



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: December 1, 2011

To: Members, Ethics Commission

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

Re: Amendment of DHR's SIA

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The Department of Human Resources ("DHR") has asked that its Statement of Incompatible Activities ("SIA") be amended to clarify certain of its provisions and to ensure that the SIA reflects DHR's policies on the confidentiality of information. A representative of the department will attend the Commission's December 12, 2011 meeting to discuss the changes and answer questions from the Commission. Because staff believes that the changes are in line with DHR's confidentiality policies and will provide clearer guidance to employees, staff recommends that the Commission approve the changes.

## Background

Each City department has an SIA that identifies outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of a City department, board, commission or agency. The SIAs, adopted by the Ethics Commission after extensive meetings with City employee labor unions, have the force of law, just as if they were codified in a conflict-of-interest ordinance. *See* San Francisco Campaign and Governmental Conduct Code § 3.218.<sup>1</sup>

In addition to listing outside activities that are incompatible, inconsistent, or in conflict with each particular department's mission, each SIA also states that no officer or employee may:

- use City resources for non-City purposes;

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<sup>1</sup> The voters adopted section 3.218 as part of Proposition E in November 2003. That measure required all City departments to submit draft SIAs to the Ethics Commission for consideration by August 2004. Based on feedback from the Civil Service Commission, which held hearings on the SIAs from 2004 - 2006, the Commission adopted a template—which it amended several times—that sets forth standard language to be included in every department, board and commission's SIA. Between February 2006 and September 2008, the Ethics Commission held hearings to approve the SIAs for all the City's departments, boards and commissions. Throughout the process, the Commission's staff and the DHR invited every City employee union to attend meet and confer discussions regarding template and department-specific language. The staff held dozens of meetings with unions between October 2006 and March 2008. The Commission finally approved the last of the SIAs at its meeting on September 8, 2008; and all the SIAs took effect 30 days later, on October 8, 2008.

- sell, use or publish, without appropriate authorization, non-public materials prepared on City time or while using City property;
- use his or her City title or designation in any communication for private gain or advantage; or
- receive any gift for doing his or her job.

During the development of the SIAs, the Ethics Commission invited departments to propose their own provisions to govern only their officers and employees. Representatives of each department met with Ethics staff in crafting these provisions, and in general, staff deferred to the departments in identifying issues that required special language in the SIAs. Each SIA was subject to meet and confer with the unions prior to final approval of each SIA by the Ethics Commission.

Under section 3.218, the Ethics Commission may amend any department's SIA. Prior to the Commission's final amendment of any SIA that would affect officers or employees represented by a union, representatives of the City, on behalf of the Ethics Commission, must meet and confer with unions that represent the affected officers or employees. *See Ethics Commission Regulations Related to Conflicts of Interest ("EC Reg.") Regulation 3.218-1(d).* Following that meet-and-confer process, the Commission must hold a hearing to consider each proposed amendment after providing appropriate notice to the department, the affected unions and the Civil Service Commission.

The Commission will consider the draft amendments at its December 12, 2011 meeting. All the unions that represent employees at DHR and the Civil Service Commission have been notified of the meeting. DHR, which under the Charter represents the City in negotiations with unions, has already met and conferred with the affected unions about the proposed changes; thus, the Commission may finally approve the amendments at its December 12, 2011 meeting. Within two days of such approval, the Executive Director must provide to the department a copy of the final version of the approved SIA.

#### The proposed changes in DHR's SIA

The non-template language in DHR's SIA primarily appears in section III.A.1, which sets forth four restrictions on activities of DHR officers and employees.<sup>2</sup> The provisions are stated below in ***bold italic text***; proposed changes are set forth in underlined or ~~strike-through~~ text.

- a. ***No officer or employee may provide information about the processes and procedures of the Department that is not otherwise available to the public.***

***Example. No officer or employee may reveal or discuss any examination content or other confidential information regarding the examination ~~prior to the administration of the examination~~ to any candidate or other individual not involved in the***

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<sup>2</sup> Under the SIA, an officer or employee may engage in an activity proscribed in section III.A.1(a)-(e) if the officer or employee obtains an advanced written determination from the department head or appointing officer that such activity is actually not incompatible, inconsistent or in conflict with the officer's or employee's duties.

