Statement of Incompatible Activities (SIA) Training for City Officers and Employees

Welcome to the Statement of Incompatible Activities Training for City Employees.

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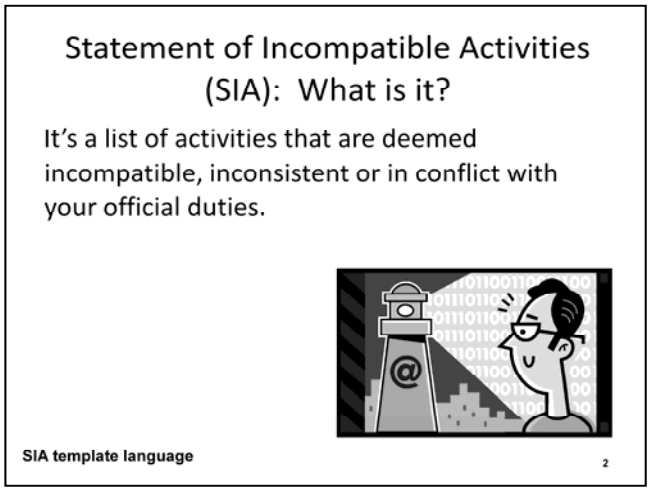


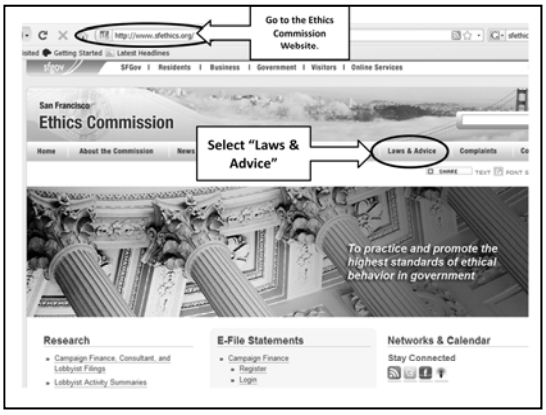
The Statement of Incompatible Activities is a list of activities that are deemed incompatible, inconsistent, or in conflict with your official duties.

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

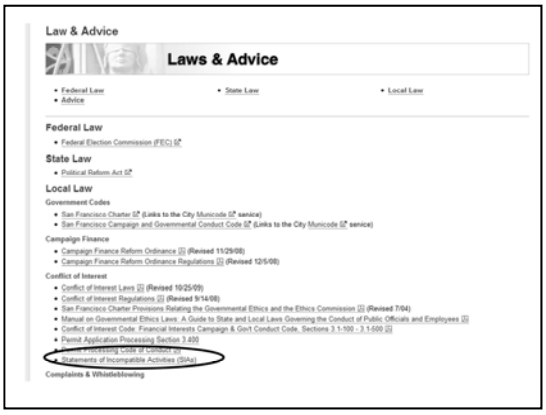
In November 2003, the voters of San Francisco adopted an ordinance that revamped the ethics laws governing all City officers and employees. One of the changes made was to require all City departments, boards and commissions to prepare a draft SIA and send it to the Ethics Commission for consideration. The SIAs then went to the Civil Service Commission for about a year of hearings. Based on CSC's recommendations, the Ethics Commission created a template for the SIA so that to the extent possible, the SIAs of all departments, boards and commissions would be identical. Between February 2006 and September 2007, the Ethics Commission held public hearings, met with department representatives, and representatives from the various unions about the revisions of the SIAs.

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, it means most other departments, boards, or commissions have adopted the same language in their SIAs.



You will find your specific SIA on the Ethics Commission website. First go to www.sfethics.org and select, "Laws and Advice."



Law & Advice

Laws & Advice

- Federal Law
- Advice
- State Law
- Local Law

Federal Law

- Federal Election Commission (FEC)

State Law

- Political Reform Act

Local Law

Government Codes

- San Francisco Charter (Links to the City Municode service)
- San Francisco Campaign and Governmental Conduct Code (Links to the City Municode service)

Campaign Finance

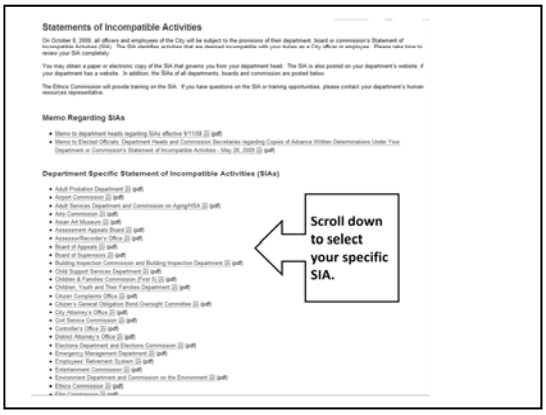
- Campaign Finance Reform Ordinance (Revised 11/29/08)
- Campaign Finance Reform Ordinance Regulations (Revised 12/5/08)

