

ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: January 21, 2016
To: Members of the Ethics Commission
From: LeeAnn Pelham, Executive Director
Re: **AGENDA ITEM 3 – Request from Evan Gross for waivers from post-employment restrictions in San Francisco Campaign & Governmental Conduct Code sections 3.234(a)(1) and 3.234(a)(2)**

Summary: This memorandum provides an overview and Staff’s recommendation regarding waiver requests received from Evan Gross on January 11, 2016.

Action Requested: Staff recommends that the Commission not approve the waiver requests.

Overview

On January 11, 2016, the Ethics Commission received a written request for two waivers from Evan Gross.¹ Mr. Gross is currently a partner with Gubb & Barshay LLP and was formerly a Deputy City Attorney with the City Attorney’s Office (“CAO”). He has requested that the Ethics Commission grant him two waivers: (1) regarding the permanent restriction on representation in particular matters, set forth in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(1); and (2) regarding the one-year restriction on communicating with his former department, set forth in San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”) section 3.234(a)(2).

For the reasons discussed below, Staff recommends that the Commission deny both waiver requests. Mr. Gross has been notified that this matter would be on the Commission’s agenda for the January 25, 2016 meeting and has indicated he will attend the meeting to address any questions the Commission may have.

Procedures for Considering Post-Employment Waiver Requests

Once the Commission receives a request for a waiver from the City’s post-employment restrictions, the Commission must consider the request at its next regularly scheduled meeting. Accordingly, the Commission must consider Mr. Gross’ waiver requests at its January 25, 2016 meeting. At the meeting, per Ethics Commission Regulation 3.234-4(a)(3),

¹ See Attachment 1.

Mr. Gross and a designated representative from his former department, the CAO, will be provided an opportunity to make a presentation to the Commission supporting or opposing the requests. In accordance with the Brown Act and Sunshine Ordinance, members of the public will be permitted to address the Commission on this matter during public comment.

Pursuant to Ethics Commission regulations, the Commission may grant Mr. Gross' waiver requests only if the Commission makes a finding that granting the waivers would not create the potential for undue influence or unfair advantage. In making this determination, the Commission may consider: (1) the nature and scope of the communications the former officer or employee will have with his or her former department; (2) the subject matter of such communications; (3) the former position held by the officer or employee; (4) the type of inside knowledge that the former officer or employee may possess; and (5) any other factors the Commission deems relevant. *EC Regulation 3.234-4(a)(4)*.

Background

Mr. Gross served as a Deputy City Attorney on the Real Estate and Finance Team for seven and a half years, with his City service ending on January 2, 2016. As of January 4, 2016, Mr. Gross is a partner at the law offices of Gubb & Barshay LLP. He states that his firm represents non-profit affordable housing developers throughout California. According to Mr. Gross, he seeks the waivers so that he may represent the non-profit affordable housing developers operating in the City and assist in the completion of many of the affordable housing transactions on which he worked while with the CAO. He states that granting the waivers would further the mutual interests of the City and his new firm's non-profit clients in developing and preserving affordable housing in San Francisco. He also states that the waivers would not confer any undue influence or unfair advantage. Both the CAO and the Mayor's Office of Housing and Community Development ("MOHCD") have communicated support for Mr. Gross' waiver requests.²

Relevant Laws³

Policy Purpose of Post-Employment Restrictions

Section 3.200(e) of the findings and purpose of Chapter II of the SF C&GCC, which relates to conflict of interest and other prohibited activities, states the following:

Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis. The practice of former officers and employees communicating with their former colleagues on behalf of private interests and the practice of current officers of the City and County communicating with other officers and employees on behalf of any other person for compensation creates the potential for, and the appearance of, undue influence, favoritism or preferential treatment. Prohibiting former officers and

² Mr. Gross also provided a copy of an informed written consent form signed by Moira Walsh, the Managing Attorney at the City Attorney's Office, waiving any legal conflict of interest arising out of Mr. Gross' prior representation of the City in "any and all matters related to or arising out of the matters listed in Exhibit B, and consent to that representation, so long as the matters do not extend to any litigation against the City." Ms. Walsh signed the form on January 8, 2016.

³ A copy of Chapter II of SF C&GCC and the Ethics Commission Regulations related to Conflicts of Interest are attached to this memorandum.

employees from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time and prohibiting current officers from communicating orally, in writing, or in any other manner with other officers and employees of the City and County on behalf of any other person for compensation will eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.

Post-Employment Restrictions of City Law

1. Permanent Restriction on Certain Activities

Section 3.234(a)(1) of SF C&GCC provides the following restrictions:

(A) No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

- (i) in which the City and County is a party or has a direct and substantial interest;
- (ii) in which the former officer or employee participated personally and substantially as a City officer or employee; and
- (iii) in which involved a specific party or parties at the time of such participation.

(B) No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another person (except the City and County) in any proceeding in which the officer or employee would be precluded under Subsection (A) from personally appearing.

(C) The prohibitions in Subsections A and B do not prohibit a former City officer or employee from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

Ethics Commission Reg. 3.234-1 states that section 3.234(a)(1) restricts only specific activities of former City and County officers and employees, not their employment *per se*.

Ethics Commission Reg. 3.234-5(b) states the City has a "direct and substantial interest in a particular matter" if the City is the subject of the proceeding or transaction or would be significantly affected by the result of the proceeding or transaction. Ethics Commission Reg. 3.234-5(d) defines "particular matter" for the purposes of the restriction in section 3.234, as one that "involves a specific proceeding affecting the legal rights of parties or an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, applications, requests for rulings, litigation, or investigations. Rulemaking, legislation, the

formulation of general policy, standards or objectives, or other actions of general application are not particular matters.”

Ethics Commission Reg. 3.234-5(e) defines “participate personally” as to participate directly, and includes the participation of a subordinate. Ethics Commission Reg. 3.234-5(e) states in part that “participate substantially” means that the officer’s or employee’s involvement is, or reasonable appears to be, significant to the matter. Participate substantially relates not only to the effort devoted to a matter, but also to the importance of the effort. EC Reg. 3.234-5(e). The single act of approving or participation in a critical step may be substantial. EC Reg. 3.234-5(e).

2. One Year Restriction

Section 3.234(a)(2) of the San Francisco Campaign and Governmental Conduct Code provides the following one-year restriction on certain communications:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Waiver Considerations

A request for a waiver must be in writing and include information describing the former position held by the employee; the particular matter for which the waiver is sought; the individual’s prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. A requestor must also certify that he has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his former department. EC Reg. 3.234-4(a)(1).

Pursuant to SF C&GCC section 3.234(c), the Commission may waive the restrictions in sections 3.234(a)(1) and 3.234(a)(2) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. The Commission shall not approve any request for a waiver from the bans made under subsection 3.234(c)(1) unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage. EC Reg. 3-234-4(a)(4).

Ethics Commission Reg. 3.234-4(a)(4) provides that in making its determination whether granting a waiver would create the potential for undue influence or unfair advantage, the Commission may consider:

- the nature and scope of the communications the individual will have with his former department,
- the subject matter of such communications,
- the former position held by the employee,
- the type of inside knowledge that the individual may possess, and
- any other factors the Commission deems relevant.

A copy of Chapter II of SF C&GCC and the Ethics Commission Regulations related to Conflicts of Interest have been attached to this memorandum.

Discussion

As expressed in Section 3.200(e) of the findings and purpose of Chapter II of the SF C&GCC, the City's post-employment restriction provisions were enacted to protect the integrity of government decision-making by preventing a City officer or employee from using his or her influence or knowledge, gained as a public servant, in a way that creates the potential for, or the appearance of, undue influence, favoritism or preferential treatment. SF C&GCC section 3.200(e) states that government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis. The permanent and one-year restrictions in the law are designed to eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.

Recognizing that there may be circumstances in which the post-employment provisions may not be necessary to protect the integrity of government decision-making, the law also contains provisions that permit the Ethics Commission to grant waivers to individuals in specified circumstances where the Commission concludes the threat to the integrity of City decisions is minimal.

As noted above, to determine that the granting of a waiver of either of the post-employment restrictions in SF C&GCC section 3.234(a)(1) or 3.234(a)(2) would not create the potential for undue influence or unfair advantage, the Commission may consider factors that include the nature and scope of the communications the former employee will have with the City; the subject matter of those communications; and the employee's former position and type of knowledge the former employee possesses. These factors are evaluated below in connection with the waiver requests submitted by Mr. Gross.

Permanent Restriction Waiver Request - SF C&GCC section 3.234(a)(1)

Mr. Gross seeks a waiver from the permanent post-employment restriction in SF C&GCC section 3.234(a)(1), so that he may represent his firm's clients in connection with particular ongoing transactions.

Nature and scope of communications

In his request, Mr. Gross provided a list of transactions and "existing matters" relating to his previous representation of MOHCD. It appears that there are various ongoing projects and transactions for which Mr. Gross provided advice, as well as drafted and reviewed documents. Mr. Gross states "MOHCD typically will be completely transparent in negotiations" and that "MOHCD often refers to the nonprofit developers as the City's partners." Nevertheless, Mr. Gross now seeks to directly represent private interests in matters for which he previously represented the City.

The City's post-employment restrictions were enacted to eliminate both any actual or perceived conflict that could arise when former employees communicate on behalf of a private entity with the City on matters in which they formerly had direct involvement during their City tenure.

Because Mr. Gross' communications with his former department on behalf of his new employer would involve matters in which he was directly involved while in City service, those communications give rise to a potential for undue influence or unfair advantage.

Subject matter of communications

Mr. Gross noted three specific "significant transactions" that remain ongoing:

- The transfer and rehabilitation of 28 distinct public housing projects to private ownership under the federal Rental Assistance Demonstration Program ("RAD");
- The demolition and new construction of affordable housing at the Potrero and Sunnydale public housing projects under the City's HOPE SF program; and
- The new construction of over 100 affordable housing units at the corner of Eddy and Taylor Streets.

Mr. Gross also provided a list of "existing matters" relating to his previous representation of MOHCD. Staff researched some of the matters listed in Mr. Gross' request and it appears there may be multiple "particular matters" about which Mr. Gross would be restricted from contacting any City officer or employee, as the transactions he named involve multiple City contracts, grants, and/or applications. In his request, however, Mr. Gross did not identify any particular matter or matters for which the waivers are sought, nor did he detail his prior involvement in each particular matter, such as contracts or applications, in which the City may be "a party or has a direct and substantial interest." Fully assessing the possible merits of any waiver request against this factor is not possible absent that information. Should Mr. Gross be able to provide additional information for the Commission's consideration, disclosure of the exact subject matter of his proposed communications would enable transactions that remain ongoing to be more fully evaluated.

Former position

In his former position with the CAO, Mr. Gross' primary role was to represent the MOHCD on affordable housing real estate transactions. He stated that he did not participate in proceedings or adjudicatory hearings, and that he was the only transactional attorney at the CAO working on behalf of MOHCD. He stated that, in his former position, he frequently communicated with non-profit developers and their attorneys, who were working with MOHCD, including, but not limited to, Mercy Housing, Tenderloin Neighborhood Development Corporation (TNDC), Chinatown Community Development Center (CCDC), Community Housing Partnership (CHP), and BRIDGE Housing. These entities are all current clients of Mr. Gross' firm. Given that Mr. Gross participated substantially while as a City employee in these matters, the granting of his waiver request could create a potential for undue influence or unfair advantage to the extent that he proposes to now communicate the interests of private parties in matters that remain pending with the City.

Type of knowledge possessed

Mr. Gross stated that his understanding and experience would facilitate the transactions and that he would be able to share his institutional knowledge at the CAO with his successors. According to Mr. Gross, he seeks the waivers in order to communicate and work on

transactional matters related to affordable housing in San Francisco and not for court proceedings or administrative hearings. From the information he has provided, it appears Mr. Gross will be participating in ongoing transactions where he had previously been representing the City. As the only attorney assisting MOHCD for over seven years, he has in-depth knowledge about the City's positions on these ongoing transactions and, during his employment with the CAO, he has developed many relationships within multiple City agencies. Mr. Gross is prohibited by SF C&GCC section 3.228 from disclosing or using confidential City information to advance the financial or other private interest of a former officer or employee. As a former City employee with unique institutional knowledge, granting Mr. Gross' waiver request may create a potential for undue influence or unfair advantage to the extent that he proposes to now communicate the interests of private parties in matters that remain pending with the City.

Other considerations

Mr. Gross states that Gubb & Barshay has already worked on this transactional work prior to his arrival at the firm, and that it will continue to do so, even if he is unable to participate. It appears, therefore, that Mr. Gross' involvement in transactions with the City is not a prerequisite for work with his new employer.

Additional background

For reference, the Ethics Commission has considered three previous waiver requests regarding the permanent restriction in SF C&GCC section 3.234(a)(1).

