidance regarding this issue. Thus, it would appear to be possible for a lobbyist to list the entity that actually employs them as the lobbyist employer and the real party in interest with respect to particular lobbying activity as a client, even where these are two distinct entities within one corporate family.

Procurement Lobbying

San Francisco's definition of lobbying includes procurement lobbying. However, there is a limited exception for contacts made by a party or prospective party to a contract during a formal procurement process. This

exception extends only to officers and employees of the party or prospective party to a contract or of a subcontractor, and is not available to third parties retain to influence a procurement decision.

Authorities

- San Francisco Lobbying [Ordinance](#), S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1.
- [San Francisco Ethics Commission Lobbying Regulations](#).
- The [San Francisco Ethics Commission](#) administers and enforces the San Francisco Lobbying Laws.

Campaign Finance & Pay-to-Play Regimes

Individual Contributions

Contributions to Candidates, PACs, and Committees:

Individuals may not contribute more than \$500 per election to any candidate for elective city office. S.F. Campaign and Gov't Conduct Code, Article I, Chapter 1, § 1.114(a).

There is no limit on contributions to non-candidate committees, such as PACs. See San Francisco Campaign Contribution Guide; see also Ethics Commission [Statement](#) on Contributions Received by Committees.

While San Francisco law also imposes aggregate contribution limits on individual contributions, the Ethics Commission has suspended this limit following the Supreme Court's decision in *McCutcheon v. FEC*. See Ethics Commission Press Release on Enforcement of the City's Aggregate Limit, May 20, 2014.

Cash contributions must be less than \$100. CAL. GOV'T CODE § 84300.

Registration Requirements

Contributions to non-candidate committees, including ballot committees, may trigger the state major donor registration law. Under this law, individuals who make monetary or nonmonetary contributions (including loans) to San Francisco committees totaling \$10,000 or more in a calendar year are required to file Form 461 with the appropriate state and local entities. A copy of the Form must be submitted to the San Francisco Ethics Commission. CAL. GOV'T CODE § 84215; San Francisco Campaign Contribution Guide.

For more information about the major donor requirement, visit the California

Campaign Finance [section](#) of the website.

Federal PAC Activities

Contributions

A federal PAC may contribute up to \$500 per election to any candidate for elective city office. S.F. Campaign and Gov't Conduct Code, Article I, Chapter 1, § 1.114(a).

Registration & Reporting Requirements

If a federal PAC contributes \$1,000 or more to all California candidates (including San Francisco candidates), it must register as a state recipient committee upon making any other California state or local contributions. FPPC Advice letter 06-065.

State PAC Activities

Contributions

A state PAC may contribute up to \$500 per election to any candidate for elective city office. S.F. Campaign and Gov't Conduct Code, Article I, Chapter 1, § 1.114(a).

Registration & Reporting Requirements

For information about state PAC registration and reporting requirements, visit the California Campaign Finance [section](#) of the website. San Francisco does not impose any additional registration and reporting requirements on State PACs.

Out-of-State PACs

Corporate Contributions

Contributions

Corporations are prohibited from making contributions of any amount to a candidate for elective city office. S.F. Campaign and Gov't Conduct Code, Article I, Chapter 1, § 1.114(b).

A Limited Liability Company may make a contribution to a candidate committee if it is taxed as a partnership. Otherwise, the LLC is treated as a corporation and is subject to the ban on contributions by corporations to candidates. See San Francisco Campaign Contribution Guide.

San Francisco does not impose any limit on corporate contributions to non-candidate committees, such as PACs. See San Francisco Campaign Contribution Guide; see also Ethics Commission [Statement on Contributions Received by Committees](#).

Registration Requirements

Contributions to non-candidate committees, including ballot committees, may trigger the state major donor registration law. Under this law, individuals who make monetary or nonmonetary contributions (including loans) to San Francisco committees totaling \$10,000 or more in a calendar year are required to file Form 461 with the appropriate state and local entities. A copy of the Form must be submitted to the San Francisco Ethics Commission. CAL. GOV'T CODE § 84215; San Francisco Campaign Contribution Guide.

For more information about the major donor requirement, visit the California Campaign Finance [section](#) of the website.

Pay-to-Play Regime

San Francisco campaign finance law bans persons who are seeking or recently entered into government contracts from making contributions to certain candidates for City elective office. The ban applies when:

- the City, a state agency on whose board an appointee of a City elective officer serves, the Unified School District, or the Community College District is a party to the contract,
- the contract or series of contracts in the same fiscal year has a total anticipated or actual value of \$50,000 or more in a fiscal year, and
- the City elective officer, a board on which that officer serves, or the board of a state agency on which the officer's appointee serves must approve that contract or series of contracts.