Conflict of Interest

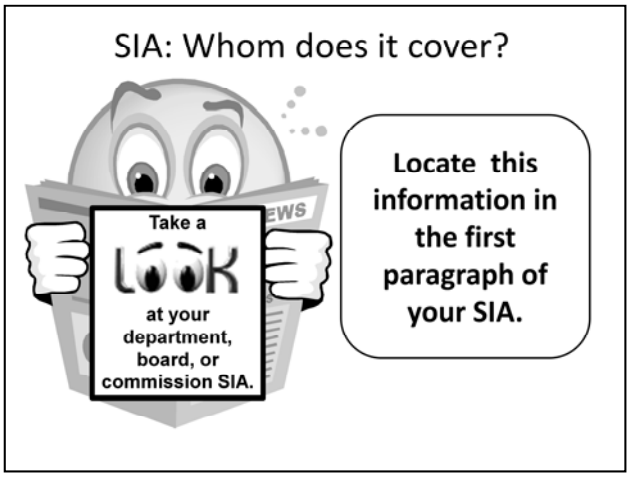
- Conflict of Interest Laws (Revised 10/25/09)
- Conflict of Interest Regulations (Revised 9/14/08)
- San Francisco Charter Provisions Relating the Governmental Ethics and the Ethics Commission (Revised 7/04)
- Manual on Governmental Ethics Laws: A Guide to State and Local Laws Governing the Conduct of Public Officials and Employees
- Conflict of Interest Code: Financial Interests Campaign & Gov't Conduct Code, Sections 3.1-100 - 3.1-600
- Permit Application Processing Section 3.400
- Lobbyist Registration Code of Conduct
- Statements of Incompatible Activities (SIAs)

Complaints & Whistleblowing

On the “Laws and Advice” page, select “Statements of Incompatible Activities.”



Then scroll down to select your specific SIA.



To find out whom your department specific SIA covers, refer to the first paragraph of your SIA. For most departments this would include officers and employees. Your SIA will provide more specific information that is pertinent to your department, board, or commission.

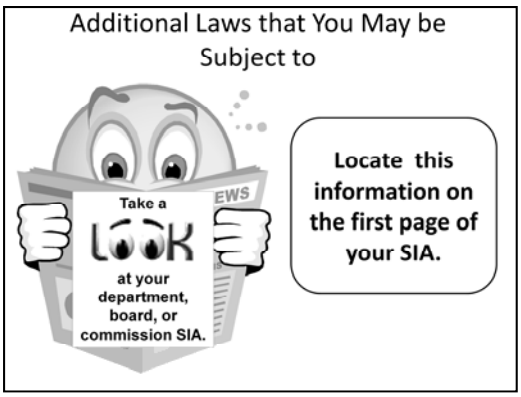
Laws You are Subject to

- 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

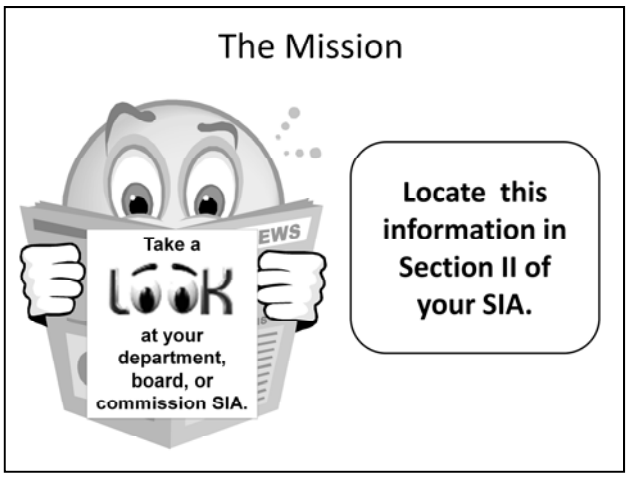
SIA template language 7

Also included in the introduction are a list of laws you are subject to, which includes 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, and Applicable Civil Service Rules.

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



There are some departments, boards, or commissions that have listed additional laws. Please review your SIA to see if there are laws you may be subject to in addition to the ones listed in the previous slide.

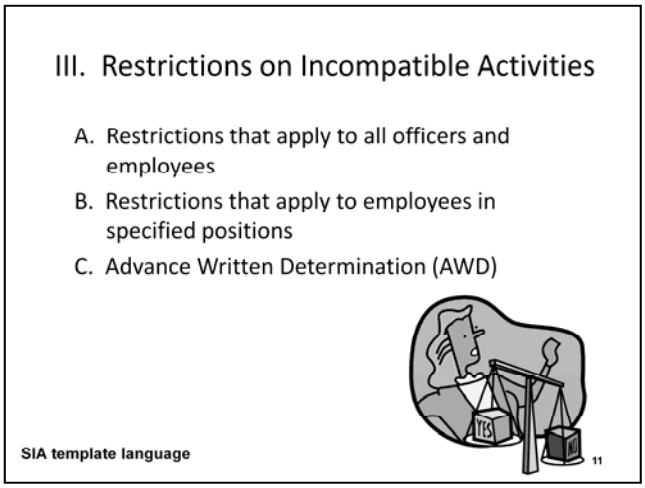


Find your mission in your department specific SIA. You will find it listed in bold and italicized language in Section II of your SIA.

