

Department of Building Inspection Statement of Incompatible Activities Training

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Welcome to the Department of Building Inspection Statement of Incompatible Activities Training. You may watch these series of eight videos in segments or all at once.

Please note that this training is based on current local and state law. To the extent that these trainings conflict with state or local law, the law controls.

Agenda


- Department of Building Inspection, Building Inspection Commission, Access Appeals Commission, Board of Examiners and Unreinforced Masonry Building Appeals Board Statement of Incompatible Activities (DBI SIA)
- Obligations, Enforcement, and Penalties

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In this training, I will provide information regarding your department's Statement of Incompatible Activities which includes the Department of Building Inspection, Building Inspection Commission, Access Appeals Commission, Board of Examiners, and Unreinforced Masonry Building Appeals Board. I will also cover obligations, enforcement, and penalties.

Statement of Incompatible Activities (SIA): What is it?

It's a list of activities that are deemed incompatible, inconsistent or in conflict with your official duties.



SIA template language

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The Statement of Incompatible Activities is a list of activities that are deemed incompatible, inconsistent, or in conflict with your official duties.

There are six parts to the SIA and I'm going go through each one of them in the consecutive slides. First I will go over some of the history behind the SIA.

In November 2003, the voters of San Francisco adopted an ordinance that revamped the ethics laws governing all City officers and employees. One of the changes made was to require all City departments, boards and commissions to prepare a draft SIA and send it to the Ethics Commission for consideration by August 2004. Most departments did so. The SIAs then went to the Civil Service Commission for discussion. After about a year of hearings, the CSC made recommendations to the Ethics Commission. Among them was to create a template for the SIA so that to the extent possible, the SIAs of all departments, boards and commissions would be identical. The Ethics Commission began its consideration of the SIAs in February 2006; it then turned its attention to the creation of a template. After several meetings, a template was approved in August 2006, with subsequent amendments made in November 2006, and April, May, July, August and November 2007. Many of the changes came about because of discussions with department representatives and the meet and confer sessions with the affected unions. All of the SIAs underwent the meet and confer process and have been approved by the Ethics Commission.

The SIAs took effect on October 8, 2008. That means that all the provisions of the SIAs have the effect of law, which means that if you violate any of the provisions, you may be subject to discipline as well as administrative, civil and criminal penalties. So we advise you to review the SIA carefully.

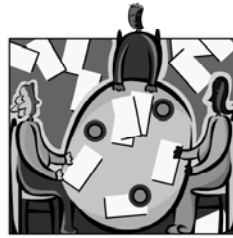
You'll notice that in this section of the training, on the bottom left side, a notation will indicate whether the slide information is SIA template language or department specific language of the slide. If it says SIA template language that means most other departments, boards, or commissions have adopted the same language in their SIAs.

SIA: Whom does it cover?

Unless otherwise stated, the SIA covers:

- The Director, a member of the BIC, Access Appeals Commission, Board of Examiners, or Unreinforced Masonry Building Appeals Board
- and
- All employees of the Department of Building Inspection

DBI SIA



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The first part includes a general introduction to the SIA. This section also tells you whom the SIA covers. For your office, it's everybody – all the employees of the department, the director, the members of the Building Inspection Commission, Access Appeals Commission, Board of Examiners, and Unreinforced Masonry Building Appeals Board.

Laws You are Subject 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
- Applicable Civil Service Rules
- Department of Building Inspection Code of Professional Conduct

SIA template language and DBI SIA

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Also included in the introduction are a list of laws you are subject to, which include the Political Reform Act, California Government Code Section 1090, the San Francisco Charter, the San Francisco Campaign and Governmental Conduct Code, San Francisco Sunshine Ordinance, Applicable Civil Service Rules and, for your department, DBI's Code of Professional Conduct.

Portions of some of these laws have been included the Ethics Training for City Employees.

Department of Building Inspection (DBI): Mission

- ***ensures fair, efficient and effective enforcement of the City's codes and disability access,***
- ***enforces, administers and interprets the City's Housing, Building, Mechanical, Electrical and Plumbing Codes;***
- ***inspects and regulates additions, alterations and repairs in buildings and structures covered by these Codes to ensure public safety and accessibility.***

DBI SIA

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The second section of the SIA lists the missions of DBI, Building Inspection Commission, Board of Examiners, the Access Appeals Commission, and Unreinforced Masonry Buildings Appeals Board. In determining if an outside activity is incompatible or not incompatible, you would want to keep in mind the mission of your department, board or commission.

They are as follows:

The Department is generally responsible for the enforcement, administration and interpretation of the City's Housing, Building, Mechanical, Electrical and Plumbing Codes. The Department inspects and regulates additions, alterations and repairs in buildings and structures covered by these Codes to ensure public safety and accessibility. The mission of the Department is to ensure fair, efficient and effective enforcement of the City's codes and disability access laws and regulations.

Building Inspection Commission (BIC): Mission

- ***The Building Inspection Commission oversees the DBI and considers appeals of certain decisions made by the Department of Public Works, Water Department or the Department.***

DBI SIA

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The Building Inspection Commission oversees the Department and considers appeals of certain decisions made by the Department of Public Works, Water Department or Department of Building Inspection. (S.F. Charter § D3.750-4.)