In October 2006, the Commission granted a waiver request from Rio Foster, a former staffer of the Mayor's Office of Economic and Workforce Development, permitting him to contact the Mayor's Office regarding his work at the Bid Committee for the 2016 Olympics. In September 2011, the Commission granted a waiver request from Thomas Long, a former Deputy City Attorney. In that matter, Mr. Long, a former Deputy City Attorney, left City employment and became the Legal Director of TURN, a non-profit organization. At the time of his request, Mr. Long had not yet obtained a waiver from the CAO regarding his representation of specific clients. At that time, Commission staff recommended that the Commission grant a waiver because of a general mutuality of interests between the City and TURN in their advocacy efforts before the California Public Utilities Commission on behalf of utility customers.

In November 2011, the Commission considered a waiver request from Tiffany Bohee, a former member of the Office of Economic and Workforce Development. Ms. Bohee left her position to serve as the Interim Executive Director of the San Francisco Redevelopment Agency, another governmental agency. The Commission granted Ms. Bohee's waiver request in order for her to continue her involvement in a legislative package that she anticipated would be presented to the Board of Supervisors and the Mayor for their approval.

One-year Restriction Waiver Request - SF C&GCC section 3.234(a)(2)

So that he may represent his firm's clients in connection with particular ongoing transactions, Mr. Gross also seeks a waiver from the one-year restriction in SF C&GCC section 3.234(a)(2) on communicating with his former department.

Nature, scope, and subject matter of communications

Mr. Gross seeks to represent private parties regarding matters on which he previously represented the City. Because his involvement in those matters would directly involve the former office for which he worked while in City service, representation on behalf of his new employer with former associates can create a potential for undue influence or unfair advantage that accrues to his new employer. It is precisely this potential that the City's one-year restriction on communications with a former department intends to address.

Former position

As stated above, Mr. Gross' primary role in his former position was to represent the MOHCD on affordable housing real estate transactions. He stated that, in his former position, he frequently communicated with non-profit developers and their attorneys, who were working with MOHCD, including, but not limited to, Mercy Housing, Tenderloin Neighborhood Development Corporation (TNDC), Chinatown Community Development Center (CCDC), Community Housing Partnership (CHP), and BRIDGE Housing. These entities are all current clients of Mr. Gross' firm. Because his former position involved communications on these same matters, representation on behalf of his new employer with former associates can create a potential for undue influence or unfair advantage that accrues to his new employer. It is precisely this potential that the City's one-year restriction on communications with a former department intends to address.

Type of knowledge possessed

As the only attorney assisting MOHCD for over seven years, the in-depth knowledge and relationships Mr. Gross established while in that role clearly provided a benefit for the City's work in that area. At the same time, a one-year restriction on communicating with one's former department helps maximize public confidence in the integrity of City decision-making by providing a buffer or 'cooling off' period before that former official may communicate with his or her former associates to shape City decisions. Mr. Gross' waiver request would result in the elimination of that buffer period, which could create the potential for undue influence or unfair advantage accruing to his new employer. Staff recommends that the one-year restriction be retained to maximize confidence in City decision-making.

Other considerations

As noted above, Mr. Gross states that Gubb and Barshay has already worked on this transactional work prior to his arrival at the firm, and that it will continue to do so, even if he is unable to participate. It appears, therefore, that Mr. Gross' involvement in transactions with the City is not a prerequisite for work with his new employer.

Additional background

Since 2010, the Commission has considered six waiver requests regarding the one-year restriction on communication in SF C&GCC section 3.234(a)(2). Five requests were granted and one was not granted. The Commission granted limited post-employment waivers to the restriction in three cases.

In February 2012, for example, the Commission considered a waiver request from Robert Selna, a former aide to then Supervisor Mirkarimi. Mr. Selna had not delineated what communications he would

have and did not identify which City agencies he would contact. The Commission believed the request was premature, as he had not provided information regarding a position he had accepted. The Commission advised Mr. Selna to return once he had more information.

Recommendation

For the reasons discussed above, staff recommends that the Ethics Commission deny Mr. Gross' waiver requests from the restrictions in SF C&GCC section 3.234(a)(1) and 3.234(a)(2).

Attachments:

- Waiver requests from Evan Gross
- E-mail from Charles Sullivan, Office of the City Attorney
- E-mail from Olson Lee, Mayor's Office of Housing and Community Development
- E-mail from Daniel Adams, BRIDGE Housing
- E-mail from Katie Lamont, Tenderloin Neighborhood Development Corporation
- Chapter II of San Francisco Campaign and Governmental Conduct Code
- Ethics Commission Regulations Related to Conflicts of Interest

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Argumedo, Catherine (ETH)

From: Petersen, Patricia (ETH)
Sent: Wednesday, January 13, 2016 11:12 AM
To: Argumedo, Catherine (ETH)
Subject: FW: Request for Waivers
Attachments: Waiver Ltr.pdf; Conflict Waiver - Gubb & Barshay 01.11.16[1].pdf

From: Pelham, Leeann (ETH)
Sent: Tuesday, January 12, 2016 4:26 PM
To: Petersen, Patricia (ETH) <patricia.petersen@sfgov.org>
Subject: Fw: Request for Waivers

From: Evan Gross <egross@gubbandbarshay.com>
Sent: Monday, January 11, 2016 3:01 PM
To: Pelham, Leeann (ETH)
Cc: Shen, Andrew (CAT); Walsh, Moira (CAT); Smith, Jesse (CAT); Lee, Olson (MYR)
Subject: Request for Waivers

Dear Ms. Pelham,

Attached please find a pdf of my signed request for waivers letter, as well as the Exhibit A to the letter (a signed informed consent letter).

Please let me know if you have any questions or need anything else from me in order to consider my request at the January 25th Commission hearing.

Thank you so much!

Best,
Evan

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Evan Gross
Gubb & Barshay LLP
505 14th Street, Suite 1050
Oakland, CA 94612
ph: [415-781-6600](tel:415-781-6600), ext. 6
fax: [415-781-6967](tel:415-781-6967)
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2016 JAN 14 PM 1:15

Telephone: (415) 781-6600
Facsimile: (415) 781-6967

BY _____

January 11, 2016

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Request for Waivers of Campaign and Governmental Conduct Code Sections 3.234(a)(1) and (a)(2).

Dear Ms. Pelham:

The purpose of this letter is to respectfully request that the San Francisco Ethics Commission grant me a waiver of two provisions of Section 3.234 of the Campaign and Governmental Conduct Code ("C&GCC"). First, I request a waiver of subsection (a)(1), which bars former City employees from representing a non-City party before a court or administrative agency on a matter in which the employee represented the City. Second, I request a waiver of subsection (a)(2), which bars former employees from communicating with their former City departments with the intent to influence a governmental decision, for a period of one year from the employee's separation from City employment. As I will explain in more detail below, without these requests I would be unable to represent the non-profit affordable housing developers operating in the City and to help complete many of the critical affordable housing transactions that I worked on while with the City. Granting the requested waivers would further the mutual interests of the City and my new firm's non-profit clients in developing and preserving much needed affordable housing in San Francisco, and would not confer any undue influence or unfair advantage.

I am informed that both the City Attorney's Office and the Mayor's Office of Housing and Community Development ("MOHCD") support these waiver requests.

In addition, because of the rules of professional conduct applicable to attorneys, I have already obtained the informed written consent of the City Attorney's Office allowing me to represent any clients in any matter in which I previously represented the City (so long as the matters do not extend to litigation against the City). The City Attorney's Office's consent letter is attached hereto as Exhibit A.

I respectfully request that the Commission hear my waiver requests at its next regularly scheduled meeting on January 25, 2016.

Prior Employment

For the past seven and one-half years, until my departure from City service on January 2, 2016, I served as a Deputy City Attorney on the Real Estate and Finance Team. My primary role was to represent MOHCD on affordable housing real estate transactions. I provided advice, drafted and reviewed real estate and finance documents, and generally helped facilitate the development and preservation of affordable housing in San Francisco. My work was almost exclusively transactional; I did not participate in proceedings or adjudicatory hearings.

In my time with the City, I worked to help create many new affordable housing developments and to preserve many existing developments. Because financing for affordable housing developments is so uniquely complicated, many of these developments take a long time to complete. Thus, there are some significant transactions that I have worked on that are still ongoing, including but not limited to: (1) the transfer and rehabilitation of 28 distinct public housing projects to private ownership under the federal Rental Assistance Demonstration Program ("RAD"); (2) the demolition and new construction of affordable housing at the Potrero and Sunnyside public housing projects under the City's HOPE SF program; and (3) the new construction of over 100 affordable housing units at the corner of Eddy Street and Taylor Street.

I frequently communicated with the nonprofit developers (and their attorneys) who were working with MOHCD, including but not limited to Mercy Housing, Tenderloin Neighborhood Development Corporation (TNDC), Chinatown Community Development Center (CCDC), Community Housing Partnership (CHP), and BRIDGE Housing. In affordable housing development, it is quite common for these nonprofits to work closely in collaboration with public agencies. This is because they have the shared goal of creating and preserving affordable housing. And in San Francisco especially, it is a very small, tight-knit community with longstanding connections between the City and all of the developers. We would often discuss issues openly with each other and work together to find solutions to any obstacles that would arise. When negotiating with the commercial banks and other public agencies that help finance affordable housing projects, I often found myself discussing strategy with both MOHCD and the nonprofit developer together.

It is important to note that in my seven and one-half years, I was the only transactional attorney working on behalf of MOHCD. Thus, I obtained a large amount of institutional knowledge that my successors will not have. I believe it is critical that I be able to communicate with them to impart that knowledge, especially with respect to ongoing matters.

New Employment

As of January 4, 2016, I am a partner at the law offices of Gubb & Barshay LLP. Gubb & Barshay represents nonprofit affordable housing developers throughout California, primarily as real estate and finance transactional counsel. Gubb & Barshay only represents nonprofits, not for-profit developers. In that sense, my new job continues my dedication to serving the public interest in furthering affordable housing development.

Gubb & Barshay actively represents almost every significant affordable housing developer doing work in San Francisco, including the ones mentioned above. They have been representing these nonprofits for many years and have longstanding relationships with all of them and with MOHCD. Gubb & Barshay already works on all of the current transactions I mention above, and will continue to do so even if I am unable to work on these transactions. I believe it will be more

valuable to the City if I can take advantage of my expertise by helping on these transactions. In addition, I believe it will serve the mutual interest of the City and the nonprofit developers if I am able to communicate freely and openly with MOHCD and the City Attorney's Office.

Why the Waivers are Appropriate

The Ethics Commission may grant waivers from subsections (a)(1) and (a)(2) of C&GCC Section 3.234 in instances where granting the waiver would not create the potential for undue influence or unfair advantage. In my case, neither waiver would create such a potential.

Subsection (a)(1). First, I am not seeking a waiver for court proceedings or administrative hearings. Rather, I am simply seeking a waiver that would allow me to communicate and work on transactional matters related to affordable housing in San Francisco. Second, as discussed above, my new firm is already working on the matters that I directly worked on, and will continue to do so even without my involvement. And my firm and the nonprofits we represent all already have long, close relationships with MOHCD and the City in general. But my significant understanding of the unique nature of affordable housing development in San Francisco can only help facilitate these transactions. In addition, it would be immensely helpful to my successors at the City Attorney's Office if I am able to share my institutional knowledge with them.

Additionally, I do not believe I currently have any significant confidential information on current matters that has not already been shared with the nonprofit partners that I would represent. While affordable housing transactions do involve negotiation, because my clients are all nonprofit, mission-driven organizations, MOHCD typically will be completely transparent in those negotiations. In fact, MOHCD often refers to the nonprofit developers as the City's "partners". On the ultimate goal of increasing and preserving affordable housing in San Francisco, their interests align. When issues arise, MOHCD works collaboratively with the nonprofit developers to resolve them. As discussed above, I typically collaborated and cooperated with the nonprofit developers and my new firm in my work for MOHCD.

It is again important to note that all our clients at my new firm are nonprofits. We do not represent for-profit developers in San Francisco. My role is to facilitate the furtherance of the nonprofits' mission to build and maintain affordable housing; not to maximize profits. Our clients work together with MOHCD with the common goal of developing and preserving desperately needed affordable housing in San Francisco. My knowledge and experience with the unique aspects of developing affordable housing in San Francisco can help facilitate achieving that goal.

Because I am a lawyer subject to the rules of professional conduct, I am also required to obtain a separate informed consent waiver for any conflicts of interest from the City Attorney's Office. *See* California Rule of Professional Conduct 3-310. The City Attorney, the Office's Manager Attorney, and the Ethics Team have already reviewed my request and have determined that a waiver of any conflict of interest is appropriate in this instance. *See* Exhibit A. This indicates that the City Attorney's Office has no concern about me working on these matters, and that the office is generally supportive of my waiver request.

For all of the above reasons, I believe granting a waiver under subsection (a)(1) would not create the potential for undue influence or unfair advantage.

Subsection (a)(2). I believe a waiver under subsection (a)(2) is appropriate for the same

reasons described above. In addition, because I was not a team leader in the City Attorney's Office, none of the attorneys I would communicate with would be former subordinates. I therefore don't believe that my former employment would create any undue influence or unfair advantage in communicating with the City Attorney's Office. To the contrary, for the reasons stated above, I believe that allowing me to talk with the City Attorney's Office on affordable housing matters will help further the City's goal of increasing and preserving the City's affordable housing stock. And, it would also allow me to provide critical institutional knowledge to my replacement.