The third section is restrictions on incompatible activities.

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

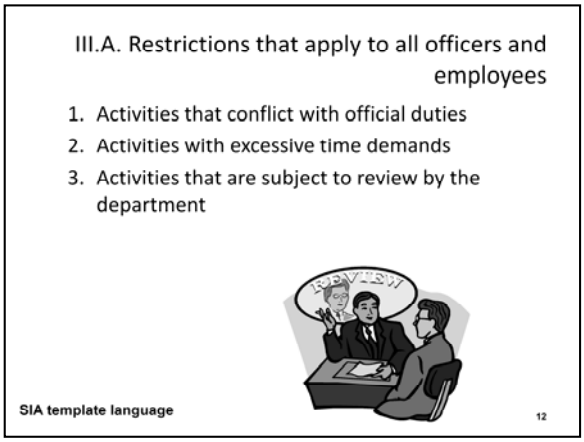
This section identifies activities that are banned under the SIA for your department. It has three subsections, which are identified in upcoming slides.



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

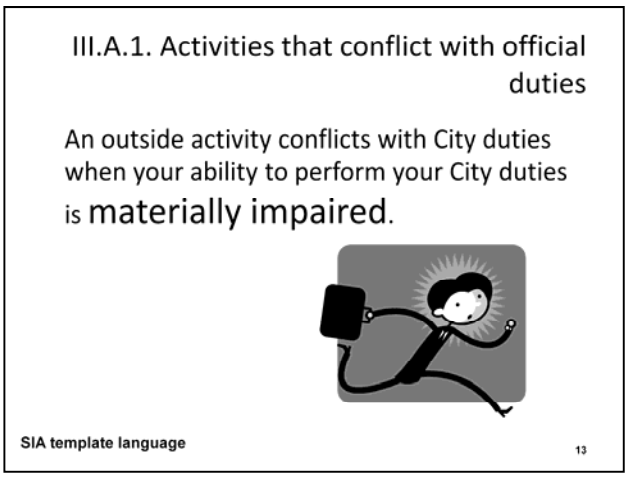
A. Restrictions that apply to all officers and employees,
B. Restrictions that apply to employees in specified positions, and
C. the Advance Written Determination or AWD.

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



III.A. 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.



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.

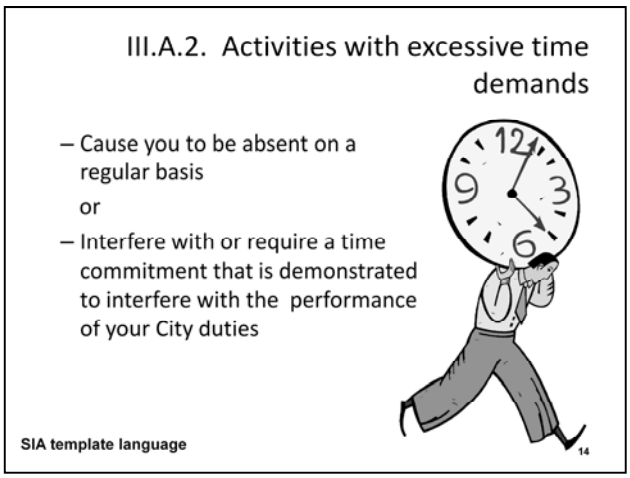
Outside activities that materially impair your ability to perform your City duties include, but are not limited to, activities that disqualify you from City assignments or responsibilities on a regular basis.

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.

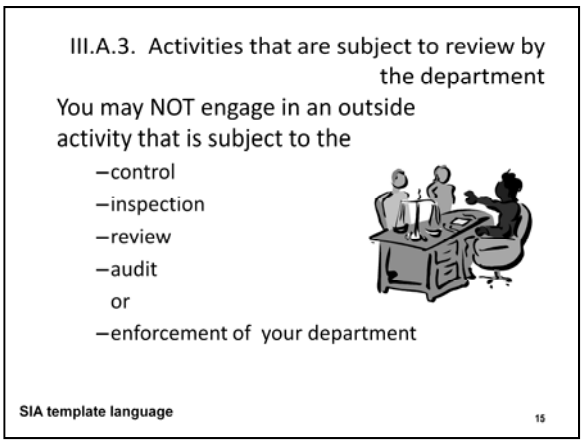
1. You can seek an AWD to find out if an outside activity is incompatible.

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.

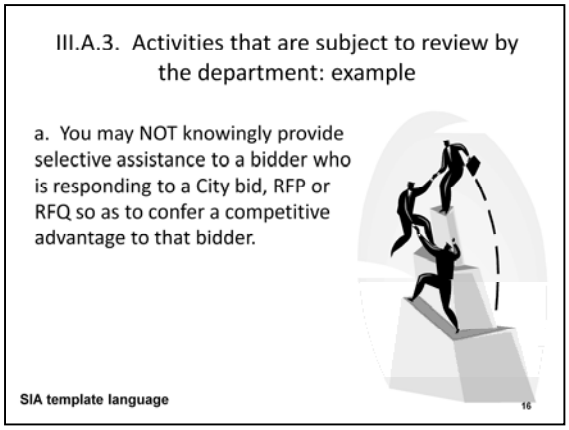


No employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the employee's performance of his or 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.