Board of Examiners: Mission

- *hears and determines requests by the public as to whether new materials, new methods or types of construction comply with safety standards established by the S.F. Construction Codes which include the Building Code, Plumbing Code, Electrical Code and Mechanical Code.*
- *has the power to determine reasonable interpretation of the provisions of the Building Code, and to hear the appeals from the Director's condemnation order involving construction methods, assemblies or materials or where safety is involved.*

DBI SIA

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The Board of Examiners is a group of experts created under Section 105.1 of the San Francisco Building Code. The purpose of the Board is to hear and determine the requests by the public as to whether new materials, new methods or types of construction comply with the standards of safety established by the San Francisco Construction Codes. The Board also has the power to determine reasonable interpretation of the provisions of the San Francisco Building Code, and to hear the appeals from the Director's condemnation order involving construction methods, assemblies or materials or where safety is involved.

Access Appeals Commission: Mission

- *hears written appeals brought by any person regarding actions taken by DBI in the enforcement of the requirements for Access to Public Accommodations by Physically Handicapped Persons, as well as action taken by DBI in the enforcement of the disabled access and adaptability provisions of this code.*
- *conducts hearings to approve or disapprove DBI's interpretations of applicable disability access regulations and actions taken by DBI to enforce said regulations and abate violations.*

DBI SIA

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The Access Appeals Commission serves the City and the general public by hearing written appeals brought by any person regarding actions taken by the Department in the enforcement of the requirements for Access to Public Accommodations by Physically Handicapped Persons, as well as action taken by the Department in the enforcement of the disabled access and adaptability provisions of this code. Consisting of five-members, the AAC conducts hearings to approve or disapprove the Department's interpretations of applicable disability access regulations and actions taken by the Department to enforce said regulations and abate violations. It establishes reasonable rules and regulations for its own procedures, chooses its officers, conducts public meetings, designates an official reporter, and makes decisions and recommendations by resolution.

Unreinforced Masonry Buildings Appeals Board:
Mission

- *hears applications for variance from or interpretations of code requirements for Unreinforced Masonry Buildings (UMB)*
- *recommends approval or disapproval of new materials, new methods and types of constructions for UMBs,*
- *hears appeals from the Director of Building Inspection's Abatement Orders for UMBs,*
- *reviews UMB retrofit alteration permits and cost estimate for demolition permits, and*
- *assists the Seismic Safety Retrofit Bond Program and Advisory Boards pursuant to the authority granted to the Board under Chapters 16B & 16C of the SFBC.*

DBI SIA

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The purpose of the Unreinforced Masonry Buildings Appeals Board is to hear applications for variance from or interpretations of code requirements for Unreinforced Masonry Buildings (UMB), recommend approval or disapproval of new materials, new methods and types of constructions for UMBs, hear appeals from the Director of Building Inspection's Abatement Orders for UMBs, review UMB retrofit alteration permits and cost estimate for demolition permits, and assist the Seismic Safety Retrofit Bond Program and Advisory Boards pursuant to the authority granted to the Board.

Subsequent slide examples will illustrate outside activities that would be considered incompatible or not incompatible to the mission of your department, board or commission.

III. Restrictions on Incompatible Activities

This section prohibits outside activities that are incompatible with the mission of the department, board or commission.



SIA template language

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The third section is restrictions on incompatible activities.

For most departments, section III is the core of the SIA.

This section identifies activities that are banned under the SIA for your department. It has three subsections, which are identified in upcoming slides.

III. Restrictions on Incompatible Activities

Nothing in this SIA restricts your ability to perform volunteer functions with non-profit charitable organizations as long as those volunteer functions do not conflict with official duties, require excessive time demands or are subject to the review of the Department, as defined in this section.



Volunteer

DBI SIA

~~Conflict with official duties~~

~~Subject to review of the dept.~~

~~Require excessive time demands~~



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Your SIA has a specific provision regarding volunteer activities. It says, “Nothing in this Statement shall be construed to restrict an officer’s or employee’s ability to perform volunteer functions with non-profit charitable organizations as long as those volunteer functions do not conflict with official duties, require excessive time demands or are subject to the review of the Department, as defined in this section.”

For example, on your own time, you could volunteer as a tutor for an educational non-profit charitable organization for 3 hours a week, as long as the volunteer work you’re doing does not conflict with your official job duties, is not subject to review by your department, board, or commission, or require excessive time demands.

III. Restrictions on Incompatible Activities

- A. Restrictions that apply to all officers and employees
- B. Restrictions that apply to employees in specified positions
- C. Advance Written Determination (AWD)



SIA template language

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There are three parts in Section III, titled Restrictions on Incompatible Activities, which are:

- A. Restrictions that apply to all officers and employees,
- B. Restrictions that apply to employees in specified positions, and
- C. the Advance Written Determination or AWD.

The AWD will be described and examples will be provided in subsequent slides.

III.A. Restrictions that apply to all officers and employees

1. Activities that conflict with official duties
2. Activities with excessive time demands
3. Activities that are subject to review by the department



SIA template language

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III.A. itself has three subparts:

1. Activities that conflict with official duties,
2. Activities with excessive time demands, and
3. Activities that are subject to review by the department.

III.A.1. Activities that conflict with official duties

An outside activity conflicts with City duties when your ability to perform your City duties is **materially impaired**.



SIA template language

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This section provides that 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.

