

CITIZENS' GENERAL OBLIGATION BOND OVERSIGHT COMMITTEE AND AUDIT REVIEW BOARD STATEMENT OF INCOMPATIBLE ACTIVITIES

I. INTRODUCTION

This Statement of Incompatible Activities is intended to guide officers of the Citizens' General Obligation Bond Oversight Committee and Audit Review Board ("Committee") 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 a member of the Committee.

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 to discipline, up to and including removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an officer is subjected to discipline or penalties for violation of this Statement, the officer 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.)

In addition to this Statement, officers are subject to Committee policies and State and local laws and rules governing the conduct of public officers, 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; and
- San Francisco Sunshine Ordinance.

Nothing in this Statement shall exempt any officer 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 be construed to prohibit or discourage any City officer 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.

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 CITIZENS' GENERAL OBLIGATION BOND OVERSIGHT COMMITTEE AND AUDIT REVIEW BOARD

The mission of the Committee is to review and report on the expenditure of the proceeds of general obligation bonds issued by the City and County of San Francisco. In addition, pursuant to the passage of Proposition C in November of 2003, the Committee shall also serve as an independent Citizens Audit Review Board, in support of the City Controller's duties as City Services Auditor.

III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Committee. Under subsection C, an officer 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.

A. RESTRICTIONS THAT APPLY TO ALL OFFICERS

1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES

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

- a. No officer may perform services on a City general obligation bond project that results in the officer's direct or indirect receipt of City general obligation bond proceeds as compensation.*
- b. No officer may be employed by or participate in the profits of any party that serves as an initial purchaser or underwriter of City general obligation bonds.*
- c. No officer may be a direct owner of City general obligation bonds.*
- d. No officer may represent any person or entity whose complaint, including any whistleblower complaint, is subject to the review of the Committee.*

2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

[RESERVED.]

3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE COMMITTEE

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 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 Committee. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: 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 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 ***funded with general obligation bond proceeds***. Nothing in this Statement prohibits an officer from providing general information about a bid for a City contract, a Committee 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 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 OFFICERS IN SPECIFIED POSITIONS

In addition to the restrictions that apply to all officers of the Committee, 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 officers holding specific positions.

[RESERVED.]

C. ADVANCE WRITTEN DETERMINATION

As set forth below, a member of the Committee may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Committee, imposes excessive time demands, is subject to review by the Committee, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an officer 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 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 officer who has not received a determination under subsection C from the decision-maker; or

(b) 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 a member of the Committee: A member of the Committee may seek an advance written determination from his or her appointing authority or from the Committee, or the Ethics Commission. The appointing authority, Committee 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 Committee 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.

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.

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 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 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.

Example. An 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 for a personal purpose.

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

B. USE OF CITY WORK-PRODUCT

No officer 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 the officer's appointing authority.

C. USE OF PRESTIGE OF THE OFFICE

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

Example of inappropriate use. An officer'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 officer over to view the disputed fence. When the neighbor introduces herself, the officer 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 officer was acting in an official capacity.

Example of acceptable use. An officer 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 officer to set up a meeting time. The officer hands the friend the officer'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 officer 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 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 is acting in an official capacity when the officer 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 is contesting a parking ticket. The officer 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 COMMITTEE

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

Example. An officer 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 officer's neighborhood. The officer may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Committee.

V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES

State and local law place monetary limits on the value of gifts an officer 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 from accepting any gift that is given in exchange for doing the officer's City duties.

No officer may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer 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 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 Committee owns season tickets to the Giants and sends a pair of tickets to an officer of the Committee in appreciation for the officer's work. Because the gift is given for the performance of a service the officer is expected to perform in the regular course of City duties, the officer 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 Committee. The officer directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the officer a gift in appreciation for this assistance. The officer 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 to a 501(c)(3) organization or federal, state or local government without the officer 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 officer's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that officer, 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 Committee sends a \$15 basket of fruit to an officer as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the officer is expected to perform in the regular course of City duties, the officer may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an officer 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 Committee sends a \$150 basket of fruit to the Committee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Committee is expected to perform in the regular course of City duties, the Committee may accept the fruit basket because it is a gift to the office to be shared among officers.

VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Committee 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.

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