

#52  
10/1/13

ORDINANCE NUMBER O- 20302 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 15 2013

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.3503, ADDING SECTION 27.3515, AMENDING SECTIONS 27.3520, 27.3521, 27.3522, AND 27.3525, REPEALING SECTION 27.3526, AMENDING SECTIONS 27.3550, 27.3551, 27.3560, 27.3561, 27.3562, AND 27.3564, RELATING TO THE CITY OF SAN DIEGO ETHICS ORDINANCE.

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San Diego Ethics Commission regularly reviews the City's Ethics Ordinance and proposes updates to these laws for City Council approval; and

WHEREAS, the Ethics Ordinance reflects provisions of state conflict of interest laws including Government Code sections 1090 through 1099, the Political Reform Act, and associated regulations of the California Fair Political Practices Commission (FPPC); and

WHEREAS, the FPPC has revised the regulations interpreting the Political Reform Act regarding acceptance of gifts, disclosure of economic interests, and disqualification of officials due to conflicts of interest, such that the Ethics Ordinance is no longer consistent with state law; and

WHEREAS, the Ethics Commission has proposed amendments to the Ethics Ordinance to reflect the applicable state laws, and to maintain consistency in the future by incorporating relevant provisions of state law into the Ethics Ordinance; and

WHEREAS, the City Council concurs with the recommendations of the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending section 27.3503 to read as follows:

**§27.3503 Definitions**

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. Except as otherwise provided herein, the terms and provisions of this Division shall have the meanings and shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (California Government Code sections 81000 through 91014) and the regulations of the California Fair Political Practices Commission, as amended. For purposes of this Division, the following definitions shall apply:

*Benefit through Filing Officer* [No change in text.]

*Gift* means 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. Any *person*, other than a defendant in a criminal action, who claims that a *payment* is not a *gift* by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The value of a *gift* shall be as determined by title 2, section 18946 of the California Code of Regulations.

*High Level Filer* means the Mayor, the members of the *City* Council, the *City* Attorney, the *City* Manager (Chief Operating Officer), the *City* Treasurer, the *City* Comptroller, the Chief Financial Officer, the Chief Investment Officer, Investment Officers, members of the Planning Commission, members of the Funds Commission, members of the Retirement Board, members of the Defined Contribution Plan Board,

any candidate for an elective office of the *City*, and any other individual whose position is specified in California Government Code section 87200.

*Honorarium through Lobbyist* [No change in text.]

*Local Code Filer* means any *City Board* member, any consultant, and any employee of the *City*, except for classified employees, who is required to file a statement of economic interests pursuant to a conflict of interest code adopted by the *City Council*.

*Ministerial act* means an act that does not require a *City Official* to exercise discretion concerning any outcome or course of action.

*Municipal decision* means any governmental decision that is not a *ministerial act*.

*Organization lobbyist through Travel expenses* [No change in text.]

Section 2. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by adding section 27.3515 to read as follows:

**§27.3515 Disclosure of Behested Payments**

- (a) A *City Official* who is an elected *High Level Filer* shall file a Fair Political Practices Commission Form 803 Behested Payment Report if any *person* makes one or more *payments* totaling \$5,000 or more for a legislative, governmental, or charitable purpose at the behest of the official. A *payment* is made at the behest of an official if it is requested, solicited, or suggested by the official, or otherwise made in cooperation, consultation, coordination with, or at the consent of, the official.
- (b) The *City Official* shall file the Form 803 with the *City Clerk* within thirty calendar days following the date on which a *payment* causes the total *payments* made by that *person* at the behest of the official to reach or exceed \$5,000 in the same calendar year.

- (c) Once a *person* has reached the \$5,000 threshold during a calendar year, each subsequent behested *payment* by that *person* in any amount during the same calendar year must be reported to the *City Clerk* on a Form 803 within thirty calendar days.
- (d) A *payment* behested by a *City Official* includes a *payment* behested by his or her agent or employee on behalf of the official.
- (e) This section shall be interpreted in a manner consistent with the provisions of California Government Code section 82015(b)(2)(B)(iii) and title 2, section 18215.3 of the California Code of Regulations.