As a final note, I want to emphasize the fact both the City Attorney's Office and MOHCD support my waiver requests. Both offices recognize the unique nature of this practice area and consider my knowledge and experience a valuable asset in furthering the City's goals of developing and preserving affordable housing. They also recognize that the City is in the midst of an extreme housing crisis and could use all possible support to resolve the critical need for affordable housing. By granting these waivers, the Commission would allow me to apply my knowledge and expertise and share my institutional knowledge to help contribute to this worthy cause.

Thank you for your consideration of this letter. If you have any questions regarding this matter, you may reach me by email at egross@gubbandbarshay.com or phone at (415) 781-6600.

Sincerely,



Evan Gross

CC: Dennis J. Herrera, City Attorney
Olson Lee, Director, Mayor's Office of Housing and Community Development

EXHIBIT A

(see attached)

Law Offices of
GUBB & BARSHAY LLP

505 14th Street, Suite 1050
Oakland, California 94612

Telephone: (415) 781-6600
Facsimile: (415) 781-6967

January 8, 2016

Moira Walsh
Office of the San Francisco City Attorney
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102

Re: Request for Informed Written Consent under California Rule of Professional Conduct 3-310(E).

Dear Moira,

Pursuant to California Rule of Professional Conduct 3-310, I am writing to request consent from the City and County of San Francisco (the "City") to represent several nonprofit housing developers in the course of my new employment as a partner at Gubb & Barshay LLP. Gubb & Barshay represents nonprofit affordable housing developers throughout California, primarily as real estate and finance transactional counsel. In San Francisco, Gubb & Barshay only represents nonprofits, not for-profit developers. A list of these existing clients is attached in Exhibit A.

As you know, in my prior position as a Deputy City Attorney on the Real Estate and Finance Team, I primarily represented the Mayor's Office of Housing and Community Development (MOHCD) on affordable housing real estate transactions. I provided advice, drafted and reviewed real estate and finance documents, and generally helped facilitate the development and preservation of affordable housing in San Francisco. My work was almost exclusively transactional; I did not participate in proceedings or adjudicatory hearings. My representation of MOHCD touched on many ongoing and potential affordable housing development-related transactions, listed in Exhibit B.

The purpose of this letter is to seek City's informed written consent under Rule 3-310(E) to represent the clients listed in Exhibit A in affordable housing transactions where the City is a party, including but not limited to the matters described in Exhibit B. Under Rule 3-310(E), an attorney may not accept employment adverse to the lawyer's former client without the former client's consent if the attorney has obtained confidential information material to the new employment.

While Rule 3-310(E) is intended to protect a former client's confidences, my prior representation of MOHCD actually involved very little confidential information. In affordable housing development, it is quite common for these nonprofits to work closely in collaboration with public agencies. This is because they have the shared goal of creating and preserving affordable housing. And in San Francisco especially, it is a very small, tight-knit community with longstanding connections between the City and all of the developers. We would often discuss issues openly with each other and work together to find solutions to any obstacles that would arise. When negotiating with the commercial banks and other public agencies that help

finance affordable housing projects, I often found myself discussing strategy with both MOHCD and the nonprofit developer together. Nonetheless, I believe it is appropriate for me to obtain the City's informed written consent, as set forth in Rule 3-310(E).

Please let me know if you have any questions or if the City Attorney's Office would like any additional information related to this request. Thank you for your consideration, and I appreciate your assistance in this matter.

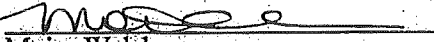
Very truly yours,



Evan Gross

CONSENT TO REPRESENTATION

I have read and understand this letter disclosing the potential conflict of interest between the City and Mr. Gross' clients at Gubb & Barshay. I hereby waive any conflict of interest arising out of Mr. Gross' prior representation of the City in any and all matters related to or arising out of the matters listed in Exhibit B, and consent to that representation, *so long as the matters do not extend to any litigation against the City.*

Name: 
Moira Walsh
Managing Attorney
City Attorney's Office

Date: January 11, 2016

EXHIBIT A

LIST OF SAN FRANCISCO CLIENTS

**Mercy Housing California
Tenderloin Neighborhood Development Corporation
Community Housing Partnership
BRIDGE Housing Corporation
Chinatown Community Development Center
S.F. Housing Development Corporation
Mission Housing Development Corporation**

EXHIBIT B

EXISTING MATTERS LIST

Hunters View HOPE SF - Phase III
Potrero Terrace and Annex HOPE SF
Sunnydale HOPE SF
490 South Van Ness
Balboa Park Upper Yard
Freeway Parcels R, S, U
55 Laguna (Richardson Hall)
17th & Folsom
1296 Shotwell
4th and Folsom
Bill Sorro Apartments (old hugo hotel)
Midtown Apartments
95 Laguna - Laguna Senior
Eddy & Taylor
Canon Kip
Broadway Sansome
Edward II
1180 4th Street
Seawall 322-1/88 Broadway & 735 Davis
Phelan Loop (1100 Ocean Ave)
1036 Mission
1950 Mission
801 Brannan
Ping Yuen (Cluster #1 RAD Phase II)
Ping Yuen North (Cluster #1 RAD Phase II)
Westside Courts (Cluster #2 RAD Phase II)
1750 McAllister (Cluster #3 RAD Phase II)
Rosa Parks (Cluster #3 RAD Phase II)
350 Ellis (Cluster #4 RAD Phase II)

Clementina Towers (Cluster #4 RAD Phase II)
Alemany (Cluster #5 RAD Phase II)
3850 18th Street (Cluster #6 RAD Phase II)

Mission Dolores (Cluster #6 RAD Phase II)
1760 Bush (Cluster #7 RAD Phase II)

Kennedy Towers (Cluster #7 RAD Phase II)
2698 California (Cluster #7 RAD Phase II)
Westbrook (Cluster #8 RAD Phase II)
227 Bay Street (RAD Phase I)
990 Pacific (RAD Phase I)
666 Ellis (RAD Phase I)
The Eddys (RAD Phase I)
430 Turk Street (RAD Phase I)
Holly Courts (RAD Phase I)
31st Ave (RAD Phase I)
Arguello (RAD Phase I)
Duboce (RAD Phase I)
Sanchez (RAD Phase I)
Woodside (RAD Phase I)
HPEW (RAD Phase I)
Pine Street (RAD Phase I)

Argumedo, Catherine (ETH)

From: Charles Sullivan <Charles.Sullivan@sfgov.org>
Sent: Friday, January 15, 2016 4:58 PM
To: Pelham, Leeann (ETH)
Cc: Argumedo, Catherine (ETH); Evan Gross
Subject: Ethics Hearing On Waiver Request

Dear Ms. Pelham,

I was Evan Gross' supervisor during the time that he worked in the City Attorney's Office. The City Attorney's Office supports Evan's request for waivers of Campaign and Governmental Conduct Code Sections 3.234(a)(1) and (a)(2). Please do not hesitate to call me or write to me if I can be of any assistance or answer any questions in furtherance of Evan's request.

Thanks, Charles.

Charles Sullivan
Office of City Attorney Dennis Herrera
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102-4682
415-554-4735 (p)
415-554-4757 (f)

This email may contain privileged or confidential information. If you are not the intended recipient, please reply to this email to inform me of your receipt and then destroy all copies. Thanks.

Argumedo, Catherine (ETH)

From: Lee, Olson (MYR)
Sent: Tuesday, January 19, 2016 3:22 PM
To: Pelham, Leeann (ETH)
Cc: Argumedo, Catherine (ETH); Shen, Andrew (CAT); Hartley, Kate (MYR)
Subject: Evan Gross

Dear LeeAnn:

I strongly support the request of former Deputy City Attorney Evan Gross to be granted a waiver of Campaign and Governmental Conduct Code ("C&GCC") Sections 3.234(a)(1) and (a)(2).

There are many compelling reasons to support Evan's request.

First, Evan is now a partner at Gubb and Barshay, LLP, a law firm that has been an integral partner in the City's effort to build affordable housing development for over 20 years. As opposed to the relationship between lenders and developers of market-rate housing, public lenders and developers of affordable housing share a common goal that is not profit-oriented: to bring high-quality housing to low-income people who cannot compete in the housing marketplace. This basic structure has meant that industry participants such as Gubb and Barshay, their clients, and the City can communicate collaboratively and strategically regarding their common interest. The City does not have a traditionally adversarial relationship with Gubb and Barshay; rather, City staff often look to the firm for input on affordable housing matters.

Second, Evan brings a unique wealth of knowledge to ongoing affordable housing development deals that will facilitate their successful completion and serve the interests of both his new clients and the City.

Third, Evan's work at the City was solely transactional and will continue to be so in his new role. He will never be opposing counsel in a suit adverse to the City's interests.

Finally, Evan has always displayed the utmost integrity. He is honest, an excellent communicator, and committed to the work of affordable housing development. Though we were very sorry to have lost him as our representative City Attorney, we take comfort in knowing that he will continue to work on City affordable housing transactions. With his representation of the City's developer partners, we know the work will proceed with the highest level of professionalism and excellence.

Please do not hesitate to contact me if you have any questions about this recommendation.

Thank you.

Olson Lee

Argumedo, Catherine (ETH)

From: Dan Adams <dadams@bridgehousing.com>
Sent: Monday, January 18, 2016 7:38 PM
To: Pelham, Leeann (ETH)
Cc: Argumedo, Catherine (ETH); Shen, Andrew (CAT); Evan Gross
Subject: Support for waiver request - Evan Gross

I am writing to express my support for Evan Gross' request to be granted a waiver of Campaign and Governmental Conduct Code Sections 3.234(a)(1) and (a)(2).

The production of affordable housing relies on the collaboration of a set of socially-directed professionals with very specific and specialized knowledge. We realize our work through "public/private partnerships" that bring together a host of actors – the public sector, the non-profit community, and private consulting and technical assistance organizations – who work together along shared principles and toward shared goals. Because of the specialized nature of our work, and given the housing crisis we currently face, it is more essential than ever that we fully exploit the skills and talents of those professionals who make significant contributions to our field. Evan is such a professional, and as such, is deserving of the dispensation requested here.

Evan brings a wealth of insight and technical knowledge to the work that groups like BRIDGE Housing and other non-profit housing developers do. His experience working at the City Attorney's Office and with MOHCD represents an invaluable resource to the affordable housing community as we seek to address the extreme need for housing in San Francisco. Furthermore, Gubb and Barshay works in collaboration with every non-profit developer in the Bay Area and are a critical partner in our effort to create more equitable and inclusive communities. Having Evan at Gubb and Barshay provides much needed capacity not only to the firm, but to the San Francisco affordable housing network as a whole. Although we recognize that Evan will be missed at the City Attorney's Office, we are extremely pleased that as a community of non-profit housing developers we have the opportunity to continue to benefit from his integrity, commitment, and professional acumen.

Again, I strongly urge the Ethics Committee to grant this waiver as it will have a direct and positive impact on the production of affordable housing in San Francisco.

Best regards,
Daniel Adams

Daniel Adams | Director, Real Estate Development
BRIDGE Housing | 600 California Street, Suite 900 | San Francisco, CA 94108
D: 415.321.3566 | C: 415.505.9842 | bridgehousing.com

Argumedo, Catherine (ETH)

From: Katie Lamont <klamont@TNDC.org>
Sent: Wednesday, January 20, 2016 5:03 PM
To: Pelham, Leeann (ETH)
Cc: Argumedo, Catherine (ETH); egross@gubbandbarshay.com
Subject: Letter in Support of Commission Waivers requested by former Deputy City Attorney Evan Gross

January 20, 2016

LeeAnn Pelham
Executive Director
San Francisco Ethics Commission
25 Van Ness Ave #220
San Francisco, CA 94102

Re: Letter in Support of Commission Waivers of Campaign and Governmental Conduct Code Sections 3.234(a)(1) and (a)(2) for Evan Gross, Former San Francisco Deputy City Attorney on the Real Estate and Finance Team.

Dear Ms. Pelham:

This letter is to strongly support the request of former Deputy City Attorney Evan Gross that the Commission waive Campaign Governmental Conduct Code §§ 3234(a)(1) and (a)(2).

As you may know, work in the arena of creating and supporting affordable and supportive housing in the city and county of San Francisco is uniquely collaborative between MOHCD and non-profit affordable housing developers. All actors regularly work with an eye toward getting units funded and built, as opposed to an adversarial, profit-driven model. This collaboration has meant that industry participants such as the City and non-profit affordable housing developers (and their attorneys such as Gubb and Barshay) work together for the common interest.

Affordable housing has been identified as a significant urgent issue and is needed now more than ever. Evan Gross represents an important resource in the non-profit affordable housing community, both in his current role as a partner at Gubb and Barshay and in his previous role as Deputy City Attorney. Given his deep knowledge and extensive experience in the field, I believe it is in the City's interest to allow Evan to work on City-funded affordable housing deals in order to further the City's goals of developing and preserving affordable housing.

We do not believe that there would be a conflict of interest should the supported waivers be granted because Mr. Gross's role in the past, as well as in the future, would be solely transactional and suits adverse to the City's interest simply would not arise.