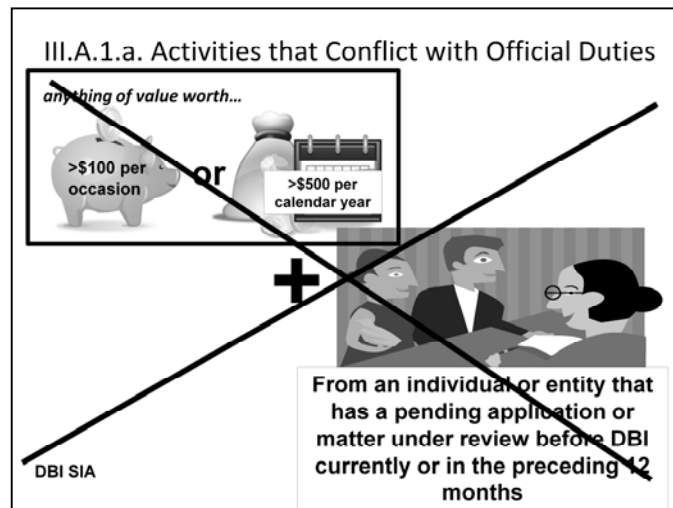
An outside activity conflicts with City duties when your ability to perform your City duties is materially impaired.

Outside activities that materially impair your ability to perform your City duties include, but are not limited to, activities that disqualify you from City assignments or responsibilities on a regular basis.

If an activity is listed here in section III.A.1, unless it is otherwise noted or an advance written determination determines that the outside activity is not incompatible, the activity is expressly prohibited.

There are a couple things I want to emphasize.

1. You can seek an AWD to find out if an outside activity is incompatible.
2. Outside activities other than those that are expressly identified may be prohibited; so if you think you might be engaged in an activity that might conflict with the mission of the department, you may want to seek an AWD.



The first activity that is deemed incompatible by your SIA is you may not provide services in exchange for compensation or anything of value worth more than \$100 per occasion or more than \$500 per calendar year from any individual or entity that has a pending application or matter under review before the DBI or has had an application or matter under review before the DBI in the preceding 12 month-period.

This ban does not apply to an officer on the Access Appeals Commission, the Board of Examiners, or the Unreinforced Masonry Building Appeals Board.

Individual or Entity: Definition

- Property owner
- Architect
- Designer
- Developer
- Engineer
- Contractor
- Permit expediter and
- associations of such individuals or entities.

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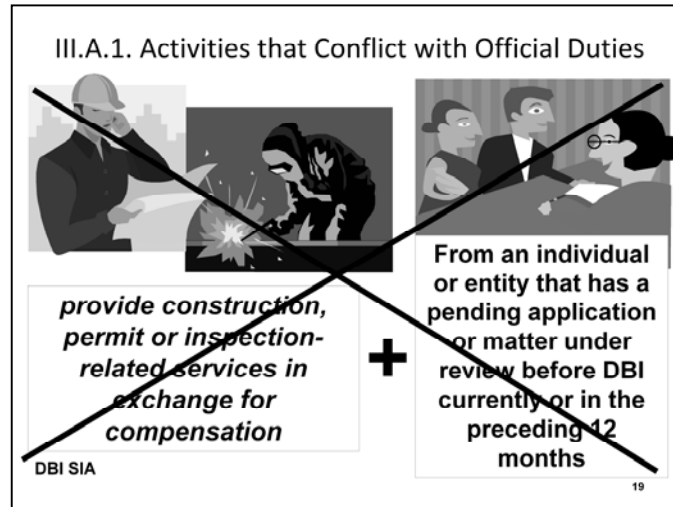
An individual or entity includes a property owner, architect, designer, developer, engineer, contractor, permit expediter, and associations of such individuals or entities.

“Compensation or Anything of Value” includes:

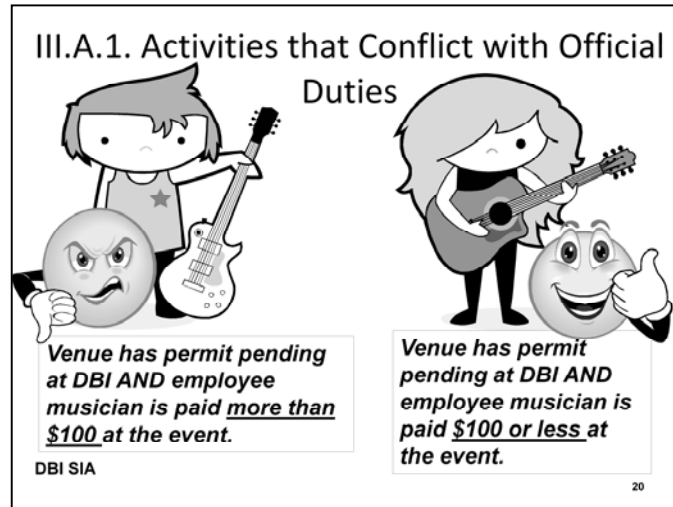
- Construction materials (new and salvaged)
- A loan or below-market rental of construction tools or equipment and
- free or below-market-rate services from an:
 - Architect
 - Designer
 - Developer
 - Engineer
 - Contractor
 - Permit expediter
 - Real estate agent
 - or
 - Other individual or entity that is regulated by DBI

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Compensation or anything of value includes new and salvaged construction materials, a loan or below-market rental of construction tools or equipment, and free or below-market-rate services from an architect, designer, developer, engineer, contractor, permit expediter, real estate agent or other individual or entity that is regulated by the DBI.



In addition, you may not provide construction, permit or inspection-related services in exchange for any compensation or anything of value from any individual or entity that has a pending application or matter under review before the DBI or has had an application or matter under review before the DBI in the preceding 12-month period.



Here are three examples.

Example number one.