The ban applies to:

- any party or prospective party to the contract,
- the contracting party's board of directors, its chairperson, CEO, CFO, COO,
- any person with an ownership interest of more than 20 percent in the contracting party,
- any subcontractor listed in the contract,
- affiliates of the party or prospective party to the contract (but not such affiliates board of directors, CEO, etc.), and

- any committee that is sponsored or controlled by the contracting party.

The ban applies during the period from the start of negotiations on the contract until negotiations are terminated or six months after the contract is approved. The ban applies not only to City elective officers who must approve the contract but also to candidates for those offices. Negotiations commence when a prospective contractor first communicates about the possibility of obtaining a specific contract. The law requires a party or prospective party to the contract to inform other persons subject to the ban (e.g., members of the party’s board of directors) when negotiations on the contract have commenced and, as a result, the ban applies. S.F. Campaign and Gov’t Conduct Code, Article I, Chapter 1, § 1.126; San Francisco Campaign Contribution Guide; San Francisco Campaign Finance Reform Regulations 1.126-1, 1.126-3, 1.126-5.

State Law Appendix

Authorities

- San Francisco Campaign Finance Reform [Ordinance](#), S.F. Campaign and Gov’t Conduct Code, Article I, Chapter 1.
- [San Francisco Campaign Finance Reform Regulations](#).
- San Francisco Campaign Contribution [Guide](#).
- San Francisco Ethics Commission [Statement](#) on Contributions Received by Committees.
- The [San Francisco Ethics Commission](#) administers and enforces the San Francisco Lobbying Laws.

Gift Laws

Description

Insurance Health Laws

Executive Branch

San Francisco City and County officers and employees are subject to the general California gift rules, which are described [here](#). In brief, City and County officers and employees cannot accept anything of value from any single source in a calendar year that total more than \$440. CAL. GOV’T

CODE §§ 89503(a), 89503(b)(1), 89503(c); CAL. CODE REGS., tit. 2, § 18940.2(a). A gift is from a "single source" if the giving from multiple parties is directed or controlled by one individual or entity, which is presumed where an individual or entity has greater than a 50% ownership in another entity. CAL. CODE REGS., tit. 2, §§ 18945.1(a)-(c). In parent/subsidiary relationships or for business entities with a common owner, which is deemed to exist where one business entity owns more than 50 percent of another business entity, gifts are not aggregated if the decision to give a gift is made independently by each entity. CAL. CODE REGS., tit. 2, § 18945.1 (d).

In addition, San Francisco city and county officers and employees are prohibited from soliciting or accepting any gift of any value from a person who the officer or employee knows or has reason to know is a restricted source.

- Restricted source means a person or entity that is contracting or seeking to contract with the employee or officer's department, or that has attempted to influence the employee or officer regarding any legislative or administrative action in the previous 12 months. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.216.

Gift Exceptions

The following exceptions apply to the City's restricted source gift ban:

- Things of value, other than cash, with an aggregate value of \$25 or less per occasion, up to four times during a calendar year.
- Food and drink to be shared in the office among officers and employees.
- Free attendance at a widely attended convention, conference, seminar, or symposium where attendance is appropriate to the official duties of the officer or employee and the donor provides the free attendance voluntarily.
 - A widely attended event is an event that is open to individuals from throughout a given industry or profession, or an event that is open to individuals who represent a range of persons interested in a given matter.
 - Free attendance may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event

- Certain business-related meals paid for by members of the investment community, the maritime industry, or the aviation industry. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.216; Ethics Commission Regulation 3.216(b)-5.
- In addition, the restricted source ban incorporates the California state law gift exceptions, which are provided [here](#). A gift which qualifies for a state-level exception is also excepted from the restricted source ban.

Legislative Branch

The same restrictions apply to the Legislative Branch (i.e., the Board of Supervisors).

Lobbyist Gift Limitations

Lobbyists are prohibited from giving gifts with a value of more than \$25 to Officers of the City and County. S.F. Campaign and Gov't Conduct Code, Article II, Chapter 1, § 2.115.

This limit applies only to gifts given by lobbyists, and not to those given by lobbyist employers. The Lobbyist Gift ban is subject to the same exceptions discussed in the Executive Branch Gift section, above.

Authorities

- San Francisco [Conflict of Interest Code](#), S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2.
- San Francisco Ethics Commission Conflict of Interest [Regulations](#).
- San Francisco Ethics Commission [Manual](#) on Governmental Ethics Laws.

Revolving Door Restrictions

Contacting Current Officials

Applicability of State Restrictions

San Francisco City officers and employees are subject to the general California revolving door rules. More information about these rules is available [here](#).

