



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: January 13, 2012

To: Members, Ethics Commission

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

Re: Amendments to the SIA of the San Francisco Public Library

At its May 9, 2011 meeting, the Ethics Commission began consideration of proposed changes to the Statement of Incompatible Activities (“SIA”) for the San Francisco Public Library, but the Commission did not take formal action to approve or reject the proposals. The Commission will consider the proposals again at its January 23, 2012 meeting. If the Commission approves the changes, representatives of the City on behalf of the Ethics Commission will meet and confer with unions that represent the affected officers and employees. *See* EC Reg. 3.218-1(c). After such meet and confer, the revised SIA will come back to the Commission for final approval. The revised SIA will take effect 30 days after the Commission finally approves it. Attached to this memo is the May 4, 2011 staff memo which discusses the proposed changes and staff’s recommendations.

At the May 9 meeting, Commission members expressed support for the proposed changes as they relate to *employees* at the Library. However, because of concerns about possible undue influence, the Commissioners asked staff and the Library to explore whether the SIA provisions affecting the Library’s *officers*—that is, Library Commissioners and the City Librarian—should remain in place.

Since May, staff has held several discussions with Library staff and attended a meeting with the Library Commission to discuss the draft provisions. Upon receiving comments from the Library Commissioners and after additional review of general conflicts of interest laws as well as the City Charter’s proscription of interference in the administration of departments, staff recommends that the affected provisions be deleted in their entirety from the SIA, as the Library’s staff initially recommended. *See* S.F. Charter § 4.102.

The reasons provided earlier by the Library to delete provisions in the SIA governing employees apply equally to officers. Applying current provision III.A.1.a to officers would harm individual officers without advancing the goals of the SIA. As explained by the Library, the current language in the SIA would prohibit a member of the Library Commission—who may be a published author—from having his or her books published through a publisher or vendor that sells books to the Library. This conflicts

with the Library's mission to collect broadly on all topics. Moreover, applying the provision to officers does not serve the SIA's goal of preventing potential abuse. But allowing Library Commissioners to receive compensation from a Library contractor such as a publisher does not give rise to potential abuses of power because the Library Commission does not make contracting decisions for the Library; instead, it is the department head who is authorized to "issue or authorize requisitions for the purchase of materials, supplies, and equipment required by the department." Admin. Code § 2A.30. The Library Commission "sets policy and communicates that policy to the department head, who in turn is responsible for its execution. *See* S.F. Charter section 4.102. While the Library Commission approves the Library's budget, it does not approve specific contracts with publishers. Finally, other conflict of interest laws, such as the Political Reform Act's ban on participating in governmental decisions in which the officer has a financial interest (incorporated into San Francisco Campaign and Governmental Conduct Code section 3.206(a)), already prevent Commissioners and the City Librarian from exercising improper influence. For these reasons, staff believes that the provisions in the current SIA are not necessary and recommends that they be deleted.

SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION
STATEMENT OF INCOMPATIBLE ACTIVITIES

I. INTRODUCTION

This Statement of Incompatible Activities is intended to guide officers and employees of the San Francisco Public Library ("Department" or "Library") and Library Commission ("Commission") 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 City Librarian and a member of the Commission; 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;
- San Francisco Public Library Collection Policy and Collection Plan;
- San Francisco Public Library Exhibitions Policy and Exhibitions Guidelines;
- Library Bill of Rights; and the
- Code of Ethics of the American Library Association.-

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.

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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 City Librarian. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the City Librarian, although the supervisor or City Librarian 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 SAN FRANCISCO PUBLIC LIBRARY AND COMMISSION

The mission of the San Francisco Public Library is to provide free and equal access to information, knowledge, and independent learning and the joys of reading for our diverse community.

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 City Librarian 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 City Librarian.

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.

Reserved.