**examination preparation or administration of that examination unless expressly authorized to do so by the director or designee.**

***Example. No officer or employee may distribute or utilize proprietary training materials or resources unless expressly authorized to do so by the director or designee.***

***b. No officer or employee may utilize or access confidential information in the Department's possession ~~to advance the private interest of himself or herself or others~~ for any unauthorized purpose.***

***Example. No officer or employee may use proprietary software, processes or data, whether developed by or used by or licensed to the City, ~~for private gain or advantage, or the gain or advantage of another~~ for any purpose not authorized by the Department.***

***Example. No officer or employee may use confidential information regarding any City employee for any purpose not authorized by the Department.***

***c. Except as necessary to carry out his or her official duties, no officer or employee may apply any pay provisions to gain a personal benefit or advantage, or to benefit or disadvantage any other person with whom the officer or employee has a personal or business relationship.***

***d. No officer or employee may distribute Department publications, mailing lists ~~and or~~ examination materials ~~for personal remuneration or benefit, or for the remuneration or benefit of a third party~~ unless authorized to do so by the director or designee.***

#### **Reasons for the proposed changes in DHR's SIA**

DHR states that the revisions are intended to clarify that:

- Examination materials remain confidential even after the administration of the examination;
- Employees may distribute or utilize proprietary materials as long as they are authorized to do so;
- Officers and employees may not utilize or access confidential information for *any* unauthorized purpose, not only because such use will advance their private interests or the private interests of others;
- Officers and employees may not distribute DHR publications, mailing lists or examination materials for *any* purpose unless authorized to do so, not only because such distribution is for personal remuneration or benefit, or for the remuneration or benefit of a third party.

DHR adds that the proposed revisions to DHR's SIA are consistent with the Civil Service Rules, public records laws and DHR policy. Under Civil Service Commission Rules, examination materials are confidential.<sup>3</sup> Aside from the fact that such materials are considered proprietary

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<sup>3</sup> Civil Service Rule 111.11.4 (Rating Keys) provides that inspection privileges do not apply to questions or answers in standard or continuous examinations. Civil Service Rule 111.10 (Copying of Examination-Related Materials) prohibits anyone from copying or making notes or outlines of examination-related materials. (The Civil Service

and confidential, providing an applicant any previous, current or future related examination materials would give them an unfair advantage over other applicants for that examination or a related examination.

The revisions are also intended to align the SIA with DHR's Confidentiality Agreement and Statement of Employee Statement of Responsibility ("Agreement"), which was recently adopted by DHR and will be rolled out to all employees along with the amended SIA. As noted in the Agreement, employees at DHR "are in the unique and responsible position of having access to and being aware of an array of highly sensitive confidential information including examination materials, medical records, and personal information." The Agreement makes clear that "Disclosure of this information to other parties or colleagues is allowed only when it is legally required or essential to the operation of the City, and then it is disclosed strictly on a need-to-know basis." Each DHR employee is required to read and sign the agreement. *See* attached Confidentiality Agreement and Statement of Responsibility.

#### DHR Met and Conferred with Its Unions

On September 30, 2011, DHR notified the unions that represent its employees (MEA; SEIU, Local 1021; and IFPTE, Local 21) of the proposed changes to the SIA and invited them to meet and confer with DHR to discuss any questions, comments or concerns they may have. *See* attached notice sent to the unions from Jennifer Johnston. MEA did not respond. However DHR met with SEIU, Local 1021 on October 14, 2011; and with IFPTE, Local 21 on October 12, 2011. The unions expressed no concern about the proposed changes, as long as DHR provides some training on the SIA, which DHR plans to do as soon as the amendments are approved.

#### Staff's recommendation

For the reasons set forth above, staff recommends that the Commission approved the proposed changes to the SIA of DHR.

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Rules may be accessed on the Civil Service Commission website at [www.sfgov.org/civil\\_service](http://www.sfgov.org/civil_service)). California Government Code section 6254(g) (the California Public Records Act) exempts from disclosure any "test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment." In addition, Civil Service Rule 111.9.1 (Aid, Hindrance, Fraud and Collusion in Examinations) prohibits employees from furnishing to any person "any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted."