Section 3. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending sections 27.3520, 27.3521, 27.3522, and 27.3525 to read as follows:

**§27.3520 Restrictions on Benefits to Filers**

For the purposes of this section, a *benefit* offered to, solicited by, or accepted by, a *Filer* includes any *benefit* offered to, solicited by, or accepted by any member of a *Filer's immediate family*, except as provided in section 27.3525. Subject to the exceptions set forth in section 27.3525, *Filers* are subject to the following restrictions with regard to their acceptance of *benefits*:

- (a) It is unlawful for a *High Level Filer* to accept *gifts* from a single source in any calendar year with a total value of more than \$440. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.
- (b) through (e) [No change in text.]
- (f) It is unlawful for a *Local Code Filer* to accept *gifts* from any single source in any calendar year with a total value of more than \$440 if the *Local Code Filer* would be required to report the receipt of the *gift* from that source on his or her

statement of economic interests. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.

- (g) It is unlawful for a *Local Code Filer* to accept an *honorarium* from any source if that individual would be required to report the receipt of income or *gifts* from the source of the *honorarium* on his or her statement of economic interests.
- (h) It is unlawful for any *person* to offer, or for any *Filer* to solicit or accept, any *benefit* with the intent that the *Filer* will be influenced thereby in the performance of any official act.

**§27.3521 Adjustment of Gift Limitations**

The *gift* limitation amounts set forth in section 27.3520(a) and (f) are intended to be consistent with the California gift limitation amount amended biannually by the California Fair Political Practices Commission. Notwithstanding the dollar amounts set forth in section 27.3520(a) and (f), the *gift* limitation amount for this Division shall be the same as set forth in title 2, section 18940.2 of the California Code of Regulations.

**§27.3522 Acceptance of Benefits**

- (a) through (b) [No change in text.]
- (c) Discarding a *benefit* does not negate receipt or acceptance of the *benefit*, except when the *benefit* is a pass or ticket that has not been used or transferred to another *person*.
- (d) [No change in text.]

**§27.3525 Exceptions to Restrictions on Benefits**

- (a) All exceptions relating to *gifts*, *loans*, *honoraria*, and *travel expenses* contained in the Political Reform Act of 1974, as amended, including but not limited to

California Government Code sections 82028 and 89501 through 89506, and the regulations of the California Fair Political Practices Commission, as amended, including but not limited to Regulations 18930 through 18961, are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.

- (b) For purposes of subsection (a), any exception not applicable to a *gift, loan, honorarium, or travel expense* from a lobbyist, lobbying firm, or lobbyist employer registered with the State of California shall also not apply to a *gift, loan, honorarium, or travel expense* from a *lobbyist, lobbying firm, or organization lobbyist* registered with the *City*.

Section 4. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by repealing section 27.3526.

Section 5. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending sections 27.3550, 27.3551, 27.3560, 27.3561, 27.3562, and 27.3564 to read as follows:

**§27.3550 Lobbying Activities of Former City Officials**

(a) through (d) [No change in text.]

(e) The prohibitions contained in subsections (a), (b), and (d) shall not apply:

- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;

- (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
  - (3) to the activities of any former *City Official* who is an elected or appointed *officer* or employee of any *Public Agency*, or a consultant of any *Public Agency*, when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or consultant of the agency;
  - (4) to any *ministerial act*;
  - (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or
  - (6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.
- (f) The exceptions in subsections (e)(1), (5), and (6) do not apply to any former *City Official* who, within one year of terminating *City* employment, was an elected *City Official* or served as the *City*'s City Manager (Chief Operating Officer).

**§27.3551 Future Employment of City Officials**

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom the *City Official*, or a member of the *City Official's immediate*

*family*, is seeking, negotiating, or securing an agreement concerning future employment.

- (b) It is unlawful for any *person* who has a matter pending before the *City* to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a *City Official*, or a member of the *City Official's immediate family*, if that *City Official* is making, participating in making, or using his or her official position to influence, a decision concerning that matter.
- (c) [No change in text.]