Contacting Current Officials

San Francisco City officers and employees are required to disclose on the public record any professional or business relationship, including negotiations regarding employment, 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 where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.214(a).

San Francisco City officers and employees are also prohibited from making, participating in making, or seeking to influence, government decisions affecting a person or entity with whom the officer or employee is discussing or negotiating future employment. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.206(c).

Ban on the Use of Confidential Information

San Francisco City officers and employees are prohibited from: (a) willfully or knowingly disclosing any confidential or privileged information of the City, unless authorized or required by law to do so; or (b) using any confidential or privileged information to advance the financial or other private interest of himself or herself or others. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.228. This ban applies on a permanent basis.

Confidential information means information that at the time of use or disclosure was not subject to disclosure under the Sunshine Ordinance or California Public Records Act.

Post-Employment Restrictions

Permanent ban on switching sides. City officers and employees are subject to a permanent ban on acting as an agent, attorney, or otherwise representing any other person, other than the City and County, before any court or administrative agency in connection with a particular matter if:

- The City and County is a party or has a direct and substantial interest in the matter;
- The former officer or employee participated personally and substantially as a City officer or employee in the matter; and
- The matter involved a specific party or parties at the time of the officer or employee's participation.

City officers and employees also cannot aid, advise, counsel, consult or assist another person (other than the City and County) in any proceeding in which the officer or employee would be precluded from participating

personally. This prohibition does not restrict a former City officer or employee from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.228(a)(1).

One-year ban on communicating with former department, board, commission, or other unit of government. City officers and employees are prohibited for one year after terminating their City service from:

- with an intent to influence a government decision;
 - communicating orally, in writing, or in any other manner;
 - on behalf of any other person (except the City);
 - with any officer or employee of the department, board, commission, or other unit of government for which the officer or employee served.
- S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.228(a)(2).

For a former Mayor, former member of the Board of Supervisors, or former senior staff members of the foregoing, the one-year ban prohibits communications with any City board, commission, department, employee, officer or representative. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.228(b).

One year ban on employment with certain city contractors. Former City officers and employees are prohibited from being employed by or otherwise receiving compensation from any person or entity that entered into a contract with the City in the previous 12 months, where the officer or employee personally and substantially participated in the award of the contract. S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2, § 3.228(a)(1).

Note that the San Francisco Ethics Commission has the discretion to waive post-employment restrictions, depending on the circumstances.

Definitions

Direct and Substantial Interest in a Particular Matter: The City has a direct and substantial interest in a particular matter if the City is the subject of the proceeding or transaction or would be significantly affected by the result of the proceeding or transaction. In considering whether the City has a direct and substantial interest in a particular matter, the Ethics Commission may take into account the importance of the City's interest in

the matter, the potential impact the outcome of a matter will have on these interests, and any other factors the Commission deems relevant. Ethics Commission Regulation 3.234-5(b).

Intent to influence: A current or former City officer or employee acts with an intent to influence when he or she communicates for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision. A current or former City officer or employee does not act with an intent to influence when:

- His or her communications involve only routine requests for information such as a request for publicly available documents;
- He or she participates as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
- He or she attends a general informational meeting, seminar, or similar event;
- He or she communicates with the press; or
- He or she seeks to influence an action that is solely ministerial, secretarial, manual or clerical. Ethics Commission Regulation 3.234-5(c).

Particular Matter: A particular matter involves a specific proceeding affecting the legal rights of parties or an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, applications, requests for rulings, litigation, or investigations. The term particular matter does not include a rulemaking, legislation, the formulation of general policy, standards or objectives, or other actions of general application are not particular matters. Two matters are the same matter if they involve the same facts or related issues, involve the same or related parties, and relate to the same confidential information or legal issues. Two matters are not the same merely because the second matter is related to or arises out of the first matter, if they involve different parties, different subject matters or different factual and legal issues. Ethics Commission Regulation 3.234-5(d).

Participate personally and substantially: To participate personally means to participate directly, and includes the participation of a subordinate when the subordinate is under the direction and supervision of an officer or employee. To participate substantially means that the officer's or employee's involvement is, or reasonably appears to be, significant to the matter. Significant to the matter requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or

peripheral issue. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. Ethics Commission Regulation 3.234-5(e).

Authorities

- San Francisco [Conflict of Interest Code](#), S.F. Campaign and Gov't Conduct Code, Article III, Chapter 2.
- San Francisco Ethics Commission Conflict of Interest [Regulations](#).
- San Francisco Ethics Commission [Manual](#) on Governmental Ethics Laws.

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