~~a. No officer of employee may be employed by, or receive compensation from, an individual or entity that has a contract or is a vendor with the Department or Commission, or that has had a contract or was a vendor with the Department or Commission during the past twelve months. This prohibition does not apply to employment of or compensation received by an officer's or employee's spouse or registered domestic partner.~~

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~~Example. No officer or employee may be employed by or receive compensation from any individual or entity that provides book binding or book repair services to the Library.~~

~~b. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, writer, editor or publicist for, a publisher who sells books to the Library.~~

~~e. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, programmer, editor, or publicist for a publisher of databases or other electronic media if that publisher sells such materials to the Library.~~

~~d. No employee or the City Librarian may serve, whether compensated or not, as a consultant, exhibition designer, or preparator for a company, nonprofit organization, artist, or artists' collective whose exhibitions are booked into the Library.~~

~~e.g. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as an instructor for any person or entity that provides training at the Library.~~

2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

Neither the City Librarian nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the City Librarian 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 City Librarian 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 City Librarian 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 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 City Librarian or a member of the Commission 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 City Librarian or his or her designee. The City Librarian or his or her designee will be deemed the decision-maker for the employee's request.

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

Decision-maker for request by a member of the Commission: A member of the Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Commission or Ethics Commission will be deemed the decision-maker for the member'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 City Librarian 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 City Librarian.

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

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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

speaking 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

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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.

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ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 4, 2011

To: Members, Ethics Commission

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

Re: Proposed amendments to SIA of San Francisco Public Library

The San Francisco Public Library ("Library") has requested amendments to its Statement of Incompatible Activities ("SIA"). A representative from the Library will attend the Commission's May 9, 2011 meeting to answer any questions. For the reasons set forth below, and because staff believes that provisions in SIAs should be modified when experience shows that they are unduly restricting employees from engaging in activities that are not actually incompatible, staff recommends that the Commission approve of the changes.

Background

The SIA is a statement 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. *See* San Francisco Campaign and Governmental Conduct Code ("C&GC Code") § 3.218. 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 Department of Human Resources 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.

In addition to listing outside activities that are incompatible, inconsistent, or in conflict with the department's mission, each SIA also states that no officer or employee may use City resources for non-City purposes; or sell, use or publish, without appropriate authorization, non-public materials prepared on City time or while using City property; or 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.

The Ethics Commission invited departments to add provisions to the SIAs governing only their officers and employees. Department representatives 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. All such non-template provisions were subject to meet and confer with the unions prior to final approval of each SIA by the Ethics Commission. 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.

Under section 3.218, the Ethics Commission may amend any department's SIA. The Commission must hold a hearing to consider each amendment. No later than seven days prior to the hearing, the Commission must provide notice to the department that submitted the amendment, the unions that represent officers and employees affected by the amendment, and the Civil Service Commission, all of whom will have an opportunity to make a presentation regarding the proposed amendment. *See* EC Reg. 3.218-1(c).

No amendment is operative until the City has met its meet and confer obligations under state law. *See* C&GC Code § 3.218(b).

Based on the process set for the adoption of amendments, the Commission will consider the draft amendments at the May 9, 2011 meeting. All the unions that represent employees at the Library and the Civil Service Commission have been notified of the meeting. If the Commission preliminarily approves the changes, the City through the staff of the Ethics Commission, the City Attorney's Office and the Department of Human Resources will engage in meet and confer with the affected unions. Finally, the amendments – either as preliminarily approved by the Commission or as further modified based on the meet and confer discussions – will return for further consideration and possible final approval before the Commission at a subsequent meeting.

Non-template language in the Library's SIA and the Library's reasons for change

Aside from its mission statement, the non-template language in the Library's SIA appears in section III.A.1, which sets forth five restrictions on activities of Library officers and employees.¹ The provisions are stated below in bold italic text. Following each provision, the Library has provided an explanation of why the language should be deleted, in italic text.

- a. ***No officer of employee may be employed by, or receive compensation from, an individual or entity that has a contract or is a vendor with the Department or Commission, or that has had a contract or was a vendor with the Department or Commission during the past twelve months. This prohibition does not apply to employment of or compensation received by an officer's or employee's spouse or registered domestic partner.***

¹ 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 (AWD) that concludes that such activity is actually not incompatible, inconsistent or in conflict with the officer's or employee's duties.

Example. No officer or employee may be employed by or receive compensation from any individual or entity that provides book binding or book repair services to the Library.

