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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 5, 2010

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Changes to regulations governing Statements of Incompatible Activities

Staff proposes changes to Ethics Commission regulations governing the Statements of Incompatible Activities (“SIAs”), in order to amend procedures regarding the adoption and amendment of SIAs and the City’s annual distribution of SIAs to City officers and employees. Regulations adopted by the Commission become effective 60 days after the date of their adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation(s). S.F. Charter § 15.102.

San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) section 3.218 bars any officer or employee from engaging in any employment, activity or enterprise identified as incompatible in the SIA that governs the officer or employee. In 2007 and 2008, the Ethics Commission adopted SIAs for each City department, board and commission – 53 in all. The SIAs went into effect on October 8, 2008, 30 days after the Ethics Commission finally approved the last of the SIAs.

1. Proposed changes to Regulation 3.218-1—Approval of and Amendments to Statements of Incompatible Activities

In considering the SIAs, the Commission adopted Regulation 3.218-1, which governs the approval process. There are several items in the regulation that are no longer necessary. For example, the current regulation requires all departments, boards and commissions to submit an initial SIA to the Ethics Commission by August 1, 2004; the Ethics Commission is required to forward any SIA to the Civil Service Commission for its review and comment; and the Ethics Commission is barred from considering at a public hearing any SIA until at least 45 days have passed since receipt. These regulations were adopted to encourage a deliberative process as the Ethics Commission, which first considered SIAs and adopted a City-wide SIA template in 2007. SIAs are now part of the ethics laws that govern City officers and employees. The Civil Service Commission has already provided comments that led to the Ethics Commission’s adoption of the SIA template, and the executive director of that commission has indicated to staff that future amendments to individual departments’ SIAs need not be forwarded for further review. For these reasons, staff proposes to

strike the text that appears in former Regulation 3.218-1(a)(1), (c), (d) and (e), appearing on pages 3-4 of this memo.

Staff also proposes to insert language that will help to clarify existing procedures for the approval for new SIAs or amendments to previously approved SIAs. Thus, staff has added:

- In new Regulation 3.218-1(a)(1), the phrase “previously approved” to reference amendments to existing SIAs;
- In new Regulation 3.218-1(c), the phrase, “if any,” after “unions” to recognize that in some instances where the SIA governs only officers who are not represented by unions;
- In new Regulation 3.218-1(d), language to clarify that the meeting and conferring with the unions continues to be required when the SIA or amendments affect officers or employees represented by a union but is not required when an SIA will not affect any represented officers or employees.
- In new Regulation 3.218-1(e), language to provide that the Commission may finally approve an SIA or amendment on the same date that it holds a hearing on the SIA or amendment. When the Commission first adopted the SIAs, it engaged in a three-step process: the Commission first considered an initial “draft” SIA, then staff met and conferred with applicable unions about the contents of that draft, and the Commission finally considered and adopted the “final” SIA for the department. When the Commission considers minor amendments to existing SIAs, or when it considers new SIAs for departments or commissions with no represented employees (and no meet-and-confer obligations), staff believes the three-step process is not necessary. The Commission should have discretion to adopt an SIA after a single public hearing.

Decision Point 1a:

Shall the Commission approve the deletions to Regulation 3.218-1, appearing in former sections (a)(1), (c), (d), (e), and (f); and the additions to Regulation 3.218-1, appearing in new sections (a)(1), (c), (d) and (e), as set forth on pages 3-4 of this memo?

2. Proposed changes to Regulation 3.218-2—Incompatible Activities -- Notice

Regulation 3.218-2 implements GEO section 3.218(e), which requires each department, board, and commission to provide annually to its officers and employees a copy of the its SIA. Some departments have not been able to send the SIA as an attachment in an email to their employees because their servers simply could not accommodate the traffic. Staff has advised departments that they may send an electronic link to the SIA to employees. The proposed additional language would codify this practice.

Decision Point 2:

Shall the Commission approve the addition of “or an electronic link to the SIA” in Regulation 3.218-2(3), as set forth on page 4 of this memo?

Proposed Changes to Regulations to Government Ethics Ordinance
(Additions in **bold, underlined italic** text; deletions in **~~bold strike-through~~** text)

Regulation 3.218-1. Incompatible Activities – Approval of and Amendments to Statements of Incompatible Activities

Every department, board, commission and agency of the City and County is required to submit to the Ethics Commission a statement of incompatible activities listing those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of that department, board, commission or agency. All statements of incompatible activities as well as any amendments to previously adopted statements must be approved in accordance with this regulation.