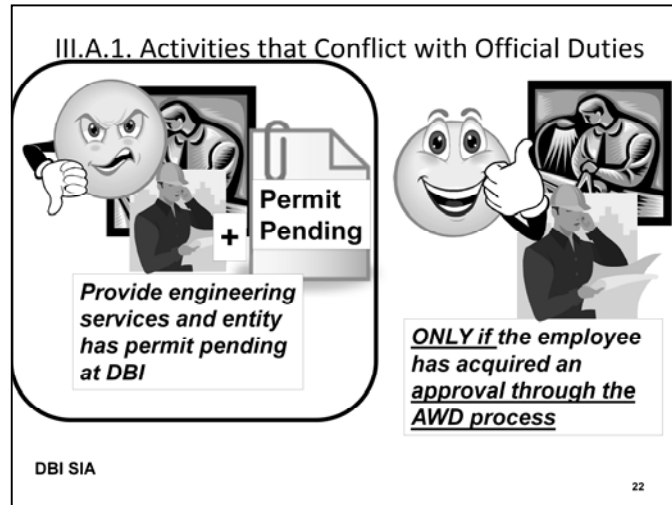
A DBI employee is a musician who often plays for compensation on weekends.

An individual who has a permit pending at DBI wishes to hire the DBI employee to play music at an event. The employee may accept the engagement as long as she is not paid more than \$100 at the event.



Example number two.

A DBI employee is a puppeteer who entertains at birthday parties. An entity that does not have a permit pending at DBI and did not have a permit pending during the past 12 months wishes to hire him to entertain at a weekend event. The employee may accept the engagement.

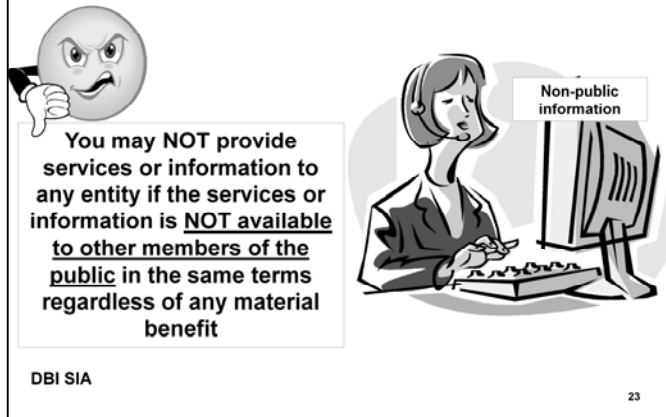


Example number three.

A DBI employee who is an engineer has been asked to provide engineering services to an entity that has a permit pending at DBI. Without an advance written determination that such an activity is not incompatible, the employee may not provide such services.

I will discuss what an advance written determination is later in this presentation.

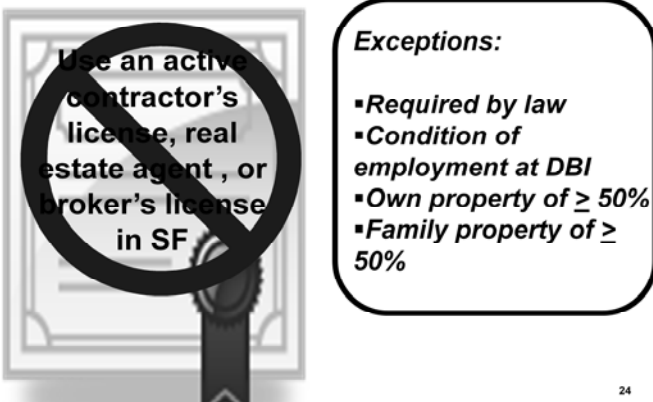
III.A.1.b. Activities that Conflict with Official Duties



A second restriction in your SIA is this.

You may not provide services or information to any individual or entity if the services or information is not available to other members of the public on the same terms, regardless of whether the services or information is provided in exchange for any material benefit.

III.A.1.c. Activities that Conflict with Official Duties



The graphic consists of two main parts. On the left, there is a rectangular sign with a black border and a large black 'X' over it. The text on the sign reads: "Use an active contractor's license, real estate agent, or broker's license in SF". On the right, there is a rounded rectangular box with a black border. The text inside this box is as follows:

Exceptions:

- *Required by law*
- *Condition of employment at DBI*
- *Own property of $\geq 50\%$*
- *Family property of $\geq 50\%$*


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A third restriction in your SIA is this.

Unless required by law or as a condition of employment at DBI, you may not use an active contractor's license, or a real estate agent or broker's license in the City and County of San Francisco. However, nothing in the SIA prohibits you from participating in such activities concerning real property you own, control or occupy, provided that your ownership or control is at least 50 percent, or real property owned and occupied by your family member, provided that such ownership or control is at least 50 percent.

Definition of Family Member

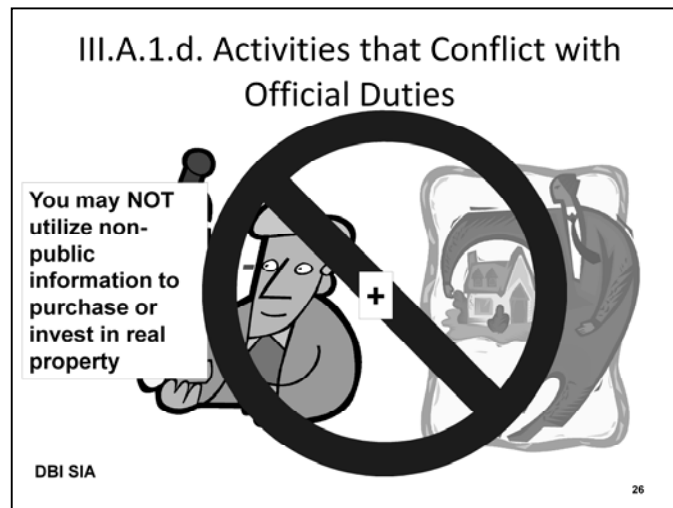
- Aunt
- Child
- Uncle
- Spouse
- Parent
- Sibling
- Grandchild
- Grandparent
- Child of a sibling
- Child of an aunt or uncle
- Registered domestic partner
- Spouse or registered domestic partner of such individual
- Same family members of the officer's or employee's spouse or registered domestic partner