**§27.3560 Financial Interest in Contract**

- (a) through (b) [No change in text.]
- (c) Any *City Official* with a remote interest in a prospective contract of the *City* must disclose the existence of the remote interest to the body of the board which the *City Official* is a member if that board has any role in creating, negotiating, reviewing, or approving the contract; and the *City Official* must abstain from influencing or participating in the creation, negotiation, review, or approval of the contract.
- (d) This section shall be interpreted in a manner that is consistent with California Government Code sections 1090 through 1099. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.



**§27.3561 Disqualification of City Officials in Municipal Decisions Affecting Economic Interests**

- (a) It is unlawful for a *City Official* to make, participate in making, or in any way use his or her official position to influence a *municipal decision* in which he or she knows or has reason to know he or she has a disqualifying financial interest.
- (b) A *City Official* has a disqualifying financial interest in a *municipal decision* if that *municipal decision* will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the *City Official* or his or her *immediate family*, or on any of their economic interests in business entities, real property, sources of income, sources of gifts, or their own personal finances.
- (c) This section shall be interpreted in a manner that is consistent with the provisions of California Government Code sections 87100 through 87105 and title 2, sections 18700 through 18709 of the California Code of Regulations. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.

**§27.3562 Disqualification of City Officials in Municipal Decisions Involving Benefactors**

- (a) It is unlawful for any *City Official* to participate in any *municipal decision* where a *party* to the *municipal decision* has, within the previous twelve months, given the *City Official*, promised to give the *City Official*, or acted as an intermediary for the *City Official* to have, an opportunity for *compensation*.
- (b) [No change in text.]
- (c) This section does not apply to opportunities for *compensation* provided by a *public agency*.

**§27.3564 Misuse of City Position or Resources**

- (a) It is unlawful for any *City Official* to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any *person* to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the *City Official* or his or her *immediate family*. As used in this section, the term “private advantage, benefit, or economic gain” means any advantage, benefit, or economic gain, distinct from that enjoyed by members of the public without regard to official status or not resulting naturally from lawful and proper performance of duties. A *City Official* engages in a prohibited use of his or her official position or prospective position when he or she engages in activities other than in the lawful and proper performance of his or her *City* duties.
- (b) [No change in text.]
- (c) It is unlawful for any *City Official* to induce or coerce, or attempt to induce or coerce any other *person* to engage in any activity prohibited by subsections (a) and (b).
- (d) through (f) [No change in text.]

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from  
and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By *Catherine M. Bradley*  
Catherine M. Bradley  
Deputy City Attorney

CMB:sc  
07/31/13  
09/09/13 COR. COPY  
Or.Dept:Ethics Commission  
Doc.No. 589229\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of  
San Diego, at this meeting of OCT 01 2013

ELIZABETH S. MALAND  
City Clerk

By *Donnette J. Paul*  
Deputy City Clerk

Approved pursuant to Charter section  
265(i).

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
Mayor

#320-A  
9/17/13

(O-2014-19)  
(COR. COPY)

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE:** ~~Struck Out~~  
**NEW LANGUAGE:** Double Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.3503, ADDING SECTION 27.3515, AMENDING SECTIONS 27.3520, 27.3521, 27.3522, AND 27.3525, REPEALING SECTION 27.3526, AMENDING SECTIONS 27.3550, 27.3551, 27.3560, 27.3561, 27.3562, AND 27.3564, RELATING TO THE CITY OF SAN DIEGO ETHICS ORDINANCE.

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*Benefit through Filing Officer* [No change in text.]

*Gift* means 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. Any *person*, other than a

defendant in a criminal action, who claims that a *payment* is not a *gift* by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. The value of a *gift* shall be as determined by title 2, section 18946 of the California Code of Regulations.

*High Level Filer* means the Mayor, the members of the City Council, the City Attorney, the City Manager (Chief Operating Officer), the City Treasurer, City Auditor, the City Comptroller, the Chief Financial Officer, the Chief Investment Officer, Investment Officers, members of the Planning Commissioners Commission, members of the Funds Commission, members of the Retirement Board, ~~members of the San Diego Data Processing Corporation Board,~~ members of the Defined Contribution Plan Board, ~~the Ethics Commission,~~ and any candidate for an elective office of the City, and any other individual whose position is specified in California Government Code section 87200.