(a) Submission to the Ethics Commission.

(1) Submission deadlines. ***The initial statement must be submitted by August 1, 2004 for departments, boards, and commissions in existence on March 1, 2004.*** For departments created after March 1, 2004, the initial statement must be submitted within six months of the creation of the department, unless the Ethics Commission extends the time for good cause. Amendments to a ***departmental previously approved*** statement may be submitted at any time.

(2) Materials submitted. Every statement or amendment shall be submitted in writing to the Ethics Commission in both paper and electronic form. In addition to each statement or amendment, every department, board, commission or agency shall submit a list of the unions that represent the officers and employees affected by the proposed statement or amendment. A department, board, commission or agency may provide any supporting materials that the department, board, commission or agency believes would assist the Ethics Commission.

(b) Waivers of Required Language. Boards and commissions whose members, by law, must be appointed in whole or in part to represent any profession, trade, business, union or association may request permission from the Ethics Commission to exclude any of the language required by section 3.218(c). Such requests must be made at the time a board or commission submits a statement or amendment to the Ethics Commission and must set forth specific reasons why the exclusion is necessary. In making a determination whether to grant permission to exclude required language from a statement, the Ethics Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the waiver is not granted; the ability of the commissioner or board member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.

~~(c) Referral to the Civil Service Commission. Within two business days of receiving a submission required by subsection (a) of this regulation, the Executive Director shall forward a paper and electronic copy of the submission to the Civil Service Commission for its review and comment.~~

~~(c)~~ Hearing before the Ethics Commission. The Ethics Commission shall hold a hearing to consider each statement or amendment ***~~no sooner than 45 calendar days after the Commission receives a submission required by subsection (a) of this regulation.~~*** No later than 7 calendar days before the hearing, the Ethics Commission shall provide notice of the hearing to: (1) the department, board, commission or agency that submitted the statement or amendment; (2) the

unions, if any, that represent the officers or employees affected by the proposed statement or amendment; and (3) the Civil Service Commission. The Ethics Commission shall provide the department, board, commission or agency that submitted the statement or amendment, the unions that represent the officers or employees affected by the proposed statement or amendment, and the Civil Service Commission with an opportunity to make a presentation regarding the proposed statement or amendment. The Ethics Commission may amend a proposed statement or amendment.

(de) Meet and Confer. The Ethics Commission encourages City departments, boards, commissions and agencies to include the unions that represent their officers and employees in the process of drafting and amending statements of incompatible activities before submitting the statement or amendment to the Ethics Commission. Prior to the Ethics Commission's approval or amendment of any statement that would affect officers or employees represented by a union, or amendment by the Ethics Commission, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent the affected officers or employees.

(ef) Final Approval. The Ethics Commission shall, at a public meeting, finally approve a statement of incompatible activities or any amendment thereto. The Commission may finally approve or amend the statement on the same date that it holds the hearing described in subsection (c) of this regulation. Within two business days of such approval, the Executive Director shall provide to the department, board, commission or agency a copy of the final version of its approved statement of incompatible activities.

Regulation 3.218-2. Incompatible Activities – Notice

By April 1 of each year, every department, board, commission or agency must annually provide to its officers and employees a copy of its Statement of Incompatible Activities (SIA). Departments, boards, commissions and agencies of the City and County may satisfy this requirement by doing all of the following:

- (1) posting the SIA on the department, board, commission or agency's web page;
- (2) posting the SIA statement within the department, board, commission or agency's offices in the same place that other legal notices are posted; and
- (3) either distributing a paper copy of the SIA to each officer or employee or distributing an electronic copy of the SIA to each officer or employee either (a) by sending an email that contains the SIA or an electronic link to the SIA to each officer or employee, or (b) if the department, board, commission or agency does not have the officer or employee's email address, by providing a handout to the officer or employee that references the SIA, provides the address of the SIA on the website of the department, board, commission or agency or the Ethics Commission, and directs the officer or employee to review the SIA in its entirety; or the Ethics Commission may opt to send such handout to all City employees via payroll inserts.

To ensure that new officers and employees are notified of the SIA, each department, board, commission and agency must provide a copy of its SIA to the each new officer at the time of appointment or each new employee at the time of hire in the manner described above.