This includes any such biological relationship; step-relationship formed as a result of marriage or domestic partnership; or relationship formed by adoption, legal guardianship, foster parenting or other operation of law.

DBI SIA 25

Whenever the term “family” is used in the SIA, it means your spouse, registered domestic partner, parent, grandparent, child, grandchild, sibling, the child of a sibling, aunt, uncle and the child of an aunt or uncle, the spouse or registered domestic partner of such individual, and the same family members of your spouse or registered domestic partner. This includes any such biological relationship; step-relationship formed as a result of marriage or domestic partnership; or relationship formed by adoption, legal guardianship, foster parenting or other operation of law.



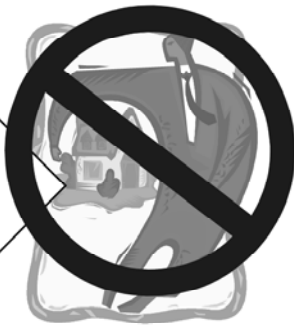
A fourth restriction in your SIA is this.

You may not utilize non-public information, obtained through the course of your public duties, to purchase or invest in real property located within the City and County of San Francisco.

As I'm talking about this, let me allude to something I'll be talking about in a short while – and that is this: under the SIA, you may not use City time or City resources to conduct research about buildings you wish to buy or invest in. So while you may utilize public information to purchase or invest in real property located in SF, you may not be researching this information during your working hours or utilizing City equipment or resources.

III.A.1.e. Activities that Conflict with Official Duties

NO BIC member or DBI employee may Purchase SF property that received a Notice of Violation currently under review or within the past 12 months.



DBI SIA

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A fifth restriction in your SIA is this.

If you are a DBI employee, the department head, or a member of the Building Inspection Commission, you may not purchase property in San Francisco if there is a code enforcement action currently under review by the DBI on the property or if the property has had a code enforcement action within the past 12 months. For the purposes of this section, a code enforcement action is defined as an issuance of a Notice of Violation.


III.A.1.e. Activities that Conflict with Official Duties

Example. An employee wishes to purchase a condominium in a building that has had a code enforcement action during the past twelve months. If an AWD determines that such an activity is not incompatible, the employee may purchase the condominium.



Here is one example. An employee wishes to purchase a condominium in a building that has had a code enforcement action during the past twelve months. If an advance written determination under subsection C determines that such an activity is not incompatible, the employee may purchase the condominium.

III.A.1. Activities that Conflict with Official Duties



**Purchase property+
provided direct
Services in last 12
months**

Direct services includes:

- *performing plan check services*
- *field inspections*
- *pre-application assistance*
- *representation before the Board of Appeals*
- *and clerical duties such as report preparation or code enforcement file processing*

DBI SIA

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A sixth restriction in DBI's SIA is this.

You may NOT purchase property in San Francisco if you have provided direct services for that property address within the past 12 months.

"Direct services" includes performing plan check services, field inspections, pre-application assistance, representation before the Board of Appeals, and clerical duties such as report preparation or code enforcement file processing.

III.A.1.f. Activities that Conflict with Official Duties

Example. An employee wishes to purchase a condominium in a building on which he or she has provided direct services during the past 12 months. If an AWD determines that such an activity is not incompatible, the employee may purchase the condominium.

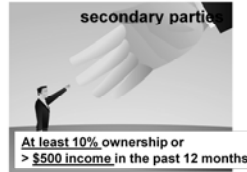


Here's an example. An employee wishes to purchase a condominium in a building on which she has provided direct services during the past twelve months. If an advance written determination under subsection C determines that such an activity is not incompatible, the employee may purchase the condominium.

Secondary Parties

Officers' and employees':

- *Clients*
- *Limited Liability Companies*
- *Partnerships*
- *Limited Partnerships*
- *Corporations*
- or
- *Any other entity in which the officer or employee has an ownership or controlling interest of at least 10% or from which the officer or employee has received income exceeding \$500 in the past 12 months*



Remember! You may not engage in any activity prohibited by Section III.A.1 & III.A.3 through secondary parties.

DBI's SIA expressly provides that you may not engage in any outside activity prohibited by Section III.A.1 through secondary parties or any other entity or association. The same applies to activities that I will discuss under Section III.A.3.

A secondary party includes clients, Limited Liability Companies, Partnerships, Limited Partnerships, Corporations or any other entity in which you have an ownership or controlling interest of at least 10% or from which you have received income exceeding \$500 in the past 12 months.

III.A.1. Activities that Conflict with Official Duties:

DISCLOSURE

At least 10% ownership or \$500 income in past 12 months

DBI SIA

All officers must disclose permit applications and matters pertaining to official DBI business submitted by them and secondary parties to the Ethics Commission and BIC within 15 days. Members of the AAC, BOE, and the UMBAB must disclose this information within 15 days of the end of March, June, September and December. Employees must disclose this information to their supervisors within 15 days of the application or action.