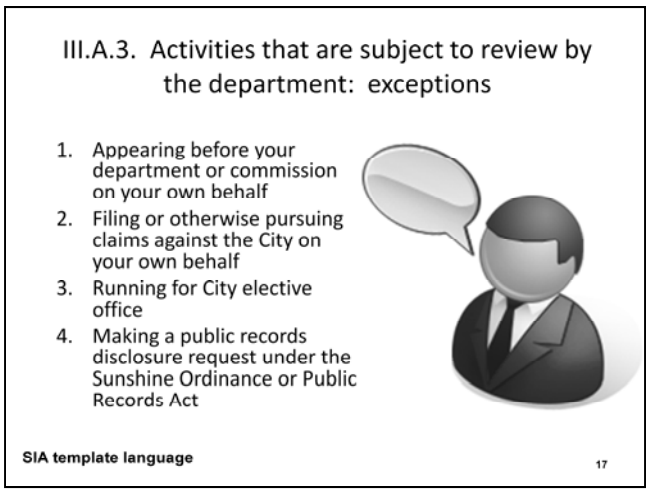
Section III.A.3. of the SIA discusses activities that may be incompatible because they are subject to review by your department. It states that unless otherwise noted or an advance written determination under subsection C concludes that such activities are not incompatible, you may not engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department.



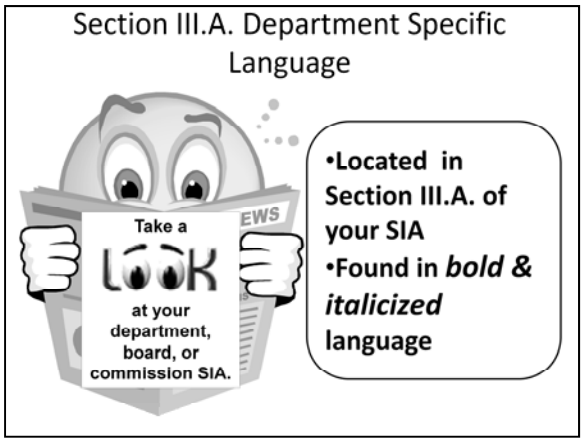
The first restriction is you may not knowingly provide selective assistance or assistance that is not generally available to all competitors to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract.

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.

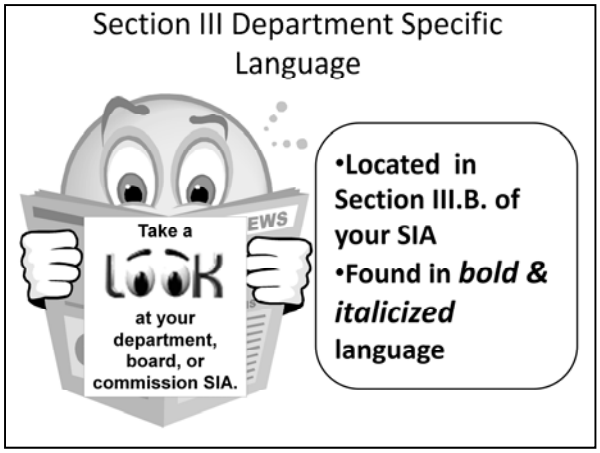


For most departments, the restrictions in this section of the SIA do not prohibit you from appearing before your own department or commission on behalf of yourself; filing or otherwise pursuing claims against the City on your own behalf; running for City elective office; or making a public records disclosure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

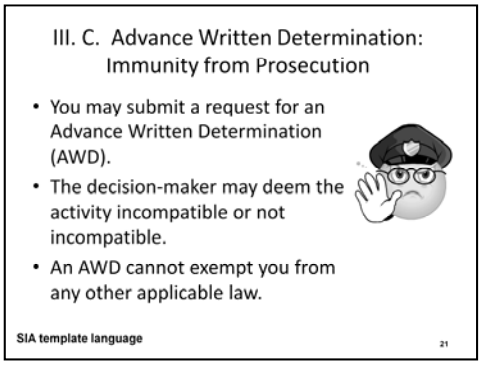


For department specific language for Section III.A., please review the bold & italicized language in your SIA.

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.



If your department does have department specific language for employees in specified positions, you will find it in bold and italicized language in Section III.B of your SIA.



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.