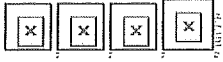
Thank you for your consideration.

Sincerely,

Katie Lamont

Katie Lamont
Director, Housing Development

Katie Lamont, Director of Housing Development
Tenderloin Neighborhood Development Corporation ([TNDC](#))
201 Eddy Street | San Francisco, CA 94102
(415) 358-3921 w | (415) 310-7907 c | klamont@tndc.org



At TNDC, we believe that when people have homes, communities thrive. We envision a San Francisco where low-income people can afford housing that meets their basic needs, is close to the amenities and services that enhance their quality of life, and provides them with the safety and stability they need to fulfill their potential. Will you help us?

[Print](#)

San Francisco Campaign and Governmental Conduct Code

CHAPTER 2: CONFLICT OF INTEREST AND OTHER PROHIBITED ACTIVITIES

- Sec. 3.200. Findings and Purpose.
- Sec. 3.201. Citation.
- Sec. 3.202. Construction.
- Sec. 3.203. Definitions.
- Sec. 3.204. Amendment or Repeal of this Chapter.
- Sec. 3.206. Financial Conflicts of Interest.
- Sec. 3.208. Appointments and Nominations.
- Sec. 3.210. Voting on Own Character or Conduct.
- Sec. 3.212. Decisions Involving Family Members.
- Sec. 3.214. Disclosure of Personal, Professional and Business Relationships.
- Sec. 3.216. Gifts.
- Sec. 3.218. Incompatible Activities.
- Sec. 3.220. Prohibition on Dual Office Holding.
- Sec. 3.222. Prohibiting Officers From Contracting With the City and County.
- Sec. 3.224. Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy.
- Sec. 3.226. Referrals.
- Sec. 3.228. Disclosure or Use of Confidential City Information.
- Sec. 3.230. Prohibition on Political Activity.
- Sec. 3.232. Prohibition on Use of Public Funds for Printed Greeting Cards.
- Sec. 3.234. Post-Employment and Post-Service Restrictions.
- Sec. 3.236. Aiding and Abetting.
- Sec. 3.238. Filing of False Charges.
- Sec. 3.240. Provision of False or Misleading Information; Withholding of Information; and Duty to Cooperate and Assist.
- Sec. 3.242. Penalties and Enforcement.
- Sec. 3.244. Severability.

SEC. 3.200. FINDINGS AND PURPOSE.

(a) The people of the City and County of San Francisco declare that public office is a public trust and all officers and employees of the City and County shall exercise their public duties in a manner

consistent with this trust. To assure that the governmental processes of the City and County promote fairness and equity for all residents and to maintain public trust in governmental institutions, the people of the City and County declare that they have a compelling interest in creating laws regulating conflicts of interest and outside activities of City officers and employees.

(b) The proper operation of the government of the City and County of San Francisco requires that public officers and employees be independent, impartial, and responsible to the people and that public office and employment not be used for personal gain. The public interest, therefore, requires that officers and employees of the City and County be prohibited from making, participating in making or otherwise seeking to influence governmental decisions in which they have a financial interest or accepting gifts and other things of value from regulated sources.

(c) In order to maintain the public's confidence in the integrity of governmental decisions related to the appointment and discipline of public officers and employees, public officers and employees must not give or receive anything of value in consideration of their appointment or accept anything of value from their subordinates, and must not participate in decisions related to their own character or conduct or that of their family members.

(d) City and County contracts should be, and should appear to be, awarded on a fair and impartial basis. The practice of members of Boards and Commissions of the City and County contracting with the City and County creates the potential for, and the appearance of, favoritism or preferential treatment by the City and County. Prohibiting members of Boards and Commissions of the City and County from contracting with the City and County will eliminate both actual and perceived favoritism or preferential treatment without creating unnecessary barriers to public service.

(e) Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis. The practice of former officers and employees communicating with their former colleagues on behalf of private interests and the practice of current officers of the City and County communicating with other officers and employees on behalf of any other person for compensation creates the potential for, and the appearance of, undue influence, favoritism or preferential treatment. Prohibiting former officers and employees from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time and prohibiting current officers from communicating orally, in writing, or in any other manner with other officers and employees of the City and County on behalf of any other person for compensation will eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.

(Added by Proposition E, 11/4/2003) (Former Section 3.200 added by Ord. 71-00, File No. 000358, App. 4/28/2000; repealed by Proposition E, 11/4/2003. Derivation: Former Administrative Code Section 16.980; added by Ord. 374-96, App. 9/30/96)

SEC. 3.201. CITATION.

This Chapter may be cited as the San Francisco Government Ethics Ordinance.

(Added by Ord. 244-09, File No. 091013, App. 12/3/2009)

SEC. 3.202. CONSTRUCTION.

This Chapter shall be liberally construed in order to effectuate its purposes, provided that nothing in this Chapter shall be interpreted or applied to prohibit officers, members and representatives of employee organizations from engaging in organizational activities that are protected by the

California Meyers-Milias-Brown Act, the First Amendment to the United States Constitution or any other federal, state or local law. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this Chapter which does not directly affect the jurisdiction of the Board of Supervisors or the City and County to control the ethical conduct of its officers and employees shall avoid the effect of this Chapter.

(Added by Proposition E, 11/4/2003)

SEC. 3.203. DEFINITIONS.

Whenever in this Chapter the following words or phrases are used, they shall mean:

(a) "Officer" shall mean any person holding City elective office; any member of a board or commission required by Article III, Chapter 1 of this Code to file statements of economic interests; any person appointed as the chief executive officer under any such board or commission; the head of each City department; the Controller; and the City Administrator.

(b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

(Added by Ord. 244-09, File No. 091013, App. 12/3/2009)

SEC. 3.204. AMENDMENT OR REPEAL OF THIS CHAPTER.

The voters may amend or repeal this Chapter. The Board of Supervisors may amend this Chapter if all of the following conditions are met:

(a) The amendment furthers the purposes of this Chapter;

(b) The Ethics Commission approves the proposed amendment by at least a four-fifths vote of all its members;

(c) The proposed amendment is available for public review at least 30 days before the amendment is considered by the Board of Supervisors or any committee of the Board of Supervisors; and

(d) The Board of Supervisors approves the proposed amendment by at least a two-thirds vote of all its members.

(Added by Proposition E, 11/4/2003)

SEC. 3.206. FINANCIAL CONFLICTS OF INTEREST.

(a) **Incorporation of the California Political Reform Act.** No officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code Section 87100 et seq. and any subsequent amendments to these Sections.

(b) **Incorporation of California Government Code 1090, et seq.** No officer or employee of the City and County shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to these Sections.

(c) **Future Employment.** No officer or employee of the City shall make, participate in making,

or otherwise seek to influence a governmental decision, affecting a person or entity with whom the officer or employee is discussing or negotiating an agreement concerning future employment.

(Added by Proposition E, 11/4/2003)

SEC. 3.208. APPOINTMENTS AND NOMINATIONS.

No person shall give or promise, and no officer or employee of the City and County may solicit or accept, any money or other valuable thing in consideration for (i) the person's nomination or appointment to any City and County office or employment, or promotion or other favorable City and County employment action, or (ii) any other person's nomination or appointment to any City and County office or employment or promotion or other favorable City and County employment action.

(Added by Proposition E, 11/4/2003)

SEC. 3.210. VOTING ON OWN CHARACTER OR CONDUCT.

(a) **Prohibition.** No officer or employee of the City and County shall knowingly vote on or attempt to influence a governmental decision involving his or her own character or conduct, or his or her appointment to any office, position, or employment.

(b) **Exceptions.** Nothing in this Section shall prohibit an officer or employee from (i) responding to allegations, applying for an office, position, or employment, or responding to inquiries; or (ii) participating in the decision of his or her board, commission, or committee to choose him or her as chair, vice chair, or other officer of the board, commission, or committee.

(Added by Proposition E, 11/4/2003)

SEC. 3.212. DECISIONS INVOLVING FAMILY MEMBERS.

(a) **Prohibition.** No officer or employee of the City and County may make, participate in making, or otherwise seek to influence a decision of the City and County regarding an employment action involving a relative. Nothing in this Section shall prohibit an officer or employee from acting as a personal reference or providing a letter of reference for a relative who is seeking appointment to a position in any City department, board, commission or agency other than the officer or employee's department, board, commission or agency or under the control of any such department, board, commission or agency.

(b) **Delegation.** A Department Head who is prohibited under Subsection (a) from participating in an employment action involving a relative shall delegate in writing to an employee within the department any decisions regarding such employment action.

(c) **Definitions.** For purposes of this Section, the term "employment action" shall be limited to hiring, promotion, or discipline, and the term "relative" shall mean a spouse, domestic partner, parent, grandparent, child, sibling, parent-in-law, aunt, uncle, niece, nephew, first cousin, and includes any similar step relationship or relationship created by adoption.

(Added by Proposition E, 11/4/2003)

SEC. 3.214. DISCLOSURE OF PERSONAL, PROFESSIONAL AND BUSINESS RELATIONSHIPS.

(a) **Disclosure.** A City officer or employee shall disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this Section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the City officer or employee's department, board, commission or agency shall constitute the public record.

(b) **Penalties.** A court may void any governmental decision made by a City officer or employee who fails to disclose a relationship as required by Subsection (a) if the court determines that: (1) the failure to disclose was willful; and (2) the City officer or employee failed to render his or her decision with disinterested skill, zeal, and diligence and primarily for the benefit of the City. No other penalties shall apply to a violation of this Section, provided that nothing in this Section shall prohibit an appointing authority from imposing discipline for a violation of this Section.

(c) **Regulations.** The Ethics Commission may adopt regulations setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this Section.

(Added by Proposition E, 11/4/2003)

SEC. 3.216. GIFTS.

(a) **Prohibition on Bribery.** No person shall offer or make, and no officer or employee shall accept, any gift with the intent that the City officer or employee will be influenced thereby in the performance of any official act.

(b) **General gift restrictions.** In addition to the gift limits and reporting requirements imposed by the Political Reform Act and this Code and any subsequent amendments thereto, no officer or employee of the City and County shall solicit or accept any gift or loan from a person who the officer or employee knows or has reason to know is a restricted source, except loans received from commercial lending institutions in the ordinary course of business.

(1) **Restricted Source.** For purposes of this section, a restricted source means: (A) a person doing business with or seeking to do business with the department of the officer or employee; or (B) a person who during the prior 12 months knowingly attempted to influence the officer or employee in any legislative or administrative action.

(2) **Gift.** For purposes of this subsection, the term gift has the same meaning as under the Political Reform Act, California Government Code Section 81000 et seq., and the regulations adopted thereunder, including any subsequent amendments. Gifts exempted from the limits imposed by California Government Code Section 89503 and Section 3.1-101 of the Campaign and Governmental Conduct Code shall also be exempted from the prohibition set forth in this subsection.

(3) **Regulations.** The Ethics Commission shall issue regulations implementing this section, including regulations exempting voluntary gifts that are nominal in value such as gifts that are given by vendors to clients or customers in the normal course of business.

(c) **Gifts from Subordinates.** No officer or employee shall solicit or accept any gift or loan, either directly or indirectly, from any subordinate or employee under his or her supervision or from any candidate or applicant for a position as a subordinate or employee under his or her supervision. The Ethics Commission shall issue regulations implementing this Section, including regulations

exempting voluntary gifts that are given or received for special occasions or under other circumstances in which gifts are traditionally given or exchanged.

(d) **Gifts of Travel.**

(1) **Gifts to Elected Officers.** In addition to the gift limits and reporting requirements imposed by the Political Reform Act and this Code, no elected officer may accept a gift of transportation, lodging, or subsistence for any out-of-state trip paid for in part by an individual or entity other than the City and County of San Francisco, another governmental body, or a bona fide educational institution, defined in Section 203 of the Revenue and Taxation Code, unless the officer has first disclosed on a form filed with the Ethics Commission:

(A) the name of the individual or entity and the total amount that will be paid by the individual or entity to fund the trip, including but not limited to the amount directly related to the cost of the elected officer's transportation, lodging, and subsistence;

(B) the name, occupation and employer of any contributor who has contributed more than \$500 to the individual or entity funding the trip and whose contributions were used in whole or in part to fund the trip;

(C) a description of the purpose of the trip and the itinerary; and

(D) the name of any individual accompanying the official on the trip who is:

(i) a City employee required to file a Statement of Economic Interests,

(ii) a lobbyist or campaign consultant registered with the Ethics Commission,

(iii) an employee of or individual who has any ownership interest in a lobbyist or campaign consultant registered with the Ethics Commission, or

(iv) the individual funding the trip, or an employee or officer of the entity funding the trip.

(2) **Reimbursement of Gifts of Travel.** In addition to any other reporting requirements imposed by the Political Reform Act or local law, an elected officer who reimburses an individual or entity for a gift of transportation, lodging or subsistence related to out-of-state travel and thereby avoids having received or accepted the gift shall file a form with the Ethics Commission within 30 days of such reimbursement disclosing:

(A) the name of the individual or entity that originally paid for the transportation, lodging or subsistence;

(B) the amount paid by the individual or entity for the elected officer's transportation, lodging or subsistence;

(C) the amount reimbursed by the elected officer to the individual or entity and the process used to determine that amount; and

(D) a description of the purpose of the trip and the itinerary.