Edwin M. Lee  
Mayor

Micki Callahan  
Human Resources Director

October 31, 2011

*Sent Via Electronic and Interoffice Mail*

Benedict Y. Hur, Chairperson  
San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Re: Request for Approval to Revise the Department of Human Resources' Statement of Incompatible Activities

Dear Chairperson Hur:

The Department of Human Resources ("DHR") is seeking to revise its Statement of Incompatible Activities ("SIA") in order to better align it with DHR's policies on the confidentiality of information and to clarify for DHR employees the type of conduct that is prohibited under the SIA (please see the attached redlined document). This request is pursuant to Ethics Commission Regulation 3.218-1, Incompatible Activities – Approval of and Amendments to Statements of Incompatible Activities, which provides in relevant part:

- (c) Hearing before the Ethics Commission. The Ethics Commission shall hold a hearing to consider each statement or amendment. [...] The Ethics Commission may amend a proposed statement or amendment.
- (d) Meet and Confer. [...] Prior to the Ethics Commission's approval or amendment of any statement that would affect officers or employees represented by a union, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent the affected officers or employees.
- (e) 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. [...]

On September 30, 2011, DHR invited the labor unions that represent its employees—the Municipal Executives' Association ("MEA"); IFPTE, Local 21; and SEIU, Local 1021—to meet and confer over the proposed changes to DHR's SIA. Although MEA did not respond to DHR's invitation to meet, DHR met with IFPTE, Local 21 and with SEIU, Local 1021 shortly thereafter at their request. None of the three unions expressed any opposition to the proposed revisions.

Accordingly, DHR respectfully requests that the proposed revisions to its SIA be scheduled before the Ethics Commission for its review and consideration as soon as practicable. If you have any questions

or require further information, please contact Jennifer Johnston, Chief of Policy, at (415) 557-4932 or [Jennifer.Johnston@sfgov.org](mailto:Jennifer.Johnston@sfgov.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Micki Callahan", with a long horizontal flourish extending to the right.

Micki Callahan  
Human Resources Director

Cc: Jennifer Johnston

Attachment (1)

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Edwin M. Lee  
Mayor

Micki Callahan  
Human Resources Director

DEPARTMENT OF HUMAN RESOURCES

STATEMENT OF INCOMPATIBLE ACTIVITIES

**I. INTRODUCTION**

This Statement of Incompatible Activities is intended to guide officers and employees of the Department of Human Resources ("Department") about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, "officer" shall mean the executive director ("director") and "employee" shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code ("C&GC Code") section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer's or employee's collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

- Political Reform Act, California Government Code § 87100 *et seq.*;
- California Government Code § 1090;
- San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance; and
- Applicable Civil Service Rules.

Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City's and/or public's attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

No amendment to any Statement of Incompatible Activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the director. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the director, although the supervisor or director may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.



## II. MISSION OF THE DEPARTMENT OF HUMAN RESOURCES

*The mission of the Department of Human Resources is to administer the personnel programs of the City and County of San Francisco and to recruit, engage, and develop the City's workforce to meet the expectations and service needs of San Franciscans.*

## III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

### A. RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES

#### 1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

*a. No officer or employee may provide information about the processes and procedures of the Department that is not otherwise available to the public.*

*Example. No officer or employee may reveal or discuss any examination content or other confidential information regarding the examination prior to the administration of the examination to any candidate or other individual not involved in the examination preparation or administration of that examination unless expressly authorized to do so by the director or designee.*

*Example. No officer or employee may distribute or utilize proprietary training materials or resources unless expressly authorized to do so by the director or designee.*

*b. No officer or employee may utilize or access confidential information in the Department's possession to advance the private interest of himself or herself or others for any unauthorized purpose.*

*Example. No officer or employee may use proprietary software, processes or data, whether developed by or used by or licensed to the City, for private gain or advantage, or the gain or advantage of another for any purpose not authorized by the Department.*

*Example. No officer or employee may use confidential information regarding any City employee for any purpose not authorized by the Department.*



*c. Except as necessary to carry out his or her official duties, no officer or employee may apply any pay provisions to gain a personal benefit or advantage, or to benefit or disadvantage any other person with whom the officer or employee has a personal or business relationship.*

*d. No officer or employee may distribute Department publications, mailing lists ~~and or~~ examination materials ~~for personal remuneration or benefit, or for the remuneration or benefit of a third party unless authorized to do so by the director or designee.~~*

## **2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS**

Neither the director nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the director or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the director's or employee's performance of his or her City duties.