*Honorarium through Lobbyist* [No change in text.]

*Local Code Filer* means any City Board member, any consultant, and any employee of the City, except for classified employees, who is required to file a statement of economic interests pursuant to a conflict of interest code adopted by the City Council.

*Ministerial act* means an act that does not require a City Official to exercise discretion concerning any outcome or course of action.

*Municipal Decision* ~~includes:~~ means any governmental decision that is not a ministerial act.

- ~~(a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and~~
- ~~(b) the amendment of any ordinance or resolution; and~~
- ~~(c) a report by a *City Official* to the *City Council* or a *City Council Committee*;  
and~~
- ~~(d) contracts; and~~
- ~~(e) quasi-judicial decisions, including:
  - ~~(1) any decision on a land development permit, map or other matter decided pursuant to Process 2 through 5 as described in Chapter 11 of this Municipal Code; or~~
  - ~~(2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code; or~~
  - ~~(3) any declaration of debarment as described in Chapter 2, Article 2, Division 8, of this Municipal Code.~~~~
- ~~(f) any other decision of the *City Council* or a *City Board*.~~

*Municipal Decision* does not include any of the following:

- ~~(a) any request for advice regarding or for an interpretation of laws, regulations, *City* approvals, or policies; or~~
- ~~(b) any ministerial action such as decisions on private land development made pursuant to Process 1 as described in Chapter 11 of this Municipal Code; or~~

*Organization lobbyist* through *Travel expenses* [No change in text.]

**§27.3515 Disclosure of Behested Payments**

- (a) A City Official who is an elected High Level Filer shall file a Fair Political Practices Commission Form 803 Behested Payment Report if any person makes one or more payments totaling \$5,000 or more for a legislative, governmental, or charitable purpose at the behest of the official. A payment is made at the behest of an official if it is requested, solicited, or suggested by the official, or otherwise made in cooperation, consultation, coordination with, or at the consent of, the official.
- (b) The City Official shall file the Form 803 with the City Clerk within thirty calendar days following the date on which a payment causes the total payments made by that person at the behest of the official to reach or exceed \$5,000 in the same calendar year.
- (c) Once a person has reached the \$5,000 threshold during a calendar year, each subsequent behested payment by that person in any amount during the same calendar year must be reported to the City Clerk on a Form 803 within thirty calendar days.
- (d) A payment behested by a City Official includes a payment behested by his or her agent or employee on behalf of the official.
- (e) This section shall be interpreted in a manner consistent with the provisions of California Government Code section 82015(b)(2)(B)(iii) and title 2, section 18215.3 of the California Code of Regulations.

**§27.3520 Restrictions on Benefits to Filers**

For the purposes of this section, a *benefit* offered to, solicited by, or accepted by, a *Filer* includes any *benefit* offered to, solicited by, or accepted by any member of a *Filer's immediate family*, except as provided in section 27.3525(e). Subject to the exceptions set forth in section 27.3525, *Filers* are subject to the following restrictions with regard to their acceptance of *benefits*:

- (a) It is unlawful for a *High Level Filer* to accept *gifts* from a single source in any calendar year with a total value of more than ~~\$320~~ \$440. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.
- (b) through (e) [No change in text.]
- (f) ~~It is unlawful for a *restricted source* to offer *travel expenses* to a *Filer*, and it is unlawful for a *Filer* to accept *travel expenses* from a *restricted source*.~~
- (~~g~~)(f) It is unlawful for a *Local Code Filer* to accept *gifts* from any single source in any calendar year with a total value of more than ~~\$320~~ \$440 if the *Local Code Filer* would be required to report the receipt of the *gift* from that source on his or her statement of economic interests. This *gift* threshold is subject to adjustment in accordance with the provisions of section 27.3521.
- (~~h~~)(g) It is unlawful for a *Local Code Filer* to accept an *honorarium* from any ~~*restricted source* or from any other~~ source if that individual would be required to report the receipt of income or *gifts* from the source of the *honorarium* on his or her statement of economic interests.



~~(i)~~(h) It is unlawful for any *person* to offer, or for any *Filer* to solicit or accept, any *benefit* with the intent that the *Filer* will be influenced thereby in the performance of any official act.