(3) **Format.** The Ethics Commission shall provide forms for the disclosure required by this subsection and shall make the completed forms available on its website.

(4) **Definition.** For the purpose of this subsection, the term "elected officer" means the Mayor, member of the Board of Supervisors, City Attorney, District Attorney, Public Defender, Assessor, Treasurer, and Sheriff.

(e) **Restrictions.** Nothing in this section shall prohibit a City department, agency, board or commission from imposing additional gift restrictions on its officers or employees.

(Added by Proposition E, 11/4/2003; amended by Ord. 128-06, File No. 060217, App. 6/22/2006; Ord. 301-06, File No. 061333, App. 12/18/2006; Ord. 107-11, File No. 110335, App. 6/20/2011, Eff. 7/20/2011)

SEC. 3.218. INCOMPATIBLE ACTIVITIES.

(a) **Prohibition.** No officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as incompatible in a statement of incompatible activities adopted under this Section. No officer or employee may be subject to discipline or penalties under this Section unless he or she has been provided an opportunity to demonstrate that his or her activity is not in fact inconsistent, incompatible or in conflict with the duties of the officer or employee.

(b) **Statement of Incompatible Activities.** Every department, board, commission, and agency of the City and County shall, by August 1 of the year after which this Section becomes effective, submit to the Ethics Commission a statement of incompatible activities. No statement of incompatible activities shall become effective until approved by the Ethics Commission after a finding that the activities are incompatible under the criteria set forth in Subsection (c). After initial approval by the Ethics Commission, a department, board, commission or agency of the City and County may, subject to the approval of the Ethics Commission, amend its statement of incompatible activities. The Ethics Commission may, at any time, amend the statement of incompatible activities of any department, board, commission or agency of the City and County.

(c) **Required Language.** Each statement of incompatible activities shall list those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of the department, board, commission, or agency of the City and County. This list shall include, but need not be limited to, activities that involve: (1) the use of the time, facilities, equipment and supplies of the City and County; or the badge, uniform, prestige, or influence of the City and County officer or employee's position for private gain or advantage; (2) the receipt or acceptance by an officer or employee of the City and County of any money or other thing of value from anyone other than the City and County for the performance of an act that the officer or employee would be required or expected to render in the regular course of his or her service or employment with the City and County; (3) the performance of an act in a capacity other than as an officer or employee of the City and County that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of the City and County officer or employee's department, board, commission or agency; and (4) time demands that would render performance of the City and County officer or employee's duties less efficient. The Ethics Commission may permit City boards and commissions to exclude any required language from their statement of incompatible activities if their members, by law, must be appointed in whole or in part to represent any profession, trade, business, union or association.

(d) **Meet and Confer.** No statement of incompatible activities or any amendment thereto shall become operative until the City and County has satisfied the meet and confer requirements of State law.

(e) **Notice.** Every department, board, commission and agency of the City and County shall annually provide to its officers and employees a copy of its statement of incompatible activities.

(f) **Existing Civil Service Rules.** Rules and Regulations relating to outside activities previously adopted or approved by the Civil Service Commission shall remain in effect until statements of

incompatible activities are adopted pursuant to this Section.

(Added by Proposition E, 11/4/2003)

SEC. 3.220. PROHIBITION ON DUAL OFFICE HOLDING.

Any person holding an office under the City and County with an annual salary in excess of \$2,500, whether by election or by appointment, who shall, during his or her term of office, hold or retain any other office with such a salary under the government of the United States, the State of California, or the City and County shall be deemed to have thereby vacated the office held by him or her under the City and County. For the purposes of this Section, the term salary does not include: (1) a stipend, per diem, or other payment provided for attendance at meetings; or (2) health, dental or vision insurance, or other non-cash benefits.

(Added by Proposition E, 11/4/2003)

SEC. 3.222. PROHIBITING OFFICERS FROM CONTRACTING WITH THE CITY AND COUNTY.

(a) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Business.** The term "business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, or other legal entity or undertaking organized for economic gain.

(2) **City and County.** The term "City and County" includes any commission, board, department, agency, committee, or other organizational unit of the City and County of San Francisco.

(3) **Contract.** The term "contract" means any agreement other than a grant or an agreement for employment in exchange for salary and benefits.

(4) **Subcontract.** The term "subcontract" means a contract to perform any work that a primary contractor has an agreement with the City and County, the San Francisco Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified School District, or the San Francisco Community College District to perform.

(b) **Prohibition.** During his or her term of office, no officer shall enter, submit a bid for, negotiate for, or otherwise attempt to enter, any contract or subcontract with the City and County, the San Francisco Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified School District, or the San Francisco Community College District, where the amount of the contract or the subcontract exceeds \$10,000.

(c) **Exceptions.** This Section shall not apply to the following contracts or subcontracts:

(1) A contract or subcontract with a nonprofit organization;

(2) A contract or subcontract with a business with which an officer is affiliated unless the officer exercises management and control over the business. A member exercises management and control if he or she is:

(A) An officer or director of a corporation;

(B) A majority shareholder of a closely held corporation;

(C) A shareholder with more than five percent beneficial interest in a publicly traded corporation;

(D) A general partner or limited partner with more than 20 percent beneficial interest in the partnership; or

(E) A general partner regardless of percentage of beneficial interest and who occupies a position of, or exercises management or control of the business;

(3) A contract or subcontract entered into before a member of a board or commission commenced his or her service;

(4) An agreement to provide property, goods or services to the City and County at substantially below fair market value; or

(5) A settlement agreement resolving a claim or other legal dispute.

(d) **Waiver.** The Ethics Commission may waive the prohibitions in this section for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.

(e) **Limitation.** Failure of an officer to comply with this Section shall not be grounds for invalidating any contract with the City and County.

(Added by Proposition E, 11/4/2003; Ord. 244-09, File No. 091013, App. 12/3/2009)

SEC. 3.224. PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE OTHER CITY OFFICERS AND EMPLOYEES – COMPENSATED ADVOCACY.

(a) **Prohibition.** No officer of the City and County shall directly or indirectly receive any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision.

(b) **Exceptions.** This section shall not apply to any communication by: (1) an officer of the City and County on behalf of the City and County; (2) an officer of the City and County on behalf of a business, union, or organization of which the officer is a member or full-time employee; (3) an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer; or (4) a City officer in his or her capacity as a licensed attorney engaged in the practice of law, which includes representing clients in communications with the City Attorney's Office, District Attorney's Office, Public Defender's Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by the City, representatives of the City who are named in a pending litigation matter or witnesses or potential witnesses in a pending litigation matter.

(c) **Waiver.** The Ethics Commission may waive the prohibitions in this section for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.

(Added by Proposition E, 11/4/2003; Ord. 97-06, File No. 051837, App. 5/19/2006; Ord. 244-09, File No. 091013, App. 12/3/2009)

SEC. 3.226. REFERRALS.

No officer or employee of the City and County shall: (a) receive any money, gift or other thing of economic value from a person or entity other than the City and County for referring a member of the public to a person or entity for any advice, service or product related to the processes of the City and County; or (b) condition any governmental action on a member of the public hiring, employing, or contracting with any specific person or entity. The Ethics Commission may waive the restriction in Subsection (b) if the Commission determines that granting a waiver is necessary for the proper administration of a governmental program or action.

(Added by Proposition E, 11/4/2003)

SEC. 3.228. DISCLOSURE OR USE OF CONFIDENTIAL CITY INFORMATION.

No current or former officer or employee of the City and County shall: (a) willfully or knowingly disclose any confidential or privileged information, unless authorized or required by law to do so; or (b) use any confidential or privileged information to advance the financial or other private interest of himself or herself or others. Confidential or privileged information is information that at the time of use or disclosure was not subject to disclosure under the Sunshine Ordinance or California Public Records Act.

(Added by Proposition E, 11/4/2003)

SEC. 3.230. PROHIBITION ON POLITICAL ACTIVITY.

(a) **Solicitation of Contributions.** No City officer or employee shall knowingly, directly or indirectly, solicit political contributions from other City officers or employees or from persons on employment lists of the City. Nothing in this Section shall prohibit a City officer or employee from communicating through the mail or by other means requests for political contributions to a significant segment of the public which may include City officers or employees.

(b) **Political Activities in Uniform.** No City officer or employee shall participate in political activities of any kind while in uniform.

(c) **Political Activities on City Time or Premises.** No City officer or employee may engage in political activity during working hours or on City premises. For the purposes of this Subsection, the term "City premises" shall not include City owned property that is made available to the public and can be used for political purposes.

(Added by Proposition E, 11/4/2003)

SEC. 3.232. PROHIBITION ON USE OF PUBLIC FUNDS FOR PRINTED GREETING CARDS.

(a) **Definitions.** The term "greeting card" means any printed card that celebrates or recognizes a holiday.

(b) **Prohibition.** No public funds may be used to design, produce, create, mail, send, or deliver any printed greeting card. The Controller of the City and County of San Francisco shall, in the Controller's sole discretion, determine whether a payment is prohibited under this Section.

The Controller's decision regarding whether a payment is prohibited under this Section is final.

(Added by Proposition E, 11/4/2003)

SEC. 3.234. POST-EMPLOYMENT AND POST SERVICE RESTRICTIONS.

(a) All Officers and Employees.

(1) Permanent Restriction on Representation In Particular Matters.

(A) **Prohibition.** No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

(i) in which the City and County is a party or has a direct and substantial interest;

(ii) in which the former officer or employee participated personally and substantially as a City officer or employee; and

(iii) which involved a specific party or parties at the time of such participation.

(B) **Restriction on assisting others.** No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall aid, advise, counsel, consult or assist another person (except the City and County) in any proceeding in which the officer or employee would be precluded under Subsection (A) from personally appearing.

(C) **Exception for testimony.** The prohibitions in Subsections A and B do not prohibit a former officer or employee of the City and County from testifying as a witness, based on the former officer's or employee's personal knowledge, provided that no compensation is received other than the fees regularly provided for by law or regulation of witnesses.

(2) **One-Year Restriction on Communicating with Former Department.** No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

(3) **Employment With Parties That Contract With The City.** No current or former officer or employee of the City shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.

(b) Mayor, Members of the Board of Supervisors, and their Senior Staff Members.

(1) **One year restriction on communicating with City departments.** For purposes of the one-year restriction under subsection (a)(2), the "department" for which a former Mayor, a former member of the Board of Supervisors, or a former senior staff member to either the Mayor or a member of the Board of Supervisors served shall be the City and County and the prohibition in subsection (a)(2) shall extend to communications with:

- (A) a board, department, commission or agency of the City and County;
- (B) an officer or employee of the City and County;
- (C) an appointee of a board, department, commission, agency, officer, or employee of the City and County; or
- (D) a representative of the City and County.

For the purposes of this subsection, "a former senior staff member to either the Mayor or a member of the Board of Supervisors" means an individual employed in any of the following positions at the time the individual terminated his or her employment with the City: the Mayor's Chief of Staff, the Mayor's Deputy Chief of Staff, a Legislative Aide to a member of the Board of Supervisors or a position that the Ethics Commission determines by regulation is an equivalent position based on an analysis of the functions and duties of the position.

(2) City service.

(A) Except as provided in Subsection (B), no former Mayor or member of the Board of Supervisors shall be eligible for a period of one year after the last day of service as Mayor or member of the Board of Supervisors, for appointment to any full time, compensated employment with the City and County. This restriction shall not apply to a former Mayor or Supervisor elected to an office of the City and County, appointed to fill a vacancy in an elective office of the City and County, or appointed to a board or commission in the executive branch.

(B) Notwithstanding the one-year restriction in Subsection (A), a former Mayor who was appointed to that office under Charter Section 13.101.5 to fill a vacancy shall be eligible for appointment to any City employment, provided that (i) the former Mayor did not file a declaration of candidacy for election to the office of Mayor after being appointed to that office, (ii) the former Mayor was employed by the City immediately prior to assuming the office of Mayor, and (iii) the salary in the first year of the new employment shall not exceed the salary received by the former Mayor in the City employment that he or she held immediately prior to assuming office as Mayor.

(c) Waiver.

(1) At the request of a current or former City employee or officer, the Ethics Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage.

(2) At the request of a current or former City employee or officer, the Ethics Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) for members of City boards and commissions who, by law, must be appointed to represent any profession, trade, business union or association.

(3) At the request of a current or former City officer or employee, the Ethics Commission may waive the prohibition in Subsection (a)(3) if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee.

(4) The Ethics Commission may adopted regulations implementing these waiver provisions.

(Added by Proposition E, 11/4/2003; amended by Ord. 218-07, File No. 070505, App. 9/21/2007; Ord. 208-09, File No. 090219, App. 9/25/2009; Ord. 86-11, File No. 110023, App. 5/31/2011, Eff. 6/30/11)

SEC. 3.236. AIDING AND ABETTING.

No person shall knowingly and intentionally provide assistance to or otherwise aid or abet any other person in violating any of the provisions of this Chapter.

(Added by Proposition E, 11/4/2003)

SEC. 3.238. FILING OF FALSE CHARGES.