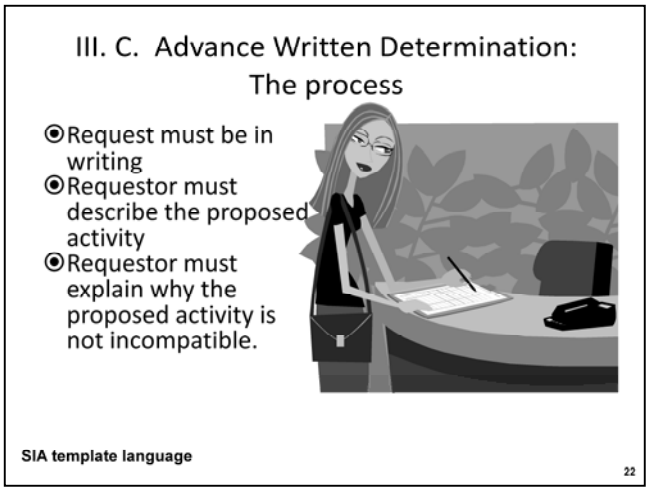
An example of this is, if an employee requests an AWD to be a part-time taxi driver, and the decision-maker has deemed the activity not incompatible, then the AWD would protect the employee from future prosecution for a violation of the SIA but the employee would still need to adhere to traffic and speed 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 20 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.

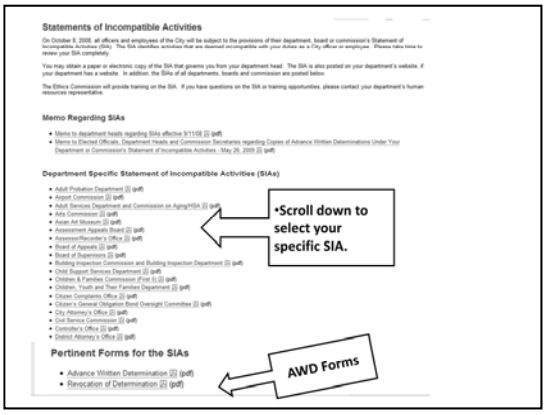


Now for the process!

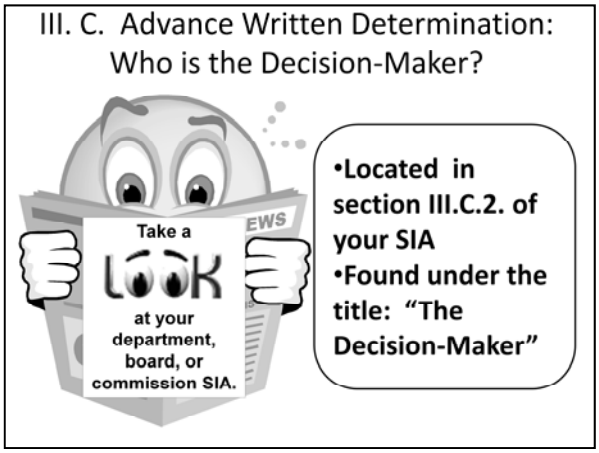
The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under the SIA. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether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



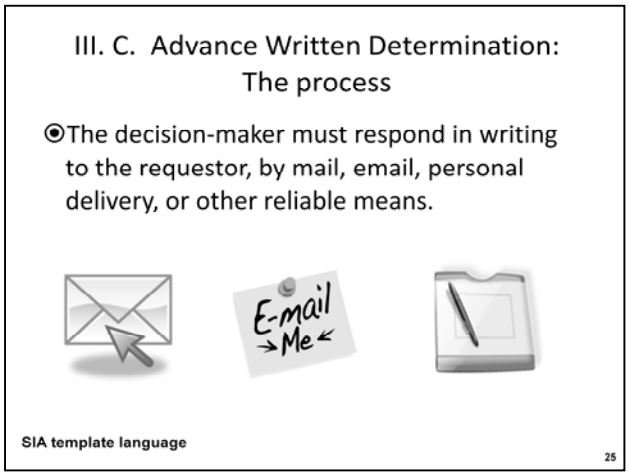
Then scroll down to select your specific SIA. You will find SIA related forms such as the Advance Written Determination or AWD at the bottom of this page.



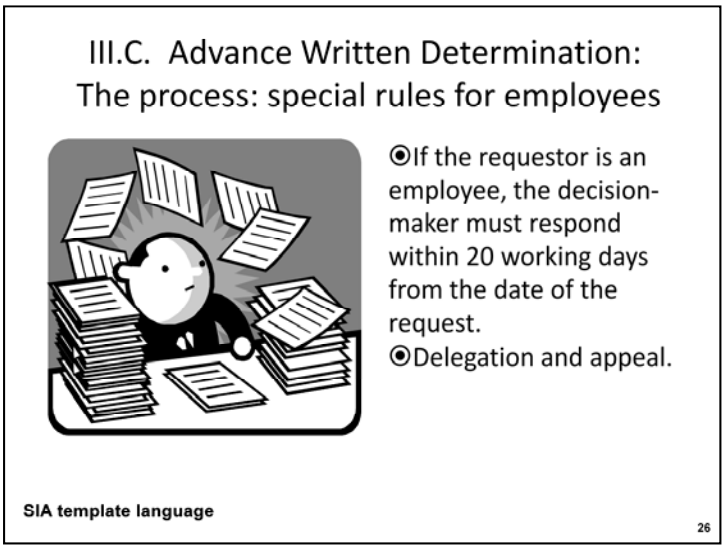
Look at your department, board, or commission SIA in Section III.C.2 to find who your decision maker is.