**§27.3521 Adjustment of Gift Limitations**

The *gift* limitation amounts set forth in section 27.3520(a) and ~~(g)~~ (f), section 27.3525(l)(1), and section 27.3561(b)(5) are intended to be consistent with the California gift limitation amount amended biannually by the California Fair Political Practices Commission. Notwithstanding the dollar amounts set forth in section 27.3520(a) and ~~(g)~~ (f), section 27.3525(l)(1), and section 27.3561(b)(5), the *gift* limitation amount for this Division shall be the same as set forth in title 2, section 18940.2 of the California Code of Regulations.

**§27.3522 Acceptance of Benefits**

(a) through (b) [No change in text.]

(c) Discarding a *benefit* does not negate receipt or acceptance of the *benefit*, except when the *benefit* is a pass or ticket and subject to the exception set forth in section 27.3525(m) that has not been used or transferred to another *person*.

(d) [No change in text.]

~~(e) A *payment* made to, or on behalf of, an elected *City Official* or a candidate for an elective office of the *City* for his or her food constitutes the acceptance of a *gift*.~~

**§27.3525 Exceptions to Restrictions on Benefits**

The following are not considered *benefits* for the purpose of this Division, and are not subject to the restrictions of section 27.3520:

- (a) ~~Anything which would otherwise be considered a *benefit*, but which is returned unused to the donor or the donor's agent or intermediary within 30 calendar days;~~
- (b) ~~Anything which would otherwise be considered a *benefit*, but which is delivered to the City of San Diego within 30 calendar days of receipt for donation to the City of San Diego's general fund, or which is delivered to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, and for which the recipient does not claim a deduction for income tax purposes;~~
- (c) ~~A *gift* or *loan* from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent in law, brother in law, sister in law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person, unless the individual giving the *gift* or making the *loan* is acting as an agent or intermediary for any *person* not identified in this subsection;~~
- (d) ~~*Gifts* exchanged between a *Filer* and an individual, other than a *Lobbyist*, on holidays, birthdays, or similar occasions provided that the presents exchanged are not substantially disproportionate in value;~~
- (e) ~~*Gifts* provided directly to members of the *Filer's immediate family* unless the *Filer* receives a direct benefit from the *gift* or the *Filer* exercises discretion and control over the use or disposition of the *gift*;~~
- (f) ~~Wedding *gifts*, although such *gifts* may be reportable on the *Filer's* statement of economic interests;~~
- (g) ~~Any devise, bequest, or inheritance;~~

- ~~(h) A prize or award received in a bona fide competition not related to the recipient's status as a *City Official* or candidate for *City* elective office, although any prize or award in excess of \$500 is reportable as income on the *Filer's* statement of economic interests;~~
- ~~(i) A personalized plaque or trophy with an individual value of less than \$250;~~
- ~~(j) A rebate or discount in the price of anything of value which is made in the regular course of business to members of the public;~~
- ~~(k) Leave credits, including vacation, sick leave, and compensatory time off, but not offerings of cash, donated to a *Filer* in accordance with a bona fide catastrophic or similar emergency leave program established by the *City* and available to all employees in the same job classification or position;~~
- ~~(l) Informational material provided to assist a *City Official* in the performance of his or her official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.~~
  - ~~(1) "Informational material" may also include scale models, pictorial representations, maps, and other such items, provided that if the item's fair market value is more than \$320, the *City Official* has the burden of demonstrating that the item is informational. This \$320 threshold is subject to adjustment in accordance with the provisions of section 27.3521.~~
  - ~~(2) On-site demonstrations, tours, and inspections designed specifically for public officials are considered informational material.~~

~~(A) This exception does not apply to meals or to transportation to the site unless the transportation is not commercially available.~~