*Example.* An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the director or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

## **3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT**

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one's own department or the Civil Service Commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

Assistance in Responding to City Bids, RFQs and RFPs. No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.

## **B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS**

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

[RESERVED.]

## **C. ADVANCE WRITTEN DETERMINATION**

As set forth below, an employee of the Department or the director may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called "the requestor"; the individual or entity that provides an advance written determination shall be called "the decision-maker."



### 1. PURPOSE

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor's written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

- (a) the requestor is an *employee* who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or
- (b) the requestor is an *officer* who has not received a determination under subsection C from the decision-maker; or
- (c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

### 2. THE DECISION-MAKER

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the director or his or her designee. The director or his or her designee will be deemed the decision-maker for the employee's request.

Decision-maker for request by the director: The director may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the director's request.

### 3. THE PROCESS

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a



reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee's request, the proposed activity will be determined not to violate this Statement.

The decision-maker may revoke the determination at any time, based on changed facts or circumstances or other good cause, by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

#### **4. DETERMINATIONS ARE PUBLIC RECORDS**

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

### **IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE**

#### **A. USE OF CITY RESOURCES**

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

*Example.* An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

#### **B. USE OF CITY WORK-PRODUCT**

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer's or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

#### **C. USE OF PRESTIGE OF THE OFFICE**

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

##### **1. USING CITY BUSINESS CARDS**

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.

*Example of inappropriate use.* An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to



view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

*Example of acceptable use.* An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

## **2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL**

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

*Example.* An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

## **3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT**

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

*Example.* An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

## **V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES**

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216.) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer's or employee's duties and responsibilities, or the processes of the entity they serve.

*Example.* A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

*Example.* A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local



government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- ii. Gifts such as food and drink, without regard to value, to be shared in the office among officers or employees.

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

*Example.* A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.

## VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

**City and County of San Francisco**  
**Confidentiality Agreement and Statement of Responsibility**

Employee Name: \_\_\_\_\_ Job Class: \_\_\_\_\_

Division: \_\_\_\_\_ Date: \_\_\_\_\_

The Department of Human Resources ("DHR") is committed to promoting an environment that retains the full trust and confidence of its customers, internal and external. To that end, all DHR employees are expected to promote a respectful workplace and honor the rights of others.

In our daily work we are in the unique and responsible position of having access to and being aware of an array of highly sensitive confidential information including examination materials, medical records, and personal information. Disclosure of this information to other parties or colleagues is allowed only when it is legally required or essential to the operation of the City, and then it is disclosed strictly on a need-to-know basis.

Additionally, while every effort is made to limit access to confidential information to those individuals who have a legitimate business reason to access it, users may, nevertheless, intentionally or unintentionally gain access to other data. Access privileges to all human resources information systems are issued to individuals with the understanding that they may use the information obtained by virtue of such access only in the conduct of their official duties, and that no information will be disclosed to any person who does not have an official "need to know."

**Confidentiality of all Examination Materials**

The loss or disclosure of confidential examination information or material (whether unintentional or otherwise) is a very serious matter, as it can render a test invalid and useless. Further, any actual or perceived breach in security of examination and examination-related material undermines the public's trust and candidates' confidence in our employment and selection processes

**Confidentiality of Candidate Information**

The disclosure of confidential candidate information or materials (whether unintentional or otherwise) is strictly prohibited. Unauthorized disclosures of candidate information undermines the candidates' confidence in our employment and selection processes and must, therefore, be safeguarded and kept confidential at all times.

**Confidentiality of Employee Information**

The disclosure of confidential employee information or materials (whether unintentional or otherwise) is strictly prohibited. Unauthorized disclosures of employee information undermine the credibility of the human resources functions of the City.



In the interest of ensuring the secure and proper use of confidential information and out of respect for the privacy of others; DHR has established the following general confidentiality principles:

1. Users must maintain the confidentiality of passwords that are granted for any of the Human Resources Information Systems (e.g., PeopleSoft, Job Aps, iVos, eMail, DHR's share drives, etc.). Sharing of passwords is strictly prohibited.
2. Users must develop, maintain, and view the information/data in a strictly confidential manner. The information developed and/or viewed may not be shared in any manner with others who are unauthorized to have access to it.
3. Use of DHR information/data for profit or for personal purposes is prohibited.
4. There may be legitimate requests for information from a variety of sources; however, confidential information should not be released without appropriate approval.
5. Inappropriate use of privileges to access and use data may result in loss of access to the system and possible disciplinary actions up to and including dismissal.