The Executive Director and Building Inspection Commission Members must disclose all permit applications and other matters pertaining to their official business before the DBI submitted by themselves and secondary parties. This disclosure must be made to the Ethics Commission and the Building Inspection Commission within fifteen calendar days of such application or action.

Members of the Access Appeals Commission, the Board of Examiners or the Unreinforced Masonry Building Appeals Board must disclose such information within fifteen calendar days of the end of September, December, March and June.

Employees must disclose this information to their supervisors within 15 days of the application or action.

III.A.1. Activities that Conflict with Official Duties: DISCLOSURE

The officer or employee may not at any time perform any official work related to the application or matter.



Do not perform official work related to the application or matter.

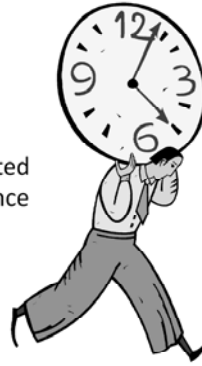
DBI SIA

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The officer or employee may not at any time perform any official work related to the application or matter. The Ethics Commission will list such information about the applications and matters provided by the executive director and all the officers of the BIC, AAC, BOE, and UMBAB on its website.

III.A.2. Activities with excessive time demands

- Cause you to be absent on a regular basis
- or
- Interfere with or require a time commitment that is demonstrated to interfere with the performance of your City duties



SIA template language

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No employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the 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 employee's performance of his or her City duties.

Here's an example. An employee who works at the Department's front desk answering public questions, 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 the director's designee may determine that the employee may not engage in this activity.

III.A.3. Activities that are subject to review by
the department

You may NOT engage in an outside
activity that is subject to the

- control
- inspection
- review
- audit
- or
- enforcement of your department



SIA template language

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Section III.A.3. of the SIA discusses activities that may be incompatible because they are subject to review by your department. It states that unless otherwise noted or an advance written determination under subsection C concludes that such activities are not incompatible, you may not 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. Four restrictions are listed in DBI's SIA.

III.A.3. Activities that are subject to review by the department: example

- a. You may NOT knowingly provide selective assistance to a bidder who is responding to a City bid, RFP or RFQ so as to confer a competitive advantage to that bidder.

This includes non-profit entities for whom you volunteer.



SIA template language and DBI SIA

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The first restriction is you may not knowingly provide selective assistance or 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. *This includes non-profit entities for whom you volunteer.*


Nothing in the SIA prohibits you 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 the SIA prohibits you 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.

III.A.3. Activities that are subject to review by the department:
BIC and DBI

b. Construction, alteration or remodeling of structures
You may not participate, directly or indirectly, in the construction, alteration or remodeling of structures within the jurisdiction of the DBI or BIC.

Exception: At least 50% owned, controlled or occupied by you; owned and occupied by a family member provided that ownership or control is at least 50%; or owned or occupied by a family member for whom you have legal custody, guardianship, or conservatorship.



DBI SIA 37

The second restriction is this.

The Executive Director, Building Inspection Commission Members and Building Inspection employees may NOT participate, directly or indirectly, in the construction, alteration or remodeling of structures within the jurisdiction of the DBI or Commission.


However, nothing in the SIA prohibits an officer or employee from participating in such activities concerning (i) real property owned, controlled or occupied by the officer or employee, provided that such ownership or control is at least 50 percent; or (ii) real property owned and occupied by a family member of the officer or employee, provided that such ownership or control is at least 50 percent; or (iii) real property owned or occupied by a family member for whom the officer or employee has legal custody, guardianship or conservatorship.

This prohibition does not apply to members of the Access Appeals Commission, the Board of Examiners or the Unreinforced Masonry Building Appeals Board.

III.A.3. Activities that are subject to review by the department: BIC and DBI

c. Design, layout or similar plan preparation. You may NOT participate, directly or indirectly, in the design, layout, drafting, checking, or similar plan preparation or review for structures to be constructed, altered or remodeled within the jurisdiction of the DBI or BIC.

Exception: At least 50% owned, controlled or occupied by you; owned and occupied by a family member provided that ownership or control is at least 50%; or owned or occupied by a family member for whom you have legal custody, guardianship, or conservatorship.



DBI SIA 38

A third restriction is this.

The Executive Director, Building Inspection Commission Members and Building Inspection employees may NOT participate, directly or indirectly, in the design, layout, drafting, checking, or similar plan preparation or review for structures to be constructed, altered or remodeled within the jurisdiction of the DBI or Commission.

However, nothing in the SIA prohibits an officer or employee from participating in such activities concerning (i) real property owned, controlled or occupied by the officer or employee, provided that such ownership or control is at least 50 percent; or (ii) real property owned and occupied by a family member of the officer or employee, provided that such ownership or control is at least 50 percent; or (iii) real property owned or occupied by a family member for whom the officer or employee has legal custody, guardianship or conservatorship.

This prohibition does not apply to members of the Access Appeals Commission, the Board of Examiners or the Unreinforced Masonry Building Appeals Board.

Remember! You may not engage in any activity prohibited by Section III.A.1 & III.A.3 through secondary parties.

Officers' and employees':

- *Clients*
- *Limited Liability Companies*
- *Partnerships*
- *Limited Partnerships*
- *Corporations*
- or
- *Any other entity in which the officer or employee has an ownership or controlling interest of at least 10% or from which the officer or employee has received income exceeding \$500 in the past 12 months*



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As mentioned before, remember, you may not engage in any activity prohibited by Section III.A.1 and III.A.3 through secondary parties or any other entity or association in which you have an ownership or controlling interest of at least 10% or from which you received income exceeding \$500 in the past 12 months.

