



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: September 11, 2008
To: Department Heads
Members of Boards and Commissions
From: John St. Croix, Executive Director
Re: Statement of Incompatible Activities

On October 8, 2008, the Statement of Incompatible Activities (SIA) that governs your department, board or commission will go into effect. As you know, the process of finalizing the SIAs has been a long one, beginning with voter approval of Proposition E in November 2003; the submission of first drafts of the SIAs to the Ethics Commission in August 2004 and their review by the Civil Service Commission in the ensuing year and a half; the creation of an SIA template and further modifications that came about as a result of input from departments heads, City staff, members of the public, and the unions that represent City officers and employees; initial review and adoption of the SIAs by the Ethics Commission; meet and confer discussions with the unions; and final adoption of the remaining SIAs by the Ethics Commission on September 8, 2008. Thus, the Ethics Commission joins me in taking this opportunity to thank you and your staff for your steadfast cooperation in reaching this result.

The SIAs identify activities that are incompatible, inconsistent or in conflict with the duties and mission of the department, board or commission. **Under San Francisco Campaign and Governmental Conduct Code section 3.218 and its implementing regulations, each department, board or commission must annually provide a copy of the SIA to its officers and employees.** You may satisfy this requirement by taking the following three steps: (1) posting the SIA on the web page of your department, board or commission; (2) posting the SIA in the office of your department, board or commission where other legal notices are posted; and (3) distributing either a paper or electronic copy of the SIA to each officer or employee. You may satisfy (3) by providing a handout listing a webpage where the officer or employee may view the SIA. Please advise your officers and employees to review the SIA in its entirety. To ensure widespread notification about the SIAs, the Ethics Commission is arranging for a payroll insert that will inform all City employees that the SIAs will go into effect on October 8 and that all SIAs will be posted on the Ethics Commission's website. The insert will also advise all City employees to familiarize themselves with the SIA that applies to them.

The Commission has adopted regulations that address both the notice requirements discussed above and other provisions governing the processes for obtaining and issuing an advanced written determination and the handling of alleged violations. I am attaching a copy of these regulations below. Please take the time to review them. As separate attachments, I am including two forms that you may wish to use: one to handle requests for advanced written determinations and the other to revoke any advance determinations.

The Ethics Commission will provide training on SIAs upon request. Please contact Judy Chang, our training officer, if you are interested in a training session. Judy's direct number is 415/252-3127.

If you have questions, our staff stands ready to assist you. Please do not hesitate to contact us.

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Regulations Related to the Statements of Incompatible Activities

Regulation 3.218-1. Incompatible Activities – Approval of and Amendments to Statements of Incompatible Activities

Every department, board, commission and agency of the City and County is required to submit to the Ethics Commission a statement of incompatible activities listing those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of that department, board, commission or agency. All statements of incompatible activities as well as any amendments to previously adopted statements must be approved in accordance with this regulation.

(a) Submission to the Ethics Commission.

- (1) Submission deadlines. The initial statement must be submitted by August 1, 2004 for departments, boards, and commissions in existence on March 1, 2004. For departments created after March 1, 2004, the initial statement must be submitted within six months of the creation of the department, unless the Ethics Commission extends the time for good cause. Amendments to a departmental statement may be submitted at any time.
- (2) Materials submitted. Every statement or amendment shall be submitted in writing to the Ethics Commission in both paper and electronic form. In addition to each statement or amendment, every department, board, commission or agency shall submit a list of the unions that represent the officers and employees affected by the proposed statement or amendment. A department, board, commission or agency may provide any supporting materials that the department, board, commission or agency believes would assist the Ethics Commission.

- (b) Waivers of Required Language. Boards and commissions whose members, by law, must be appointed in whole or in part to represent any profession, trade, business, union or association may request permission from the Ethics Commission to exclude any of the language required by section 3.218(c). Such requests must be made at the time a board or commission submits a statement or amendment to the Ethics Commission and must set forth specific reasons why the exclusion is necessary. In making a determination whether to grant permission to exclude required language from a statement, the Ethics Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question

if the waiver is not granted; the ability of the commissioner or board member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.