No person shall knowingly and intentionally file with the Ethics Commission, the District Attorney or the City Attorney any false charge alleging a violation of this Chapter.

(Added by Proposition E, 11/4/2003)

SEC. 3.240. PROVISION OF FALSE OR MISLEADING INFORMATION; WITHHOLDING OF INFORMATION; AND DUTY TO COOPERATE AND ASSIST.

(a) **Prohibition.** No person shall knowingly and intentionally furnish false or fraudulent evidence, documents, or information to the Ethics Commission, District Attorney or City Attorney, or knowingly and intentionally misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Ethics Commission, District Attorney or City Attorney of an alleged violation of this Chapter.

(b) **Duty to Cooperate and Assist.** The Ethics Commission, District Attorney or City Attorney may request and shall receive from every City officer and employee cooperation and assistance with an investigation into an alleged violation of this Chapter.

(Added by Proposition E, 11/4/2003)

SEC. 3.242. PENALTIES AND ENFORCEMENT.

(a) **Criminal Penalties.** Any person who knowingly or willfully violates any of the City's conflict of interest and governmental ethics laws shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000 for each violation or by imprisonment in the County jail for a period of not more than one year in jail or by both such fine and imprisonment.

(b) **Civil Penalties.** Any person who intentionally or negligently violates any City conflict of interest or governmental ethics law shall be liable in a civil action brought by the City Attorney for an amount up to \$5,000 for each violation.

(c) **Injunctive Relief.** The City Attorney or any resident may bring a civil action on behalf of the people of San Francisco to enjoin violations of or compel compliance with a conflict of interest or governmental ethics law. No resident may commence a civil action under this Section without first notifying the City Attorney in writing of the intent to file a civil action under this Section. If the City Attorney fails to notify the resident within 120 days of receipt of the notice that the City Attorney has filed or will file a civil action, the complainant may file the action. No resident may file an action under this Section if the City Attorney responds within 120 days that the City Attorney intends to file an action or has already filed a civil action. No resident may bring an action under this Section if the Ethics Commission has issued a finding of probable cause arising out of the same facts, the District Attorney has commenced a criminal action arising out of the same facts, or another resident has filed a civil action under this Section arising out of the same facts. A court may

award reasonable attorney's fees and costs to any resident who obtains injunctive relief under this Section.

(d) **Administrative Penalties.** Any person who violates any of the City's conflict of interest or governmental ethics laws shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter. In addition to the administrative penalties set forth in the Charter, the Ethics Commission may issue warning letters to City officers and employees.

(e) **Statute of Limitations.** No person may bring a criminal, civil or administrative action under this Section against any other person more than four years after the date of the alleged violation.

(Added by Proposition E, 11/4/2003)

SEC. 3.244. SEVERABILITY.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Chapter and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

(Added by Proposition E, 11/4/2003)

Related to Conflicts of Interest

January 24, 2014

Regulation 3.202-1. Construction – Reliance on Examples
 Regulation 3.212-1. Decisions Involving Family Members—Limited to Employment
 Regulation 3.214-1. Disclosure of Personal, Professional & Business Relationships – Basic Rule; Guide to Determining Whether Disclosure is Required
 Regulation 3.214-2. Disclosure of Personal, Professional & Business Relationships – Determining Whether a City Officer or Employee is Making a Governmental Decision
 Regulation 3.214-3. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual is the Subject of a Governmental Decision
 Regulation 3.214-4. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual has an Ownership or Financial Interest in the Subject of a Governmental Decision
 Regulation 3.214-5. Disclosure of Personal, Professional & Business Relationships – Determining Whether the Ability of an Officer or Employee to Act for the Benefit of the Public Can Reasonably Be Questioned
 Regulation 3.214-6. Disclosure of Personal, Professional & Business Relationships – Disclosure on the Public Record
 Regulation 3.216(b)-1. Gifts from Restricted Sources – Definition of "doing business with the department"
 Regulation 3.216(b)-2. Gifts from Restricted Sources – Definition of "knowingly attempted to influence the officer or employee in any legislative or administrative action"
 Regulation 3.216(b)-3. Gifts from Restricted Sources – Definition of department
 Regulation 3.216(b)-4. Definition of person
 Regulation 3.216(b)-5. Gifts from Restricted Sources – Exemptions
 Regulation 3.216(c)-1: Gifts from Subordinates
 Regulation 3.216(d)-1: Gifts of Travel
 Regulation 3.218-1. Incompatible Activities – Approval of and Amendments to Statements of Incompatible Activities
 Regulation 3.218-2. Incompatible Activities – Notice
 Regulation 3.218-3. Incompatible Activities – Opportunity to Contest Incompatibility
 Regulation 3.220-1. Prohibition on Dual Officeholding – Dual Offices held under the City and County
 Regulation 3.224-1. Compensated Advocacy – Definition – Intent to Influence
 Regulation 3.224-2. Compensated Advocacy – Waivers for Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations
 Regulation 3.226-1. Referrals – Waivers
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 Regulation 3.234-1. Permanent Restrictions on Representing and Assisting Others in Particular Matters (Post-Employment Restrictions)
 Regulation 3.234-2. One Year Restriction on Communicating with Former Department (Post-Employment Restrictions)
 Regulation 3.234-3. Restrictions on Future Employment with Parties that Contract with the City (Post-Employment Restrictions)
 Regulation 3.234-4. Waivers (Post-Employment Restrictions)
 Regulation 3.234-5. Definitions (Post-Employment Restrictions)

Regulation 3.202-1. Construction – Reliance on Examples

The application of Ethics Commission Regulations may differ depending upon the facts of each actual situation. The examples provided in the Regulations are hypothetical situations that should not be relied upon if the facts of an actual situation differ.

Regulation 3.212-1. Decisions Involving Family Members—Limited to Employment

The prohibition in section 3.212 is limited to "employment actions" involving family members and does not apply to an appointment to, or other decisions related to, holding a City office or position that is nonsalaried. The payment of per diem, health benefits, or fees for attending meetings does not constitute salary.

Regulation 3.214-1. Disclosure of Personal, Professional & Business Relationships – Basic Rule; Guide to Determining Whether Disclosure is Required

To determine whether section 3.214 requires a City officer or employee to disclose on the public record a personal, professional, or business relationship, proceed with the following analysis:

- (a) Determine whether the City officer or employee is making a governmental decision. See San Francisco Ethics Commission Regulation 3.214-2 to determine whether a City officer or employee is making a governmental decision. If the City officer or employee is making a governmental decision proceed to subsection (b). If the City officer or employee is not making a governmental decision, no disclosure is required.
- (b) Determine whether the City officer or employee has a personal, professional or business relationship with an individual who is the subject of a governmental decision being made by the officer or employee. See San Francisco Ethics Commission Regulation 3.214-3 to determine whether an individual is the subject of the governmental decision. Proceed to subsection (d) if the City officer or employee has a personal, professional, or business relationship with an individual who is the subject of the governmental decision being made by the officer or employee. Proceed to subsection (c) if the City officer or employee does not have a personal, professional or business relationship with the individual who is the subject of the governmental decision being made by the officer or employee.
- (c) Determine whether the City officer or employee has a personal, professional or business relationship with an individual who has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee. See San Francisco Ethics Commission Regulation 3.214-4 to determine whether an individual has an ownership or financial interest in the subject of the governmental decision. Proceed to subsection (d) if the City officer or employee has a personal, professional, or business relationship with an individual who has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee. If the City officer or employee does not have a personal, professional or business relationship with an individual who is the subject of or has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee, no disclosure is required.
- (d) Determine whether, as a result of the personal, professional, or business relationship with the individual who is the subject of or has an ownership or financial interest in the subject of the governmental decision, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. See San Francisco Ethics Commission Regulation 3.214-5 to determine whether the ability of an officer or employee to act for the benefit of the public can reasonably be questioned. If as a result of the personal, professional, or business relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned, disclosure is required. If as a result of

the personal, professional, or business relationship, the ability of the officer or employee to act for the benefit of the public could not reasonably be questioned, disclosure is not required.

Regulation 3.214-2. Disclosure of Personal, Professional & Business Relationships – Determining Whether a City Officer or Employee is Making a Governmental Decision

(a) A City officer or employee is making a governmental decision any time the officer or employee: (1) votes on a matter; (2) appoints a person; (3) obligates or commits his or her department, board, commission or agency to any course of action; (4) enters into any contractual agreement on behalf of his or her department, board, commission or agency; (5) determines not to act within the meaning of subsection (a)(1), (a)(2), (a)(3), or (a)(4).

(b) A City officer or employee is not making a governmental decision when: (1) the governmental decision must be approved by other City officers or employees within the same department, board, commission or agency of the City officer or employee; or (2) the City officer or employee provides advice to City officers and employees in a different department, board, commission or agency who are responsible for making the governmental decision.

Example 1. An employee at the Port of San Francisco reviews a rent reduction request from one of the Port's tenants and drafts a recommendation to the Port Commission regarding the request. Because the Port Commission, not the employee, must decide whether to grant the tenant's request, the decision regarding whether to grant the request is not a governmental decision being made by the employee.

Example 2. An employee in the Department of Human Resources provides advice to the Director of Elections about the procedures for hiring an exempt employee. Because the employee has provided advice to a City employee in a different department about a governmental decision that the other employee is responsible for making, the decision to hire the exempt employee is not a governmental decision being made by the employee in the Department of Human Resources.

Example 3. A member of the Arts Commission votes to award a grant to a non-profit organization, but the final grant agreement between the City and the non-profit organization must be approved by the Board of Supervisors. Even though the Board of Supervisors must ultimately approve the agreement, by voting on the grant, the member of the Arts Commission is making a government decision. The exception for when a governmental decision must be approved by other City officers or employees within the same department, board, commission or agency does not apply because the vote is the final action taken by the Arts Commission. No other City officer or employee within the same department, board, commission or agency will need to approve this decision. Likewise, the exception for when the City officer or employee provides advice to City officers and employees in a different department, board, commission or agency who are responsible for making the governmental decision does not apply because by voting to award the grant to the non-profit organization, the members of the Arts Commission are doing more than merely providing advice to the Board of Supervisors. The members of the Arts Commission are making a government decision to provide funding to the non-profit organization so long as the Board of Supervisors grants final approval.

Regulation 3.214-3. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual is the Subject of a Governmental Decision

An individual is the subject of a governmental decision when that individual personally or by an agent: (a) initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or similar request; (b) is a named party in the proceeding in which the governmental decision will be made; or (c) attempts to influence any City officer or employee who is responsible for making the governmental decision. No individual or entity is the subject of a governmental decision that is an action of general application such as rulemaking, legislation, or the formulation of general policy, standards or objectives.

Example 1. John Smith filed an appeal with the Assessment Appeals Board to challenge the Assessor's valuation of his home. Because Mr. Smith. filed the appeal, he initiated the proceeding before the Assessment Appeals Board and is therefore an individual who is the subject of a governmental decision.

Example 2. Jane Brown and William Jones each submitted a response to a request for proposals issued by the Department of Health. Although the Department of Health will award the final contract to only one of these individuals, each of the individuals is the subject of a governmental decision because each of them has submitted a proposal.

Example 3. The Board of Supervisors is considering legislation that will require all dog walkers in the City to register with the Animal Care and Control Commission and file disclosure reports regarding how many dogs are walked per week and where the dogs are taken on their walks. A dog walker testifies in opposition to the legislation before the Board's City Services Committee. Although the dog walker attempted to influence members of the Board of Supervisors who are responsible for making the decision whether to approve the proposed legislation, the dog walker is not an individual who is the subject of a governmental decision because the governmental decision being made is an action of general application.

Regulation 3.214-4. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual has an Ownership or Financial Interest in the Subject of a Governmental Decision

An individual has an ownership or financial interest in the subject of a governmental decision when that individual: (a) has an investment interest of \$2,000 or more in a business entity that is the subject of the governmental decision; (b) has received income of \$500 or more in the previous 12-months from an individual or entity that is the subject of the governmental decision; or (c) holds a position as director, officer, partner, or trustee with a business or non-profit entity that is the subject of the governmental decision.

Example 1. An investor has recently purchased \$50,000 of XYZ Incorporated's stock. XYZ Incorporated is the subject of a governmental decision before the Assessment Appeals Board because it has filed an appeal to challenge the Assessor's determined value of an office building it owns in the financial district. Because the investor has an investment interest of \$2,000 or more in XYZ Incorporated, he is an individual who has an ownership or financial interest in the subject of a governmental decision.

Example 2. A local non-profit organization is seeking a grant from the Small Business Commission to plant trees outside of small businesses located on Haight Street. One member of the Commission is also a member of the non-profit's Board of Directors. A second member of the Commission is a general dues paying member of the non-profit organization. The Commissioner who is also a member of the non-profit's board of directors is an individual who has an ownership or financial interest in the subject of a governmental decision because she is an officer of a non-profit organization that is the subject of a government decision. But the Commissioner who is a general dues paying member of the non-profit is not an individual who has an ownership or financial interest in the subject of a governmental decision because, although he is affiliated with the non-profit seeking a grant from the Commission, he does not hold a position as a director, officer, partner, or trustee with the non-profit.