For most employees, the decision-maker is the Executive Director of the department and/or his or her designee.

If you are a member of a board or commission, the decision-maker may be your appointing officer, the board or commission itself, or the Ethics Commission. Please look at your department specific SIA to determine who your decision-maker is.



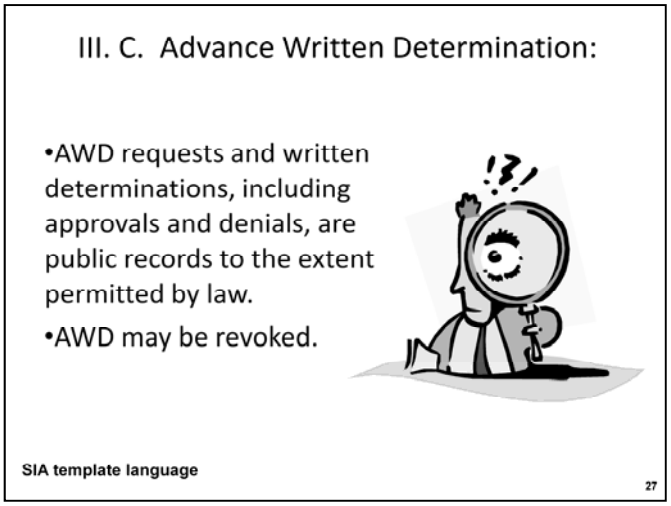
The decision-maker must respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means.



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 20 working days from the date of the request.

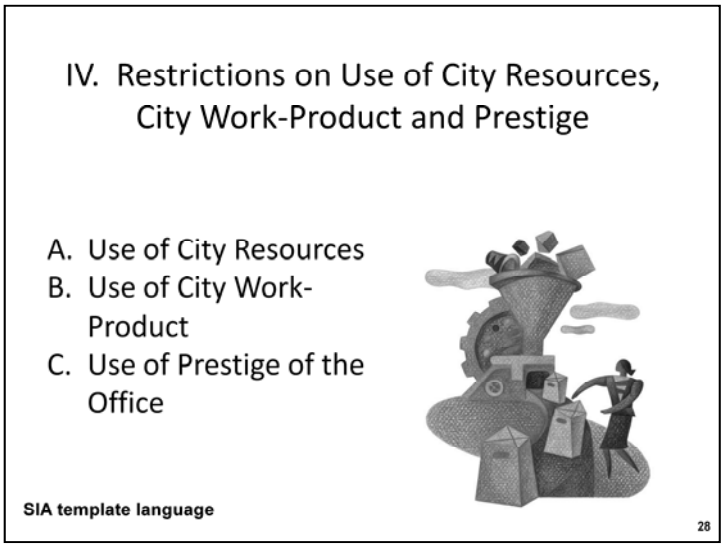
If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee's request, the decision-maker will be deemed to have determined that the proposed activity does not violate the SIA. (For the Department of Building Inspection, the time to make the advance written determination is 10 working days.)

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.

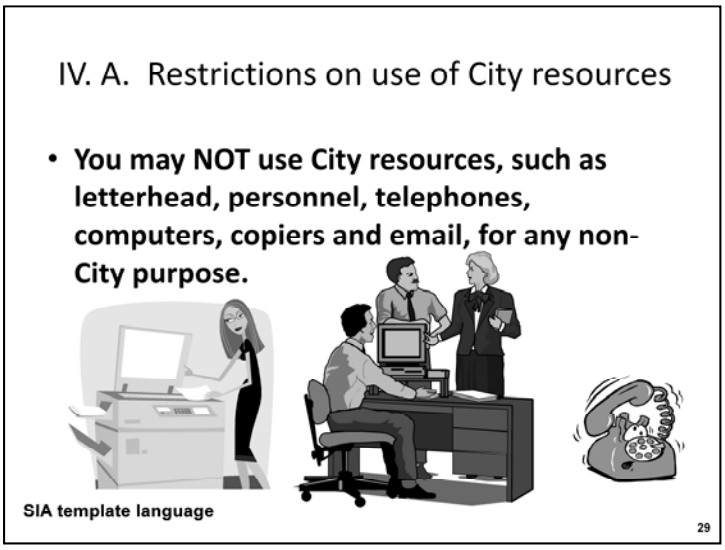


To assure that rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

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.

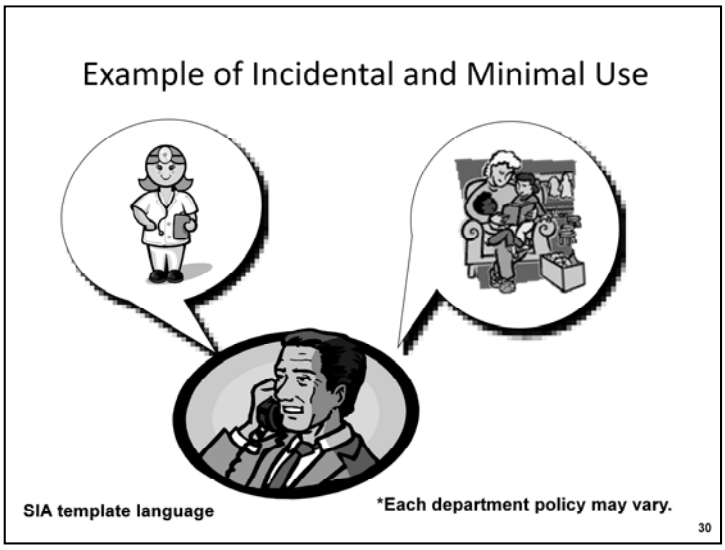


The fourth section of the SIA addresses the use of City resources, City work product and City prestige.