- (c) Referral to the Civil Service Commission. Within two business days of receiving a submission required by subsection (a) of this regulation, the Executive Director shall forward a paper and electronic copy of the submission to the Civil Service Commission for its review and comment.
- (d) Hearing before the Ethics Commission. The Ethics Commission shall hold a hearing to consider each statement or amendment no sooner than 45 calendar days after the Commission receives a submission required by subsection (a) of this regulation. No later than 7 calendar days before the hearing, the Ethics Commission shall provide notice of the hearing to: (1) the department, board, commission or agency that submitted the statement or amendment; (2) the unions that represent the officers or employees affected by the proposed statement or amendment; and (3) the Civil Service Commission. The Ethics Commission shall provide the department, board, commission or agency that submitted the statement or amendment, the unions that represent the officers or employees affected by the proposed statement or amendment, and the Civil Service Commission with an opportunity to make a presentation regarding the proposed statement or amendment. The Ethics Commission may amend a proposed statement or amendment.
- (e) Meet and Confer. The Ethics Commission encourages City departments, boards, commissions and agencies to include the unions that represent their officers and employees in the process of drafting and amending statements of incompatible activities before submitting the statement or amendment to the Ethics Commission. Prior to the approval of any statement or amendment by the Ethics Commission, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent affected officers or employees.
- (f) Final Approval. The Ethics Commission shall, at a public meeting, finally approve a statement of incompatible activities or any amendment thereto. Within two business days of such approval, the Executive Director shall provide to the department, board, commission or agency a copy of the final version of its approved statement of incompatible activities.

Regulation 3.218-2. Incompatible Activities – Notice

By April 1 of each year, every department, board, commission or agency must annually provide to its officers and employees a copy of its Statement of Incompatible Activities (SIA). Departments, boards, commissions and agencies of the City and County may satisfy this requirement by doing all of the following:

- (1) posting the SIA on the department, board, commission or agency's web page;
- (2) posting the SIA statement within the department, board, commission or agency's offices in the same place that other legal notices are posted; and
- (3) either distributing a paper copy of the SIA to each officer or employee or distributing an electronic copy of the SIA to each officer or employee either (a) by sending an email that contains the SIA to each officer or employee, or (b) if the department, board, commission or

agency does not have the officer or employee's email address, by providing a handout to the officer or employee that references the SIA, provides the address of the SIA on the website of the department, board, commission or agency or the Ethics Commission, and directs the officer or employee to review the SIA in its entirety; or the Ethics Commission may opt to send such handout to all City employees via payroll inserts.

To ensure that new officers and employees are notified of the SIA, each department, board, commission and agency must provide a copy of its SIA to the each new officer at the time of appointment or each new employee at the time of hire in the manner described above.

Regulation 3.218-3. Incompatible Activities – Opportunity to Contest Incompatibility

No officer or employee may be subject to discipline or penalties for engaging in any employment, activity or enterprise that appears on the statement of incompatible activities of the officer or employee's department, board, commission or agency unless he or she has been provided an opportunity to demonstrate that the employment, activity or enterprise is not inconsistent, incompatible or in conflict with his or her duties. The requirement of an opportunity to demonstrate that an activity is not incompatible is satisfied if the employee has an opportunity to be heard on this issue prior to the decision in any proceeding to impose penalties or discipline, including in any criminal or civil proceeding, any administrative action by the Ethics Commission, or any disciplinary proceeding by an appointing authority.

Regulation 3.218-4: Advance Written Determination

(a) A request for an advance written determination under the Statement of Incompatible Activities (SIA) is separate from a written opinion request to the Ethics Commission under the San Francisco Charter. The process for an advance written determination is set forth in section III.C of the SIA; the process for a written opinion request to the Ethics Commission is set forth in section C3.699-12 of the San Francisco Charter.

(b) A person seeking a determination that an activity is not inconsistent, incompatible or in conflict with his or her duties should seek an advance written determination from the decision-maker designated in the SIA. The decision-makers for each officer and employee are listed in section III.C.2 of the SIA.

(c) When making a determination, the decision-maker shall consider the factors set forth in the SIA. If the decision-maker makes a written determination that the proposed activity is not inconsistent, incompatible or in conflict with the requestor's duties, the requestor shall have immunity from any subsequent enforcement action for a violation of the SIA based on the proposed activity if the material facts are as presented in the requestor's written submission.