Regulation 3.214-5. Disclosure of Personal, Professional & Business Relationships – Determining Whether the Ability of an Officer or Employee to Act for the Benefit of the Public Can Reasonably Be Questioned

(a) The ability of an officer or employee to act for the benefit of the public can reasonably be questioned if:

(1) the officer or employee knows or has reason to know that an individual with whom the officer or employee has a personal, professional or business relationship is the subject of or has an ownership or financial interest in the subject of a governmental decision; and
 (2) the personal, professional or business relationship the City officer or employee has with the individual who is the subject of or who has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee is a personal, professional, or business relationship as those relationships are defined in subsection (b) of this regulation.

(b) Whenever used in section 3.214, the phrase "personal, professional or business relationship" shall mean a relationship as described in subsections (b)(1), (b)(2), and (b)(3) of this regulation, which arises out of the private personal, professional or business activities of a City officer or employee and does not arise solely from the officer or employee's official duties.

(1) Personal relationship. A personal relationship is a relationship involving a family member or a personal friend, but does not include a mere acquaintance.

(2) Professional relationship. A professional relationship is a relationship with a person based on regular contact in a professional capacity, including regular contact in conducting volunteer and charitable activities.

(3) Business relationship. An officer has a business relationship with a person if, within the two years prior to the decision, the person was a client, business partner, colleague, or did business with the officer or employee's business. A business relationship does not include a person with whom the officer or employee does business in a personal capacity, such as a grocery store owner.

Example 1. A member of the Planning Commission has a daughter who attends school with the daughter of an applicant for a permit pending before the Planning Commission. The daughters are friends, and the Planning Commissioner knows the applicant and says hello at school functions, but the Planning Commissioner and the applicant do not socialize. The member of the Planning Commission is not required to disclose this relationship because the applicant is a mere acquaintance and therefore the relationship is not considered a "personal relationship" within the meaning of section 3.214.

Example 2. A member of the Planning Commission serves on the Board of Directors of his daughter's private school. The head of the parent teacher organization at the school is an applicant for a permit pending before the Planning Commission. The Board of Directors works closely with the parent teacher organization on fundraising for the school. The member of the Planning Commission should disclose this relationship because he has a "professional relationship" with the applicant within the meaning of section 3.214, based on his regular contact with conducting volunteer or charitable activity with the applicant.

Example 3. A member of the Planning Commission provides tax-consulting services. The applicant for a permit pending before the Commission is a former client, as well as the owner of the small drug store where the Planning Commissioner shops. The Planning Commissioner must disclose this relationship if the applicant was a client of his within the previous two years because this would constitute a "business relationship" under section 3.214. If the person was a client more than two years ago, the Planning Commissioner would not be deemed to have a business relationship based on his patronage of the applicant's store because a "business relationship" under section 3.214 does not include a person with whom the officer or employee does business in a personal capacity. But if the Commissioner and the applicant had developed a personal friendship, he may be required to disclose that relationship as a "personal relationship" under section 3.214.

Example 4. A member of the Planning Commission previously served on the City's Library Commission. An applicant for a permit pending before the Commission often appeared before the Library Commission while the Commissioner served on that body. The member of the Planning Commission has no other relationship with the applicant other than his experience dealing with the applicant at the Library Commission. The Commissioner does not need to disclose this relationship on the public record because the relationship arose solely from the Commissioner's official duties and is therefore not a personal, professional or business relationship within the meaning of section 3.214.

Regulation 3.214-6. Disclosure of Personal, Professional & Business Relationships – Disclosure on the Public Record

The minutes of a public meeting at which a governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the office of the City officer or employee's department, board, commission or agency shall constitute the public record. Disclosure on the public record must occur before the governmental decision is made and need be repeated when a decision is considered over multiple days or meetings.

Regulation 3.216(b)-1. Gifts from Restricted Sources – Definition of "doing business" with the department

As used in section 3.216(b)(1), "doing business" with the department of the officer or employee means entering into or performing pursuant to a contract with the department of the officer or employee. "Doing business" does not include the receipt of or payment for services normally rendered by the City to residents and businesses such as sewer service, water and power, street maintenance and the like or providing a grant to a City department.

Regulation 3.216(b)-2. Gifts from Restricted Sources – Definition of "knowingly attempted to influence the officer or employee in any legislative or administrative action"

Except as provided below, "knowingly attempted to influence the officer or employee in any legislative or administrative action," as used in section 3.216(b)(1), means the person has contacted or appeared before the employee or officer with an intent to influence a decision of the employee or officer, or the person otherwise has attempted to influence the officer or employee. The phrase "intent to influence" means any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision. Notwithstanding the foregoing, the following shall not be deemed to be an intent to influence an officer or employee in any legislative or administrative action for the purposes of section 3.216(b)(1): communications that (a) involve only routine requests for information such as a request for publicly available documents; (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding; (c) are made while attending a general informational meeting, seminar, or similar event; (d) are made to the press; (e) involve an action that is solely ministerial, secretarial, manual or clerical; or (f) constitute oral or written public comment that becomes part of the record of a public hearing.

Regulation 3.216(b)-3. Gifts from Restricted Sources – Definition of department

(a) As used in section 3.216(b) the term "department" shall mean:

- (1) The department, board, commission, office or other unit of government for which a City officer or employee directly serves;
 - (2) Any department, board, commission, office or other unit of government to which an officer or employee is loaned;
 - (3) Any other department, board, commission, office or other unit of government subject to the direction and control of the department for which a City officer or employee directly serves.
- (b) The following factors shall be used to determine the department for which a City officer or employee directly serves:
- (1) what government unit controls the budget, personnel and other operations related to the officer or employee's position;
 - (2) where the officer or employee's position is listed in the City's conflict of interest code (Article III, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code);
 - (3) whether the law creating a department suggests that it is a separate entity; and

(4) any other factors the Ethics Commission deems relevant.

Regulation 3.216(b)-4. Definition of person

(a) For the purposes of section 3.216(b), the term "person" shall mean any individual, partnership, corporation, association, firm, committee, club or other organization or group of persons, however organized.

(b) A person shall not be deemed a restricted source solely because that person is employed by a restricted source, provided that the gift is neither paid for by the employer nor provided at the direction of the employer.

(c) A person shall not be deemed a restricted source solely because that person employs a restricted source, except that the employer shall be deemed a restricted source if the employee is doing business or seeking to do business with the department or attempting to influence the employee or officer either:

(1) at the direction of the employer,

(2) in connection with his or her duties as an employee, or

(3) regarding a matter that will achieve, defeat, aid or hinder a goal or purpose that the employee is required or expected to achieve, defeat, aid or hinder in the course of employment.

Regulation 3.216(b)-5. Gifts from Restricted Sources—Exemptions

The following are not gifts subject to the ban in section 3.216(b).

(a) Voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion, provided that no officer or employee may receive gifts from any restricted source under this exception on more than four occasions during a calendar year. For the purpose of this subsection, a gift card or gift certificate is a cash gift.

(b) Voluntary gifts, of food and drink, without regard to value, to be shared in the office among officers and employees.

(c) Free attendance at a widely attended convention, conference, seminar, or symposium where attendance is appropriate to the official duties of the officer or employee and the donor provides the free attendance voluntarily.

(1) "Free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event. "Free attendance" may also include attendance at meet-and-greet or hospitality sessions and meals offered in connection with the convention, conference, seminar, or symposium where networking or discussion opportunities may enable the officer or employee to establish working relationships that may inure to the benefit of the City. The term does not include entertainment collateral to the event.

(2) A "widely attended" event is an event that is open to individuals from throughout a given industry or profession, or an event that is open to individuals who represent a range of persons interested in a given matter.

(3) An officer or employee who attends such an event may not accept a sponsor's offer of free attendance at the event for an accompanying individual.

(d) Voluntary meals from a member of the investment, financial, or banking community provided to officers and employees who are responsible for managing investments or debt obligations on behalf of the City, provided that (i) such meals are necessary to discuss City investments or financial transactions in order to cultivate and maintain working relationships between the City and the investment, financial, or banking community; (ii) management of the City's investments or debt is discussed during the meal; and (iii) the person providing the meal is not negotiating a contract with the department of the officer or employee. For the purpose of this subsection, "investment, financial, or banking community" includes investment managers; firms that market and sell municipal securities in the tax-exempt and taxable markets including entities that support financing transactions such as bond insurers, rating agencies, credit banks, bond and disclosure counsel, financial advisors, feasibility consultants and trust agents; the custodian bank; and consultants who contract to assist the business of the retirement trust. For the purposes of this subsection, "negotiating a contract" means communicating with the department of the officer or employee regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the department makes the proposal until the date of the approval of the contract or the date that the person or the department communicates to the other party that negotiations for the contract have terminated.

(e) Voluntary meals or vessel boardings or vessel trips that do not extend overnight from a member of the maritime industry provided to officers and employees who are responsible for managing the Port's maritime commerce portfolio, provided that (i) such meals or vessel boardings or trips are necessary to cultivate and maintain working relationships between the Port and the maritime industry; (ii) management of the Port's maritime commerce portfolio is discussed during the meal, vessel boarding or trip; and (iii) the person providing the meal, or vessel boarding or trip is not negotiating a contract with the Port at the time of the meal or vessel boarding or trip. For the purposes of this subsection, "maritime industry" means individuals and entities engaged in: cruise and cargo shipping; ship repair; commercial and sport fishing; ferry and excursion operations; harbor services such as pilots, tugboats, barges, water-taxis, lay-berthing and other ship services; terminal management; stevedoring and longshore labor; facility and ship security. "Managing the Port's maritime commerce portfolio" includes: managing and marketing the Port to the maritime industry; promoting Port maritime facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the City's cruise and cargo terminals, ferry terminals, shipyards and dry-docks, Fisherman's Wharf and Hyde Street commercial fishing harbors, excursion terminals and harbor service facilities for pilots, tugboats, barges, water-taxis, lay-berthing and other ship services. For the purposes of this subsection, "negotiating a contract" means communicating with the Port regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the Port makes the proposal until the date of the approval of the contract or the date that the person or the Port communicates to the other party that negotiations for the contract have terminated.

(f) Voluntary meals from a member of the aviation industry provided to officers and employees who are responsible for managing and marketing the Airport to the aviation industry, provided that (i) such meals are necessary to cultivate and maintain working relationships between the Airport and aviation industry representatives; (ii) the aviation industry's business relationship with the Airport is discussed during the meal; and (iii) the person providing the meal is not, at the time of the meal, negotiating contract benefits on terms that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. For the purposes of this subsection, "aviation industry" means individuals and entities engaged in: air cargo shipping; general and business aviation and commercial airlines; air tourism; airline service related associations and agencies; joint marketing programs with non-competitive airports to enhance air service to the public; and facility and airline security. "Managing and marketing the Airport" includes: managing and marketing the Airport to the aviation industry; promoting Airport facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the Airport's airfield, facilities and terminals. For the purposes of this subsection, "negotiating contract benefits" means communicating with the Airport regarding a proposal to adopt or change a material term of an existing or prospective contract to include commercial benefits

that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. A person is "negotiating contract benefits" from the date that the Airport considers the proposal until the date of the approval of the contract or the date that the Airport communicates to the other party that negotiations for the contract benefits have terminated.

(g) Items of any value received by a City employee or officer in a random drawing associated with participation in the City's Annual Joint Fundraising Drive under Administrative Code Chapter 16, Article V (also known as Combined Charities Fundraising Drive).

Example: A restricted source sends five pizzas to a department as a goodwill gesture. Because this is a gift to the office, staff may share the pizza.

Example: A restricted source sends two opening day Giants ballgame tickets to a staff person. The staff person may not accept the tickets because their value exceeds \$25.

Example: A restricted source sends a baseball cap to the department head. The department head may accept the baseball cap because its value is \$25 or less, provided that the department head has not already accepted gifts with a value of \$25 or less from the restricted source on four occasions during the calendar year.

Example: Staff of a department are invited to a morning training event that is sponsored by a restricted source. Staff who attend the session may accept food and beverages that are offered at the event such as coffee, tea, juice, pastry or bagels, because their value do not exceed \$25, provided that such staff has not already accepted such food and beverages from the restricted source on four occasions during the calendar year.

Example: Staff of a City department are invited to attend a forum on best practices in the industry that is sponsored by a restricted source. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

Example: An employee donates to the City's Combined Charities Fundraising Drive. The employee's name is entered in a drawing with all other donors, and the employee wins a \$50 gift certificate in the drawing. The gift certificate was provided to the City by a company doing business with the employee's department. Even though the company that provided the gift certificate is a restricted source, the employee may accept the gift as a reward or benefit associated with participation in the fundraising drive.

Regulation 3.216(c)-1: Gifts from Subordinates

(a) Prohibition on gifts.

(1) For the purposes of section 3.216(c), a City officer or employee may not solicit or accept from a subordinate employee any gift, as defined in subsection (b) of this section.