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.

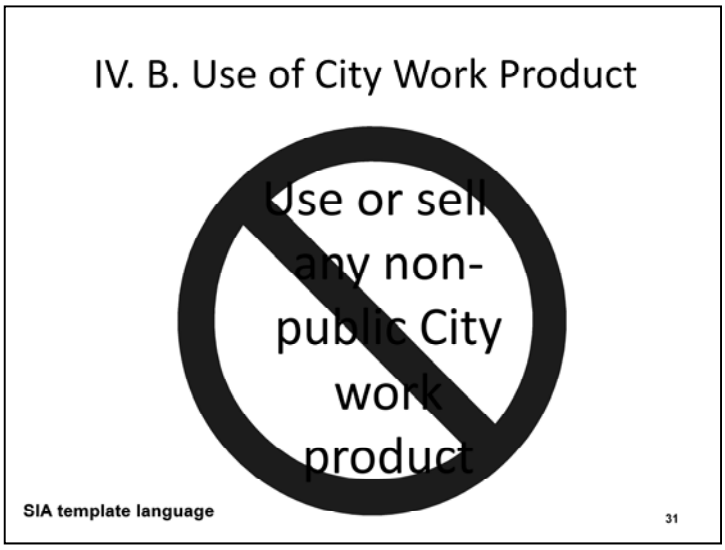


Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section of the SIA.

Here's an example.

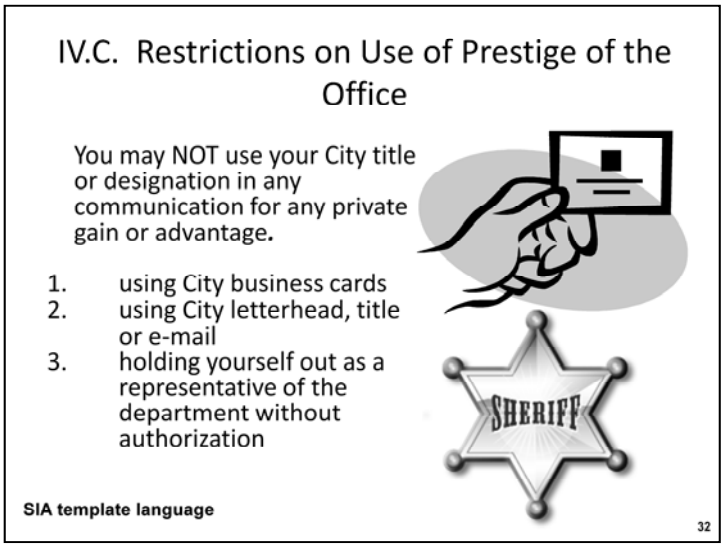
An employee or officer may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources.

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.



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.

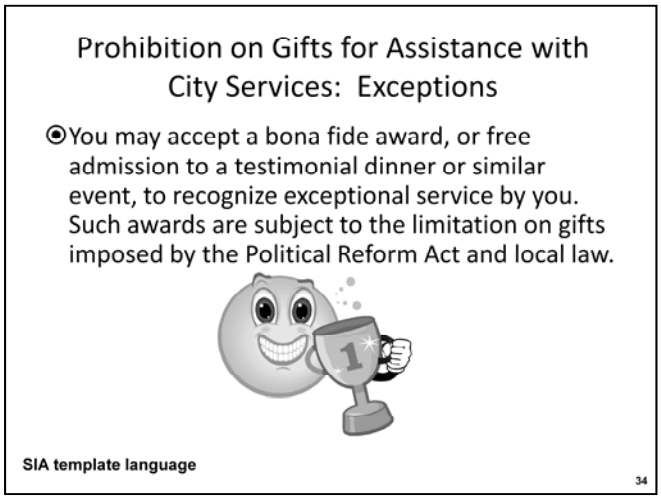


No employee or officer may use his or her City title or designation in any communication for any private gain or advantage. This includes using City business cards, using City letterhead, title or email, or holding oneself out as a representative of the department without authorization.

Here's an example of <u>inappropriate</u> 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.