III.A.3. Activities that are subject to review by the department: exceptions

1. Appearing before your department or commission on your own behalf
2. Filing or otherwise pursuing claims against the City on your own behalf
3. Running for City elective office
4. Making a public records disclosure request under the Sunshine Ordinance or Public Records Act



SIA template language

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For most departments, the restrictions in this section of the SIA do not prohibit you from appearing before your own department or commission on behalf of yourself; filing or otherwise pursuing claims against the City on your own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act.

III. B. Restrictions that apply to employees in specified positions

Some departments have identified activities that are not compatible with employees who are employed in specific positions. These employees are subject not only to the restrictions set forth in section III.A but also to any restrictions that are set forth in section III.B of the SIA.



SIA template language

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Some departments have identified activities that are not compatible with employees who are employed in specific positions. These employees are subject not only to the restrictions set forth in section III.A but also to any restrictions that are set forth in section III.B of the SIA.

There are no provisions in this section of your SIA, which means that unless otherwise provided, you are subject to all the same rules.

III. C. Advance Written Determination: Immunity from Prosecution

- You may submit a request for an Advance Written Determination (AWD).
- The decision-maker may deem the activity incompatible or not incompatible.
- An AWD cannot exempt you from any other applicable law.



SIA template language

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Section III C of your SIA sets forth a very important process, the advance written determination or AWD.

You may request an AWD from the applicable decision maker on whether a proposed activity that you want to engage in is incompatible or NOT incompatible with your city duties.

A written determination by the decision-maker that an activity is not incompatible provides the requestor immunity from any subsequent enforcement action for a violation of the SIA if the material facts are as presented in the requestor's written submission. However, a written determination cannot exempt the requestor from any applicable law.

An example of this is, if an employee requests an AWD to be a part-time taxi driver, and the decision-maker has deemed the activity not incompatible, then the AWD would protect the employee from future prosecution for a violation of the SIA but the employee would still need to adhere to traffic and speed limit laws, as well as taxi permitting laws.

If an individual has not requested an AWD and engages in an activity that is deemed incompatible, the individual will not be immune from any subsequent enforcement action brought pursuant to the SIA.

Similarly, if an individual has requested an AWD and engages in the outside activity, the individual will not be immune from any subsequent enforcement action brought pursuant to the SIA if:

- the individual is an employee who has not received a determination from the decision-maker, and 10 working days have not yet elapsed since the request was made; or
- the individual is an officer who has not yet received a determination from the decision-maker; or
- the individual has received a determination that the activity is incompatible.

In addition to the AWD process, the 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 the SIA precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties.

III. C. Advance Written Determination: The process

- Request must be in writing
- Requestor must describe the proposed activity
- Requestor must explain why the proposed activity is not incompatible.



SIA template language

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Now for 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 the SIA. 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 the SIA.

When making a determination, 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 the SIA.

The decision-maker must consider all relevant written materials submitted by the requestor. The decision-maker must 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.

III. C. Advance Written Determination: Who is the Decision-Maker?	
Requestor	Decision-Maker
Employee of the Department of Building Inspection	The Director or his or her designee
The Director	The BIC
Member of the Access Appeals Board, Board of Examiners, or Unreinforced Masonry Building Appeals Board	The Ethics Commission
Member of the Building Inspection Commission	Member's appointing authority or the Ethics Commission
DBI SIA	
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The SIA identifies who the decision-maker is for employees, department heads, members of boards and commissions, and elected officials.

For an employee of DBI, the decision-maker is the Director or his or her designee.

For the Director, the decision-maker is the Building Inspection Commission.

For members of the Access Appeals Board, Board of Examiners, or Unreinforced Masonry Building Appeals Board, the decision-maker is the Ethics Commission.

For members of the Building Inspection Commission, the decision-maker is the member's appointing authority or the Ethics Commission.

III. C. Advance Written Determination: The process

- The decision-maker must respond in writing to the requestor, by mail, email, personal delivery, or other reliable means.



SIA template language

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The decision-maker must respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means.

III.C. Advance Written Determination: The process: special rules for employees



DBI SIA

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● If the requestor is an employee, the decision-maker must respond within 10 working days from the date of the request.

● Delegation and appeal.

For a request by an employee, the decision-maker must provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 10 working days from the date of the request.

If the decision-maker does not provide a written determination to the employee within 10 working days from the date of the employee's request, the decision-maker will be deemed to have determined that the proposed activity does not violate the SIA.

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 the SIA, the employee may appeal that determination to the director.

III. C. Advance Written Determination:

- AWD requests and written determinations, including approvals and denials, are public records to the extent permitted by law.
- AWD may be revoked.



SIA template language

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To assure that 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.

The decision-maker may revoke the written 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 must specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

IV. Restrictions on Use of City Resources, City Work-Product and Prestige

- A. Use of City Resources
- B. Use of City Work-Product
- C. Use of Prestige of the Office



SIA template language

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The fourth section of the SIA addresses the use of City resources, City work product and City prestige.

IV. A. Restrictions on use of City resources

- **You may NOT use City resources, such as letterhead, personnel, telephones, computers, copiers and email, for any non-City purpose.**



SIA template language

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There is a restriction on the use of City resources.

- You may not use City resources or allow any other persons to use City resources for any non-City purpose, including any political activity or personal purpose. City resources include, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies.