(d) If a decision-maker for an advance written determination request from an employee fails to respond within 20 days from the date the request is received, the decision-maker is deemed to have determined that the proposed activity is not inconsistent, incompatible or in conflict with the employee's duties. However, if the decision-maker subsequently determines, based on changed facts or circumstances or other good cause, that the activity is inconsistent, incompatible

or in conflict with the employee's duties, the decision-maker must advise the employee to cease such activity by providing advance written notice to the employee specifying the changed facts or circumstances or other good cause. An employee who continues to engage in such activity after receiving such written notice will not have immunity from any subsequent enforcement action for a violation of the SIA.

(e) If the Ethics Commission is deemed the decision-maker for an advance written determination in the SIA, the following procedures will apply:

(1) The requestor must submit the request in writing on a form provided by the Ethics Commission, which will be available on the Commission's website. The requestor must identify the proposed activity and specify why the proposed activity is not incompatible with the department, board or commission's SIA.

(2) Upon receiving a request for an advance written determination, the Ethics Commission's Executive Director will make a preliminary written determination based on the factors set forth in the SIA. The Executive Director will distribute the preliminary written determination to the requestor and all members of the Commission for their review.

(A) If the requestor disagrees with the preliminary written determination, the requestor may request the Commission to review the matter. To make such a request, the requestor must submit a written request to the Ethics Commission within five calendar days of the date of the preliminary written determination. The written request must include a supplemental statement setting forth reasons why the requestor disagrees with the preliminary written determination and may include any additional information as to why the proposed activity is not inconsistent, incompatible or in conflict with his or her duties. Upon receipt of the request for review, the Executive Director will forward it to the Ethics Commission.

(B) If any member of the Commission wishes to calendar the preliminary written determination for discussion at a Commission meeting, the Commission member must so inform the Executive Director no later than ten calendar days after the date of the preliminary written determination or five calendar days after the date that the Executive Director forwards to the Commission the requestor's request for review, whichever is later. A matter will be calendared only if two or more members request that it be calendared. The Commission may calendar a matter regardless of whether the requestor submits a request for review pursuant to subsection (A).

(3) If the matter is not calendared, the Executive Director's determination will stand as the Ethics Commission's final written determination.

(4) If the matter is calendared, it will be on the agenda of the Commission's next meeting, subject to the discretion of the Commission's Chairperson. At the meeting, the Executive Director will make a presentation and the requestor will be invited to attend and present his or her request. The Executive Director's preliminary determination will stand as the

final written determination unless three members of the Commission vote to overrule it at the meeting.

(f) On a semi-annual basis during the first two years that the SIAs are in effect, and upon notice from the Ethics Commission, all departments, boards and commissions will forward to the Ethics Commission a summary of complaints of alleged violations of the SIAs and their dispositions, copies of all requests for advance written determination, and copies of all written determinations made by the department, board or commission.

Regulation 3.218-5: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Complaints Received by a Department, Board or Commission

(a) If a department, board or commission receives a complaint regarding an employee's alleged violation of the department, board or commission's Statement of Incompatible Activities (SIA), the department, board or commission will investigate the matter. The department, board or commission will provide an opportunity for the employee to explain why the activity should be deemed not inconsistent, incompatible, or in conflict with his or her duties. If the department, board or commission determines that the activity is inconsistent, incompatible or in conflict with the employee's duties, the department, board or commission may impose discipline as appropriate. If the department, board or commission chooses to do so, the department, board or commission may refer the complaint to the Ethics Commission.

(b) If a department, board or commission receives a complaint regarding an officer's alleged violation of the department, board or commission's SIA, the department, board or commission will consult with Ethics Commission staff to determine the most appropriate entity to investigate the matter.

Regulation 3.218-6: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Complaints Received by the Ethics Commission

(a) If the Ethics Commission receives a complaint regarding an employee or officer's alleged violation of a Statement of Incompatible Activities (SIA), the Ethics Commission staff will determine (i) whether the matter has already been resolved by the department, board or commission of the respondent; and (ii) whether the respondent has been given an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her City duties.

(b) If the matter has been resolved by the department, and the respondent has been given an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties, then the Ethics Commission staff will not take action in most cases, but will consult with the department, board or commission to determine the most appropriate course of action.