Library's explanation to show why change is necessary:

Many Library staff are also experts in their field (or in a field of personal interest) and quite a few are published authors. For example, one librarian in the arts reference section has a personal passion for dance and has published two monographs on the subject. The current SIA language suggests that the staff member not be allowed to have her works published through a publisher that sells books to the Library, nor to a book vendor that sells books to the Library. This was not the intent of the SIA and unreasonably conflicts with the Library's mission to collect broadly on all topics. It is not detrimental to the Library to have staff with this expertise on a topic; it is beneficial. The current language was intended to prevent potential abuse – a staff member using his or her position to solicit a publishing contract, completing the work during City paid hours, or influencing the purchase of items because he or she is in fact the author. However, other language in the SIA and State conflict of interest laws would prohibit these inappropriate activities and the Library's collection purchasing is directed by following a detailed Collection Development Policy and Collection Plan.

- b. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, writer, editor or publicist for, a publisher who sells books to the Library.***

Library's explanation to show why change is necessary:

Same explanation as above. The Library's largest expenditures outside of staffing are for collections, purchased from publishers and book vendors. In addition to Library staff as authors, we are often asked to act as editors, chapter writers and contributors to compiled works, particularly in the area of library services and the study of library/information science. If the work is done on personal time, there is no reason staff should not be compensated for this work. Further, the Library and community benefit from then being able to add the item to the collection for public access. Inappropriate activities would be prevented by existing conflict of interest laws and the other provisions in the SIA.

- c. No employee or the City Librarian may be employed by, or provide services in exchange for compensation as a sales representative, purchaser, programmer, editor, or publicist for a publisher of databases or other electronic media if that publisher sells such materials to the Library.***

Library's explanation to show why change is necessary:

This has simply not been a problem for the Library in the past, and we have no reason to believe it will become a problem. If any staff member seeks to obtain outside work for a publisher, the City's work rules would apply. And existing conflict of interest rules other

than the SIA would prohibit that staff member from trying to influence any Library decisions regarding that publisher. The Library's internal policies address how we engage in collections activities. Thus, this provision is not necessary.

- d. *No employee or the City Librarian may serve, whether compensated or not, as a consultant, exhibition designer, or preparator for a company, nonprofit organization, artist, or artists' collective whose exhibitions are booked into the Library.***

Library's explanation to show why change is necessary:

This provision prohibits activities that the department believes is beneficial to the Library and its staff. Library exhibits staff have been engaged with the non-profit group Exhibit Envoy (formerly the California Exhibition Resource Alliance or CERA), which originally started through the California Council for the Humanities. Exhibit Envoy is associated with numerous high quality state and national exhibits that focus on the history of the state's cultural heritage, often partnering with the Smithsonian, California Historical Society and others. Exhibits organized by Exhibit Envoy are often appropriate for the Library, per the exhibits policy, augmenting and increasing the awareness of and accessibility to the Library's collections. The provision prohibits staff from working with both institutions, though their missions are complementary.

- e. *No employee or the City Librarian may be employed by, or provide services in exchange for compensation as an instructor for any person or entity that provides training at the Library.***

Library's explanation to show why change is necessary:

Again, the Library and its staff benefit from staff doing the type of work that this provision prohibits. Instruction for Bay Area library professionals is organized by a regional company, InfoPeople, that specializes in workforce development for staff of all types of libraries, including SFPL employees. The SIA prohibits librarians from SFPL from participating with this group as instructors or curriculum developers, even on their own time and even though the activity does not interfere with the Library or City. On the contrary, staff participation in instruction of this sort would support the Library's connection to other libraries, enhance awareness of and use of SFPL collections, and improve service to the public regionally.

Discussion

In 2004, the Library's staff proposed the provisions in section III.A.1(a)-(e) to address a concern that officers or employees who engaged in the above activities might exert undue influence on the government decisions regarding the Library's purchases, exhibits, and programs.

However, as set forth in the memorandum from City Librarian Luis Herrera and the above examples from the Library, experience with the provisions suggests that they are unnecessary and burdensome for Library staff. Mr. Herrera states that the Library staff's participation in the above activities does not interfere with the Library's ability to make governmental decisions and conduct outreach according to adopted policies and procedures, adding that "such activities serve to enhance the expertise of librarians and the role of the Library as a community resource and

information provider.” The memo further states that the provisions may serve to hinder the professional development and personal growth of Library staff. The Library also makes the case that potential abuse and undue influence can be effectively addressed through existing conflict of interest laws and the other provisions in the SIA, particularly the sections prohibiting outside activities that require a time commitment that interferes with City duties, the use of City resources for non-City purposes, and the use of City title or designation for private purpose or gain.