**As an employee of the Department of Human Resources, I am aware of the confidential nature of my work and therefore expressly acknowledge and agree that:**

1. I understand that examination materials or information, including job analysis information, forms or materials involving test development and design, test items, test stimuli, test questions, test content, test booklets, assessor ratings and notes, audio and video tapes of candidates' test performances, answer keys, examination-related statistical data, scoring criteria, and failure results, to which I have been given access or to which I have been exposed are confidential if: 1) they have not been appropriately released to the public and are exempt from disclosure under public records laws; or 2) they would provide any candidate with an unfair advantage over others.
2. I understand that dissemination or disclosure of, or allowing access to any such confidential examination materials or information, both prior and after the administration of the examination, to unauthorized individuals is strictly prohibited without the express approval of the Human Resources Director or authorized designee.
3. I may be a party to confidential conversations and discussions relating to an examination or examination administration where confidential information is discussed. I understand that dissemination of confidential information relating to the participants in those discussions or the content of their conversations to unauthorized individuals is strictly prohibited without the express approval of the Human Resources Director or authorized designee.
4. I understand that I am prohibited from coaching candidates prior to or during the administration of an examination; or from furnishing to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted.

5. I understand that I am prohibited from, either by myself or by aiding another, falsely marking or grading an examination, or falsely estimating or reporting upon the examination or proper standing of any person examined.
6. I understand that if I am in doubt as to whether any particular individual is authorized to receive any such confidential examination or applicant/candidate-related data, materials or information, I am required to consult with my supervisor.
7. I understand that candidate data, materials, or information to which I have been given access or to which I have been exposed is strictly confidential if the disclosure of the data, material, or information would infringe upon an individual's right to privacy. This includes, but is not limited to the candidate's examination materials and answers, and personal information such as the candidate's home or email address, social security number, medical records, ADA/disability information, age, gender, ethnicity, conviction history information, etc.
8. I understand that dissemination of confidential candidate data, materials, or information to unauthorized individuals is strictly prohibited without the express approval of the Human Resources Director or authorized designee.
9. I understand that confidential candidate-related data, materials or information must never be left unattended or unsecured, and agree that I will at all times take steps to properly safeguard such data, materials or information.
10. I understand that I am prohibited from disclosing information regarding candidate performance prior to the posting of the tentative eligible list.
11. I understand that I am prohibited from accessing confidential candidate-related data, materials or information for examinations for any purpose for which I am not authorized, unless specifically authorized to do so by the Human Resources Director or authorized designee.
12. I understand that employee data or information to which I have been given access or to which I have been exposed is strictly confidential if the disclosure of the data or information would infringe upon an individual's right to privacy. This includes, but is not limited to the employee's personal information such as information regarding the employee's home or email address, social security number, medical records, ADA/disability information, age, gender, ethnicity, conviction history information, etc.
13. I understand that dissemination of confidential employee data or information to unauthorized individuals is strictly prohibited without the express approval of the Human Resources Director or authorized designee.
14. I understand that confidential employee data or information must never be left unattended or unsecured, and agree that I will at all times take steps to properly safeguard such data or information.
15. I understand that I am prohibited from accessing confidential employee data or information for any purpose for which I am not directly involved with, and/or for any purpose for which I am not authorized, unless specifically authorized to do so by the Human Resources Director or authorized

designee.

I further understand and agree to the following:

- I understand that I am obligated to report any violations of the above policies by candidates or other City employees.
- If I am unclear as to any of the rules and policies detailed herein, I understand that I am required to consult with my supervisor, manager, or departmental personnel officer.
- I understand that violation of any of the terms herein may lead to disciplinary action, up to and including termination, and restriction on future employment with the City.

**By signing below, I acknowledge and confirm that I have received, read and understood this Confidentiality Agreement and Statement of Responsibility.**

**EMPLOYEE SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Original to be maintained in the employee's personnel file.  
Copy to the employee.