(c) If the matter is pending at the department, board or commission, the Ethics Commission staff will not take action in most cases, but will consult with the department, board or

commission to determine the most appropriate course of action. If the Ethics Commission staff determines that it is not necessary for the Commission to engage in an immediate investigation of the matter, the Commission staff will defer to the department, board or commission to complete its investigation.

(d) If the matter is a new matter where the department, board of commission has not investigated or taken any action, the Commission staff will determine whether it should take action pursuant to Charter section C3.699-13 and the Ethics Commission Regulations for Investigations and Enforcement Proceedings. The Commission staff may determine that the matter is more appropriately handled by the department, board or commission and refer the matter to the department, board or commission.

(e) In investigating any alleged violations of a SIA, the Commission staff may contact the department head or other staff at the department, board or commission for information.

Regulation 3.218-7: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Preliminary Review and Advance Written Determination

(a) In handling a complaint that alleges that an officer or employee violated the Statement of Incompatible Activities (SIA) by engaging in an activity that is inconsistent, incompatible or in conflict with the duties of the officer or employee, the entity receiving the complaint (the enforcement body) must determine whether the officer or employee who is the subject of the complaint sought an advance written determination as set forth in the SIA.

(b) If the officer or employee who is the subject of the complaint did not seek an advance written determination, the officer or employee is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer or employee violated the SIA. The enforcement body must ensure that the officer or employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.

(c) If the officer or employee who is the subject of the complaint sought and received an advance written determination that the activity is not inconsistent, incompatible or in conflict with his or her City duties, the officer or employee is immune from discipline or penalties for engaging in that activity, if the material facts are as presented in the officer's or employee's written request for the advance written determination. The enforcement body may investigate whether the material facts are as presented in the officer's or employee's written request.

(d) If the subject of the complaint is an officer who sought an advance written determination and allegedly engaged in the activity before receiving a response, the officer is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer violated the SIA. The enforcement body must ensure that the officer who is the subject of the complaint is provided an opportunity

to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.

(e) If the subject of the complaint is an employee who sought an advance written determination and allegedly engaged in the activity within 20 working days after making the request but before receiving a response, the employee is not immune from discipline or penalties for engaging in the activity during that time period. The enforcement body may investigate the allegations in the complaint to determine whether the employee violated the SIA. The enforcement body must ensure that the employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.

(f) If the subject of the complaint is an employee who sought an advance written determination and allegedly engaged in the activity more than 20 working days after making the request without receiving a response, the employee is immune from discipline or penalties for engaging in the activity if the material facts are as presented in the employee's submission of the advance written determination. The enforcement body may investigate whether the material facts are as presented in the employee's written request.

If the employee in this subsection subsequently receives written notice from the decision-maker pursuant to Regulation 3.218-4(d) that the employee must cease engaging in the activity based on changed facts or circumstances or other good cause, but the employee continues to engage in such activity after receiving the written notice, the employee will not have immunity from discipline or penalties for engaging in the activity.

(g) If the officer or employee who is the subject of the complaint has received an advance written determination that the activity is inconsistent, incompatible or in conflict with his or her City duties, and the officer or employee allegedly engaged in the activity, the officer or employee is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer or employee violated the SIA. The enforcement body must ensure that the officer or employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.

Regulation 3.218-8: Penalties Imposed by Ethics Commission for Violations of the Statement of Incompatible Activities

The Ethics Commission will determine violations and penalties for violations of the Statement of Incompatible Activities (SIA) in accordance with Charter section C3.699-13 and the Ethics Commission Regulations For Investigations And Enforcement Proceedings. In assessing penalties for a violation of the SIA, the Ethics Commission also will look to the following guidelines:

(a) For a first violation where the respondent violated the SIA by failing to disclose an activity that is required to be disclosed – but is not prohibited – under the SIA, the Commission

will issue a warning letter to the respondent in most cases. In exceptional circumstances, the Ethics Commission may determine that additional penalties are appropriate.

(b) Penalties for other violations of the SIA will depend upon the Ethics Commission's assessment of the impact of the respondent's activities on the City and the department, board or commission as a whole; compliance with other applicable laws and rules; whether the violation was an isolated incident or part of a pattern of violations; whether the respondent or others were inappropriately enriched by the activity; whether the violation was negligent, knowing or intentional; and the intent and spirit of the SIA; and any other factors that the Ethics Commission deems appropriate and material.

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