Staff Recommendation

For the above reasons, following the Library's request, staff recommends deletion of the provisions in section III.A.1(a)-(e) from the Library's SIA.

In addition, staff recommends adding key Library policies in section I of the SIA, which identifies the laws and rules that govern the conduct of officers and employees of the Library. Staff understands that the Library has worked with union representatives in recommending these changes, and that at least one union plans to send a representative to the May 9 meeting to speak in favor of the changes.

When the Commission adopted the SIAs, it did not intend to set them in stone. The Commission should amend the SIAs when the experience of the departments and employees show that the provisions are not serving their intended goals or are unnecessarily restricting City employees from engaging in activities that are not actually incompatible. For the reasons cited by the Library, staff recommends that the Commission approve the proposed amendments to the SIA of the Library.

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San Francisco Public Library

Date: February 23, 2011

To: San Francisco Ethics Commission c/o Mabel Ng, Deputy Executive Director

From: Luis Herrera, City Librarian

Cc: Jon Givner, Deputy City Attorney

Re: Library Department Proposed Amendment of the Statement of Incompatible Activities

Pursuant to the San Francisco Campaign and Governmental Conduct Code section 3.218, the San Francisco Public Library's Statement of Incompatible Activities ("Statement") was adopted in 2008, based upon proposals drafted in 2004 under previous Library administration. As a result of further review and discussion with staff, the Library department management has reconsidered the effective use and impacts of the Statement, particularly the detailed restrictions included in section III "Restrictions on Incompatible Activities" related to authorship, publishing, exhibits, and instruction. While the restrictions in this section seemed reasonable in the original version, we have since identified many examples of activities that would be prohibited by the current language, but that are, in fact, compatible with the mission and values of the Public Library, such as:

- Technical or subject/research knowledge qualifies library staff to be considered experts in a given field. Librarians are often asked to share this expertise, building upon the public library value of sharing information, providing resources, and promoting lifelong learning. To this end, staff may have the opportunity to -
 - Publish in monograph and journal (print and online) formats, related to library services or a specific topic of expertise;
 - Participate in speaking engagements related to libraries or other topics of interest; or
 - Provide instruction to library professionals, community groups, or outside organizations.
- Personal interest in other community arts/literary activities, such as memberships in a local artist or writers' collective, serve to broaden library staff understanding of and participation in the neighborhoods the Library serves.

Library staff participation in the above activities, apart from individual work responsibilities, does not interfere with the Library's ability to retain appropriate services from publishers, associations, instruction vendors, nor does it inhibit efforts to reach out to community organizations, all according to adopted policies and procedures. On the contrary, such activities serve to enhance the expertise of librarians and the role of the Library as a community resource and information provider.

Experience implementing the Statement has proven that potential abuse will be prevented effectively through execution of the Statement as a whole and, specifically, by the following requirements, which would be maintained in a revised Statement:

- “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.” (page 2; section III, A., 1)
- “Neither the City Librarian nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the City Librarian 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 City Librarian or employee’s performance of his or her City duties.” (page 3; section III, A., 2)
- “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.” (page 6; section IV, A.)
- “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 and without limitation, intellectual property), equipment and/or materials.” (page 6; section IV, B.)
- “No officer or employee may use his or her City title or designation in any communication for any private gain or advantage.” (page 7; section IV, C.)
- “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.” (page 8; section V)

With these restrictions in place, the Library proposes that Section III, A., 1 “Activities that Conflict with Official Duties,” be amended to remove examples a. through e., as well as any references to these examples. These examples are unnecessary to achieving successful implementation of the Statement and may serve as a hindrance to the professional development and personal growth of Library staff. In addition, we propose that key Library policies related to the management of Library collections, exhibitions, and patron records be referenced in the list of “Department policies and State and local laws and rules” that govern staff conduct in the Statement’s introduction (section I).

A proposed, edited version of the Statement is attached.