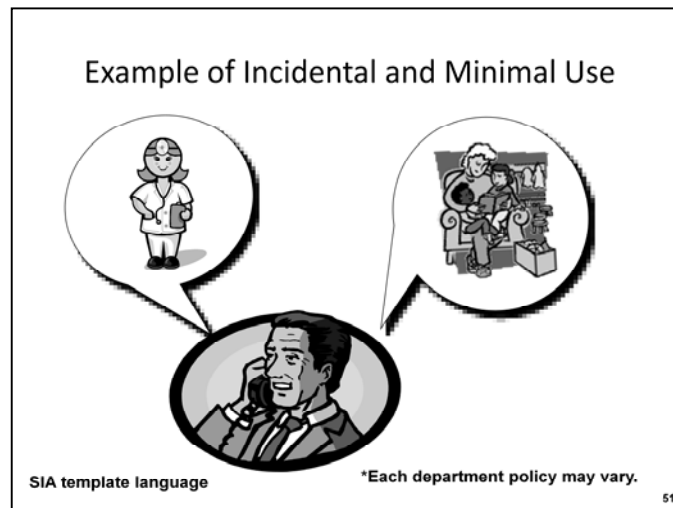
IV. A. Restrictions on use of City resources

- ***Example. Do not use City computers to plan, design or schedule personal projects.***



Here's an example.

You may not use City computers to plan, design or schedule personal projects.



Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section of the SIA.

Here's an example.

An employee or officer 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.

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

IV. B. Use of City Work Product



SIA template language

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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.

IV.C. Restrictions on Use of Prestige of the Office

You may NOT use your City title or designation in any communication for any private gain or advantage.

1. using City business cards
2. using City letterhead, title or e-mail
3. holding yourself out as a representative of the department without authorization



SIA template language

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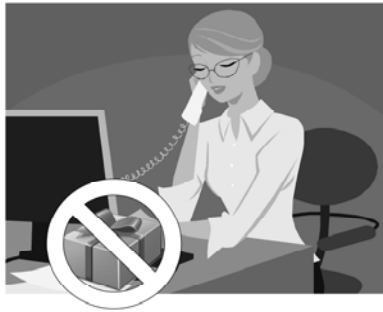
No employee or officer may use his or her City title or designation in any communication for any private gain or advantage. This includes using City business cards, using City letterhead, title or email, or holding oneself out as a representative of the department without authorization.

Here's an 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.

Here's an 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 City resources.

V. Prohibition on Gifts for Assistance with City Services

No gifts for doing your job!



SIA template language

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Section V is a prohibition on receiving gifts for doing your job, which is discussed in the ethics training for City employees.

Prohibition on Gifts for Assistance with City Services: Exceptions

- You may accept a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by you. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.



SIA template language

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There are exceptions to the prohibition on gifts for doing your job.


You may accept a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by you. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law discussed in the Ethics Training for City Employees.

Prohibition on Gifts for Assistance with City Services: Exceptions

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

***Gift cards are considered cash.**

$\leq \$25$ per occasion



SIA template language
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In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts for doing your job.

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

Example number 1. 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. (Remember! Statement of Economic Interests or SIA filers have filing requirements. 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 number 2. 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 employees and officers.

VI. Amendment of SIA

An SIA may be amended if it is approved by the Ethics Commission and the City has satisfied the meet and confer obligations of State law and the collective bargaining agreement.



SIA template language

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Section VI of the SIA makes clear that once a Statement of Incompatible Activities is approved by the Ethics Commission, the department, board or commission 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.

An SIA may be amended only if it is approved by the Ethics Commission and the City has satisfied the meet and confer obligations of State law and the collective bargaining agreement.



In the next couple slides, I will cover obligations, enforcement, and penalties.

OBLIGATIONS OF OFFICERS AND EMPLOYEES



- ⦿ Cooperate and Assist in Enforcement and Investigations.
- ⦿ Do Not File False Charges.
- ⦿ Do Not Assist Others in Violating Ethics Laws.

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Officers and employees are obligated to:

- ⦿ Cooperate and Assist in Enforcement and Investigations.
- ⦿ Not File False Charges.
- ⦿ Not Assist Others in Violating Ethics Laws

What is an enforcement investigation?

- The Ethics Commission can investigate and prosecute violations of ethics laws.
- The City Attorney can bring a civil case on the matter.
- The District Attorney can initiate criminal proceedings.

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The various enforcement mechanisms include:

- The Ethics Commission can investigate and prosecute violations of ethics laws.
- The City Attorney can bring a civil case on the matter.
- The District Attorney can initiate criminal proceedings.

Penalties for Violations of Local Law

- Criminal penalties of up to \$10,000 and/or one year in jail per violation.
- Civil or administrative penalties of \$5,000 per violation.
- Injunctive relief.
- Discipline and removal for official misconduct.

C&GCC 3.242

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The penalties for violations of local laws are:

- Criminal penalties of up to \$10,000 and/or one year in jail per violation,
- Civil or administrative penalties of \$5,000 per violation,
- Injunctive relief which means that the courts can order you to cease certain activities, and/or
- Discipline and removal for official misconduct.

Questions?

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415.252.3100

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As we mentioned before, these training videos are based on local and state ethics laws. To the extent that these training videos conflict with state or local law, the law controls.

Please contact us if you have specific questions or need advice relating to a real life governmental ethics concern. We offer advice based on the facts and specifics of your situation.

Thank you for your participation in this training.