- ~~(m) Passes or tickets which provide admission or access to facilities, goods, services, or other benefits (either on a onetime or repeated basis) that the *Filer* does not use and does not give to another *person*;~~
- ~~(n) Passes or tickets to attend fund-raisers for campaign committees or other candidates, and tickets to fund-raisers for organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code;~~
- ~~(o) Campaign contributions, including rebates or discounts received in connection with campaign activities, although such campaign contributions must be reported in the time and manner required by the California Political Reform Act;~~
- ~~(p) Admission, food, beverages, and similar non-cash nominal benefits provided to the *Filer* at an event at which a *Filer* gives a speech, participates in a panel or seminar, or provides a similar service, provided however, that such food and beverages must be consumed on the day of the activity in which the *Filer* participates;~~
- ~~(q) Hospitality, including food, beverages, or occasional lodging, provided to a *Filer* by an individual in his or her home when the individual or a member of the individual's *immediate family* is present;~~
- ~~(r) *Travel expenses* for travel within California provided directly in connection with an event at which a *Filer* gives a speech, participates in a panel or seminar, or provides a similar service;~~

- (s) ~~Travel expenses for travel outside California but within the United States (although such expenses may be reportable on the Filer's statement of economic interests) if:~~
- ~~(1) The travel is reasonably related to a legislative or governmental purpose; and~~
  - ~~(2) The travel is made in connection with an event at which the Filer gives a speech, participates in a panel or seminar, or provides a similar service; and~~
  - ~~(3) The lodging and subsistence expenses in this case are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel, or other similar service.~~
- (t) ~~Travel expenses for travel within the United States (although such expenses may be reportable on the Filer's statement of economic interests) if:~~
- ~~(1) The travel is reasonably related to a legislative or governmental purpose; and~~
  - ~~(2) The payment is provided by the City or any other Public Agency or a bona fide public or private educational institution, defined in section 203 of the Revenue and Taxation Code, or by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under section 501(c)(3) of the Internal Revenue Code.~~

- (u) ~~Travel expenses in direct connection with campaign activities, including attendance at political fund raisers, that satisfy the requirements of title 2, section 18950.4 of the California Code of Regulations, although such expenses must be reported in the time and manner required by the Political Reform Act of 1974, as amended.~~
- (v) ~~Travel expenses paid by a campaign committee; a nonprofit organization of which the City Official is a member; or by an organization of which the City Official is a member acting in an official City capacity.~~
- (w) ~~Travel expenses of a City Official traveling on government business where the payment is a gift or other payment to the City rather than a gift or payment to the City Official, within the meaning of the Political Reform Act of 1974, as amended, and the regulations of the Fair Political Practices Commission.~~
- (x) ~~Travel expenses that are reasonably necessary in connection with a bona fide business, trade, or profession and that satisfies the criteria for federal income tax deduction for business expenses in sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches, although such travel expenses may be reportable on the Filer's statement of economic interests;~~
- (y) ~~Payments made at the behest of, at the request of, or in consultation or coordination with, an elected City Official, that are made to co-sponsor an event that is principally legislative, governmental, or charitable in nature, although such payments made to an elected City Official by a single source totaling~~

\$5,000 or more in a calendar year for this type of event must be reported in accordance with California Government Code section 82015(b).

- (z) ~~Food, shelter, or similar assistance received in connection with a disaster relief program if the food, shelter, or similar assistance is:~~
- (1) ~~provided by a *Public Agency* or organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code; and~~
  - (2) ~~is available to the general public.~~
- (aa) ~~Income received as a *payment* for a comedic, dramatic, musical, or other similar artistic performance; and *payments* received for the publication of books, plays, or screenplays, although such income may be reportable on the *Filer's* statement of economic interests;~~
- (bb) ~~Income earned for the *Filer's* personal services if the services are provided in connection with a bona fide business, trade, or profession—such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting—and the services are customarily provided in connection with the business, trade, or profession, although such income may be reportable on the *Filer's* statement of economic interests;~~
- (1) ~~This exception does not apply if the sole or predominant activity of the business, trade, or profession is making speeches.~~
  - (2) ~~The *Filer* must meet the criteria set forth in title 2, sections 18932 through 18932.3 of the California Code of Regulations to establish that he or she is practicing a bona fide business, trade, or profession before a payment~~

~~received for personal services would be considered earned income and not an honorarium.~~