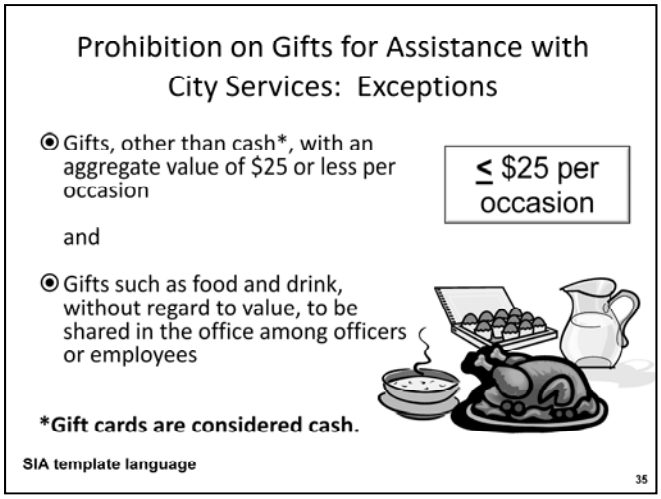
Here's an example of <u>acceptable</u> use. An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and 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.

Section V is a prohibition on receiving gifts for doing your job, which we discussed earlier.



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.



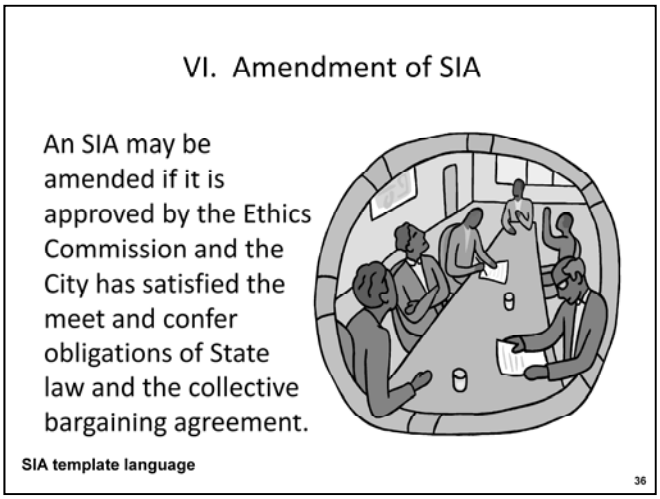
In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts for doing your job.

•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 SEI 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.)

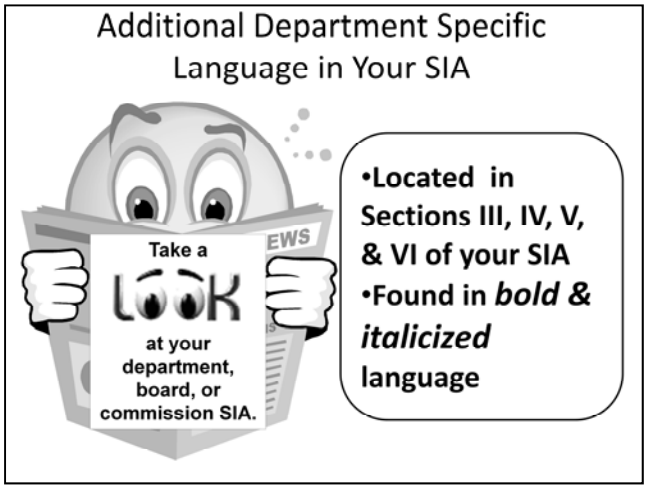
Example number 2. A member of the public who regularly works with and receives assistance from the Department sends a $150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the 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.



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).

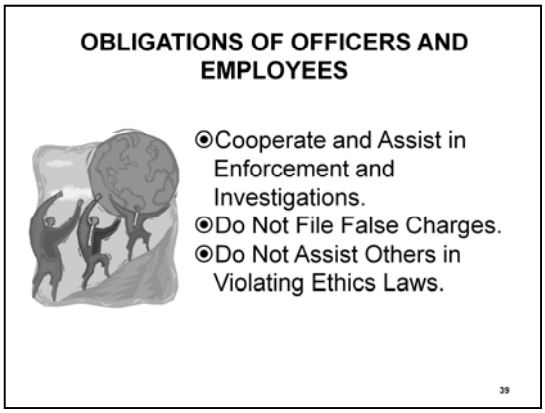
In addition, the Ethics Commission may at any time amend the Statement on its own initiative.

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.



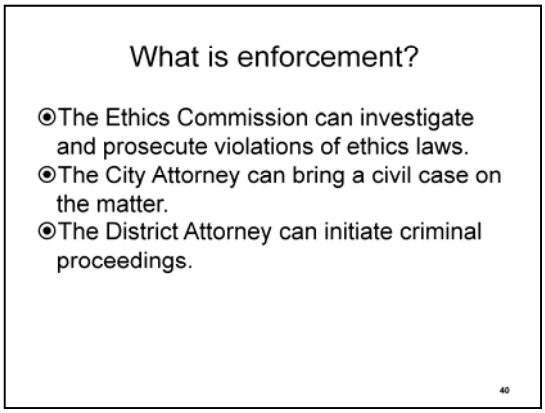
Remember to look at your department specific SIA to read the bold and italicized language that may also apply to you.

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



Officers and employees are obligated to:

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



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

41

The penalties for violations of local law 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 the courts can order you to cease certain activities, and/or

•Discipline and removal for official misconduct.

As stated before, these trainings are based on local law 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 participating in this training.