- (cc) ~~A payment which is not delivered to a Filer but is made as a donation at the behest of, at the request of, or in consultation or coordination with, a Filer directly to a bona fide charitable, educational, civic, religious, or similar organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.~~
- (1) ~~This exception applies only if the donation is not made a condition for the speech, article, or attendance; and~~
  - (2) ~~The donation is not claimed by the Filer as a deduction for income tax; and~~
  - (3) ~~The Filer is not identified to the non-profit organization in connection with the donation; and~~
  - (4) ~~The donation has no reasonably foreseeable financial effect on the Filer or any member of the Filer's immediate family.~~
- (dd) ~~Loans received from banks or other financial institutions, and retail or credit card transactions, made in the regular course of business on terms available to members of the public. Although such loans in the amount of \$10,000 or more and loans not on the Filer's principle place of residence, may be reportable on the Filer's statement of economic interests;~~
- (ee) ~~Loans made, or offered in writing, prior to January 1, 1998.~~



- (a) All exceptions relating to gifts, loans, honoraria, and travel expenses contained in the Political Reform Act of 1974, as amended, including but not limited to California Government Code sections 82028 and 89501 through 89506, and the regulations of the California Fair Political Practices Commission, as amended, including but not limited to Regulations 18930 through 18961, are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.
- (b) For purposes of subsection (a), any exception not applicable to a gift, loan, honorarium, or travel expense from a lobbyist, lobbying firm, or lobbyist employer registered with the State of California shall also not apply to a gift, loan, honorarium, or travel expense from a lobbyist, lobbying firm, or organization lobbyist registered with the City.

**§27.3526 Reportable Benefits**

In addition to the provisions of section 27.3525 that require the disclosure of certain benefits, the following benefits are reportable on the Filer's statement of economic interests:

- (a) ~~Gifts with a fair market value of \$50 or more, and multiple gifts from a single source with an aggregate fair market value of \$50 or more; and~~
- (b) ~~Loans which aggregate \$500 or more from a single source doing business in the City.~~

**§27.3550 Lobbying Activities of Former City Officials**

- (a) through (d) [No change in text.]
- (e) The prohibitions contained in subsections (a), (b), and (d) shall not apply:

- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;
- (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
- (3) to the activities of any former *City Official* who is an elected or appointed officer or employee of any *Public Agency*, or a consultant of any *Public Agency*, when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or consultant of the agency;
- (4) to any ~~ministerial action.~~ ministerial act. ~~A ministerial action is one that does not require a *City Official* to exercise discretion concerning any outcome or course of action; or~~
- (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or
- (6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.

~~(f)~~ The prohibitions contained in subsection (d) shall not apply to any individual who terminated status as a *City Official* prior to October 1, 2006, and whose *lobbying* activities are limited to (1) the establishment, amendment, administration, implementation, or interpretation of a collective bargaining agreement or memorandum of understanding between the *City* and a recognized employee organization; or a proceeding before the Civil Service Commission; or (2) any management decisions regarding the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of understanding.

~~(g)~~(f) The exceptions in subsections (e)(1), (5), and (6) and in subsection ~~(f)~~ do not apply to any former *City Official* who, within one year of terminating *City* employment, was an elected *City Official* or served as the *City's* City Manager (Chief Operating Officer).

#### §27.3551 Future Employment of City Officials

- (a) It is unlawful for any *City Official* to make, participate in making, or use his or her official position to influence a decision involving the interests of a *person* with whom he or she the *City Official*, or a member of the *City Official's* immediate family, is seeking, negotiating, or securing an agreement concerning future employment.
- (b) It is unlawful for any *person* who has a matter pending before the *City* to negotiate, directly or indirectly, knowingly or willfully, the possibility of future employment of a *City Official*, or a member of the *City Official's* immediate

family, if that City Official who is making, participating in making, or using his or her official position to influence, a decision concerning that matter.

(c) [No change in text.]

**§27.3560 Financial Interest in Contract**

(a) through (b) [No change in text.]

~~(e) For purposes of the prohibitions set forth above in subsections (a) and (b), the term financial interest means any interest, other than a remote interest as prescribed in California Government Code section 1091 or a non interest prescribed in California Government Code section 1091.5, which would prevent the City Officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the City.~~

~~(d)~~(c) Any *City Official* with a remote interest in a prospective contract of the *City* must disclose the existence of the remote interest to the body of the board which the *City Official* is a member if that board has any role in creating, negotiating, reviewing, or approving the contract; and the *City Official* must abstain from influencing or participating in the creation, negotiation, review, or approval of the contract.

(d) This section shall be interpreted in a manner that is consistent with California Government Code sections 1090 through 1099. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.

§27.3561 Disqualification of City Officials in Municipal Decisions Affecting Economic Interests

It is unlawful for any *City Official* to knowingly influence a *municipal decision* if it is reasonably foreseeable that the *municipal decision* will have a material financial effect on:

- (a) the *City Official* or a member of his or her *immediate family*, if the material financial effect is distinguishable from its effect on the public generally; or
- (b) any of the following economic interests:
  - (1) any business entity in which the *City Official* or a member of the *City Official's immediate family* has invested \$2,000 or more; and
  - (2) any business entity for which the *City Official* or a member of the *City Official's immediate family* is a director, officer, partner, trustee, employee, or hold any position of management; and
  - (3) any real property which the *City Official* or a member of the *City Official's immediate family* has invested \$2,000 or more; and
  - (4) any person from whom a *City Official* or a member of the *City Official's immediate family* has received (or by whom you have been promised) \$500 or more in income within twelve months prior to the *municipal decision*; and
  - (5) any person from whom a *City Official* or a member of the *City Official's immediate family* has received gifts which total \$320 or more within twelve months prior to the *municipal decision*. This gift threshold is subject to adjustment in accordance with the provisions of section 27.3521; and

- 6) ~~the personal expenses, income, assets, or liabilities of a *City Official* or a member of the *City Official's immediate family*.~~
- (e) ~~For purposes of this section, “material financial effect” has the same meaning as that term is used in title 2, sections 18705 through 18705.5 of the California Code of Regulations.~~
- (a) It is unlawful for a *City Official* to make, participate in making, or in any way use his or her official position to influence a *municipal decision* in which he or she knows or has reason to know he or she has a disqualifying financial interest.
- (b) A *City Official* has a disqualifying financial interest in a *municipal decision* if that *municipal decision* will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the *City Official* or his or her *immediate family*, or on any of their economic interests in business entities, real property, sources of income, sources of gifts, or their own personal finances.
- (c) This section shall be interpreted in a manner that is consistent with the provisions of California Government Code sections 87100 through 87105 and title 2, sections 18700 through 18709 of the California Code of Regulations. In this regard, these provisions of state law are hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein.

**§27.3562 Disqualification of City Officials in Municipal Decisions Involving Benefactors**

- (a) It is unlawful for any *City Official* to participate in any *municipal decision* where a *party* to the *municipal decision* has, within the previous twelve months, given the *City Official*, promised to give the *City Official*, or acted as an intermediary for the *City Official* to have, an opportunity for *compensation*.
- (b) [No change in text.]
- (c) This section does not apply to opportunities for *compensation* provided by a *public agency*.

**§27.3564 Misuse of City Position or Resources**

- (a) It is unlawful for any *City Official* to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any *person* to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the *City Official* or his or her ~~immediate family~~ *immediate family*. As used in this section, the term “private advantage, benefit, or economic gain” means any advantage, benefit, or economic gain, distinct from that enjoyed by members of the public without regard to official status or not resulting naturally from lawful and proper performance of duties. A *City Official* engages in a prohibited use of his or her official position or prospective position when he or she engages in activities other than in the lawful and proper performance of his or her *City* duties.
- (b) [No change in text.]

(c) It is unlawful for any person City Official to induce or coerce, or attempt to induce or coerce any other person to engage in any activity prohibited by subsections (a) and (b).

(d) through (f) [No change in text.]

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Or.Dept:Ethics Commission  
Doc.No. 589240\_2



Passed by the Council of The City of San Diego on OCT 01 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 15 2013.

AUTHENTICATED BY: TODD GLORIA, COUNCIL PRESIDENT  
as interim Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Dannelle J. Santos*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 17 2013, and on OCT 15 2013.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Dannelle J. Santos*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>20302</u>