(2) Gifts permitted under this section remain subject to any other applicable laws and rules, including but not limited to state and local limits on gifts to designated employees (Cal. Gov't Code § 89503; C&GCC § 3.1-101), the City's prohibition on gifts given in exchange for appointments or promotions (C&GCC § 3.208), and the City's prohibition on bribery (C&GCC § 3.216); the City's limits on gifts from restricted sources (C&GCC § 3.216); the City's limits on gifts from lobbyists (C&GCC § 2.115), and any departmental rules on gifts.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Applicant or candidate. An applicant or candidate for a position as a subordinate means any person who has communicated, orally or in writing, to a City officer or employee acting in an official capacity, that the person wants to be considered for the position.

(2) Gift.

(A) Except as provided in (B), a gift is any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

(B) The following, voluntarily given, are not gifts within the meaning of this section.

(i) Gifts, other than cash, with an aggregate value of \$25 or less per occasion, given on occasions on which gifts are traditionally given.

(ii) Gifts, such as food and drink, without regard to value, to be shared in the office among employees.

(iii) Personal hospitality provided at a residence that is of a type and value customarily provided by the employee to personal friends.

(iv) Items given in connection with the receipt of personal hospitality if of a type and value customarily provided by the employee on such occasions.

(v) A gift of any value given in recognition of an occasion of special personal significance.

(vi) A gift of any value given in recognition of an occasion that terminates a subordinate relationship.

(vii) Informational material that serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties and may include books, reports, pamphlets, calendars, or periodicals.

(viii) Gifts from an individual's spouse, domestic partner, child, parent, grandparent grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse or domestic partner of any such person, provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(ix) Campaign contributions required to be reported under the Government Code, Title 9, Chapter 4 (commencing with Section 84100) and the Campaign and Governmental Conduct Code, Article I (commencing with Section 1.100).

(x) Any devise or inheritance.

(xi) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(xii) A gift that, within 30 days of receipt of the gift, the donor either pays for, returns unused, or donates unused to a government or a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(xiii) A ticket to a fundraiser for an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or for a political committee or candidate.

(xiv) A gift given directly to members of the immediate family of an officer or employee, provided that the gift is not used or disposed of by the officer or employee or given to the officer or employee by the recipient family member for the officer's or employee's disposition or use at the discretion of the officer or employee. A gift is given directly to a family member of the officer or employee if the family member's name or designation appears in the address or communication tendering or offering the gift and the gift is intended for the family member's use and enjoyment. A gift given to the family member of an officer or employee will be considered a gift to the officer or employee if the officer or employee exercises discretion and control over who will use the gift. If the officer or employee enjoys a direct benefit from a gift to the immediate family of the officer or employee, the full value of the gift will be attributable to the official.

(3) Occasion on which gifts are traditionally given. An occasion on which gifts are traditionally given includes any holiday traditionally associated with gift giving, such as Christmas and Chanukah, as well as birthdays or thanking a person for a kindness or good deed.

(4) Occasion of special personal significance. An occasion of special personal significance is any occasion that does not typically occur on a regular basis and that is of personal significance to the recipient of the gift, as opposed to a general holiday or recurring event such as a birthday. Examples of such an event include marriage, birth or adoption of a child, graduation or illness.

- (5) Occasion that terminates a subordinate relationship. An occasion that terminates a subordinate relationship is any event severing the relationship, including but not limited to retirement, transfer, or promotion.
- (6) Receipt of gift. A gift is received when a person exercises control over the gift.
- (7) Subordinate employee. An employee is a subordinate employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.
- (8) Value. The value of a gift is determined by the actual value or where the actual value is unknown, making a reasonable good faith estimate of the fair market value of the item or service, comparing where possible similar items or services.
- (9) Voluntarily. A gift is given voluntarily if it is given freely, without pressure or coercion. A contribution to a gift from multiple persons is given voluntarily if it is made in an amount determined by the employee or subordinate. A contribution to a gift from multiple persons will be presumed to have been given voluntarily if the request for the donation includes a statement that an employee may choose to contribute less or not at all.

Regulation 3.216(d)-1: Gifts of Travel

(a) Form.

(1) To comply with the reporting requirements of section 3.216(d), elected officials shall use the Ethics Commission Form SFEC-3.216(d). This form may be filed in person, by mail or facsimile, or as a PDF attachment to an email. If the Commission implements a system for electronic filing of the form, it shall prescribe the manner in which the form may be filed. In its discretion, the Commission may require that the form be submitted using only the Commission's electronic filing system.

(b) Reporting of individual or entity funding the trip.

(1) If a single trip taken by an elected official is paid for by multiple individuals or entities, the elected official shall report the trip on a single Form SFEC-3.216(d).

(c) Reporting cost of trip.

(1) Contributions. A contribution "used in whole or in part to fund the trip," when directed towards a particular elected official, may constitute a gift to that elected official for the purposes of the Political Reform Act and the San Francisco Campaign and Governmental Conduct Code. As set forth in Fair Political Practices Commission Regulation section 18945, a non-profit organization funding the trip is not the true source of a gift of travel if it is merely an intermediary for the contribution.

(2) Family members. An elected official who receives a payment from an individual or entity for an out-of-state trip must report any travel payments for a family member accompanying the elected official on the trip.

Example: A sister city committee is organizing an overseas trip for a group of City officials, including elected officers, to visit the sister city. The sister city committee is a 501(c)(3) non-profit organization. In advance of the trip, the sister city committee fundraises for the trip's costs by approaching local companies, asking them for specific contributions to fund this particular trip, and informing them which City officials will be participating. Because the companies contributing to the trip are aware of which officials are joining the trip, the elected officials benefiting from such contributions should treat their pro rata share of the company's contribution as a gift, subject to gift limits and reporting requirements.

(d) Amendments.

(1) Elected officials may amend a Form SFEC-3.216(d) after returning from an out-of-state trip paid for in part by an individual or entity other than the City and County of San Francisco, another governmental body, or a bona fide educational institution. Any amendments should be filed no later than 30 days after completing such a trip.

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 within six months of the creation of the department, unless the Ethics Commission extends the time for good cause. Amendments to a statement previously approved 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) Hearing before the Ethics Commission. The Ethics Commission shall hold a hearing to consider each statement or amendment. 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, if any, 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.

(d) 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 Ethics Commission's approval or amendment of any statement that would affect officers or employees represented by a union, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent the affected officers or employees.

(e) Final Approval. The Ethics Commission shall, at a public meeting, finally approve a statement of incompatible activities or any amendment thereto. The Commission may finally approve or amend the statement on the same date that it holds the hearing described in subsection (c) of this regulation. 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 or an electronic link to 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 or 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.

Regulation 3.220-1. Prohibition on Dual Officeholding – Dual Offices held under the City and County

When section 3.220 prohibits the holding of two offices under the City and County, the first office held shall be deemed to have been vacated.

Regulation 3.224-1. Compensated Advocacy – Definition – Intent to Influence

Whenever used in section 3.224, the phrase "intent to influence" shall mean any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision. Notwithstanding the foregoing, the following shall not be deemed to be an intent to influence a government decision for the purposes of section 3.224: communications that: (a) involve only routine requests for information such as a request for publicly available documents; (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding; (c) are made while attending a general informational meeting, seminar, or similar event; (d) are made to the press; or (e) involve an action that is solely ministerial, secretarial, manual or clerical.

Regulation 3.224-2. Compensated Advocacy – Waivers for Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations

(a) Waivers. The Ethics Commission may waive the prohibition in section 3.224(a) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the request of the member; the request of the member's appointing authority; or on the Commission's own initiative.

(b) Process for Granting Waivers. All waivers granted pursuant to subsection 3.224(c) must be made at a public meeting. Requests for waivers made by a City officer or by the officer's appointing authority must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the 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 member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.

(c) Notice. The Commission shall maintain a list of waivers granted under subsection 3.224(c) and post the list on the Commission's web page.

Regulation 3.226-1. Referrals – Waivers

(a) Waivers. The restriction imposed by section 3.226(b) on conditioning a governmental action on a member of the public hiring, employing, or contracting with any specific person or entity shall not apply:

(1) To a City department, board, commission or agency that requires as part of an award of a contract that the primary contractor use subcontractors listed in the primary contractor's proposal or bid.

(2) If the Commission has granted a waiver pursuant to subsection (b) of this regulation. The Commission shall maintain a list of such waivers and post the list on the Commission's web page

(b) Request for Waivers.

(1) Requests. Any City officer or employee may request that the Ethics Commission waive the prohibition against conditioning a governmental action on a member of the public hiring, employing, or contracting with any specific person or entity.

(2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.226 must be made at a public meeting. Requests for waivers must be in writing and state the reasons why the waiver should be granted. The Commission may grant a waiver only if it determines that the waiver is necessary for the proper administration of a governmental program or action.

(3) Delegation to Executive Director. The Executive Director may consider and grant or deny a waiver request when: (A) the Commission has delegated such duty to the Executive Director; or (B) the requestor demonstrates good cause for the necessity for a decision before the next regularly scheduled Commission meeting. The Executive Director shall not approve or deny a waiver request without first convening a public meeting to discuss the request with interested parties. The Executive Director must provide at least 72 hours notice of such meetings and conduct such meetings in accordance with the principles of the Sunshine Ordinance and Brown Act. The Executive Director may grant a waiver only if he or she determines that the waiver is necessary for the proper administration of a governmental program or action. The Executive Director shall report to the Commission his or her determination regarding whether the request should be granted within 24 hours of making his or her decision. The Commission may reconsider the Executive Director's decision at either of its next two regularly scheduled meetings, provided that two or more commissioners request that the Executive Director's decision be calendared for consideration and such requests are received by the Executive Director at least 120 hours in advance of the meeting.

Regulation 3.230-1. Prohibition on Political Activities – Definitions

Whenever the following words or phrases are used in section 3.230, they shall mean:

(a) "in uniform" shall mean any time a City officer or employee is wearing all or any part of a uniform required or authorized to be worn when the officer or employee is engaged in official duties.

Example 1. A MUNI bus operator placed his personal coat over his uniform after work but did not otherwise change. Even though the coat hides part of his uniform, the employee is still wearing all of the uniform that he is required to wear while on duty, and is therefore prohibited from engaging in political activities.

Example 2. A Deputy Sheriff removes her star and nameplate from her uniform after work. Although if on duty the Deputy would be considered out of uniform, the Deputy is prohibited from engaging in political activities because she is still wearing part of the uniform she is required to wear when she is engaged in official duties.

(b) "political activities" shall mean all activities that have as a purpose to influence voters to support or oppose a ballot measure, or to vote for or against a candidate, but shall not include any activities of a City officer or employee that are protected from regulation by the Federal or State Constitution.

Example 1. A City Department Head has contacted each member of the Board of Supervisors and the Mayor to urge them to approve legislation that her department proposed. Although lobbying members of the Board of Supervisors and the Mayor is "political" in nature, it is not a "political activity" prohibited by section 3.230 because such activity does not have as a purpose to influence voters to support or oppose a ballot measure or candidate.

Example 2. A member of the Planning Commission is running for a seat on the school board. The Commissioner may not distribute campaign literature at the next Commission meeting. Such activity would be "political activity" prohibited by section 3.230 because the distribution of campaign literature has as a purpose to influence voters to vote for the Commissioner.

(c) "working hours" shall mean any time during which a City officer or employee is engaged in official activities, whether compensated or not, but shall not include any time during which an officer or employee is on an authorized break from official duties.

Example 1. A city employee who is running for a position on one of San Francisco's County Central Committees may leave her office during her authorized lunch break to make fundraising phone calls from the private offices of a friend without violating section 3.230, because her authorized lunch break is excluded from the definition of "working hours."

Example 2. A member of the Commission on the Environment is appearing as an official representative of the Commission before a local senior citizens organization to help promote a new recycling program the Commission is sponsoring. During the Commissioner's presentation, members of the audience ask the Commissioner which candidate for President of the United States they should vote for in the upcoming election if their primary concerns are environmental issues. Because the Commissioner is engaged in official activities while attending the presentation, the presentation is during "working hours" and he cannot engage in activities that have as a purpose to influence voters to vote for a candidate. Accordingly, he should not provide an answer to the question asked by the audience.

Example 3. Because of the nature of her work, a City employee does not have a set time during which she is scheduled to take lunch. Instead, the City employee is authorized to take an hour lunch whenever her schedule permits. The employee may engage in political activities any time during which she takes her lunch break even though that break occurs at different times on different days. On each occasion the lunch break is an authorized break and is therefore excluded from the definition of "working hours."

Regulation 3.234-1. Permanent Restrictions on Representing and Assisting Others in Particular Matters

(a) Scope of Restriction; Only Activities, Not Employment Prohibited. Subsections 3.234(a)(1) restricts only specific activities. Nothing in that subsection requires a former officer or employee to decline employment with any person or entity. The restriction applies solely to activities, not employment.

(b) Basic Rule; Guide to Determining Whether Permanent Ban Applies. To determine whether subsection 3.234(a) prohibits a former City officer or employee from making or assisting or aiding another in making any formal or informal appearance or any oral, written or other communication, proceed with the following analysis:

- (1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibitions do not apply.
- (2) Determine whether the former officer or employee is representing a person or entity other than himself, herself or the City. If the former officer or employee is not representing a person or entity other than himself, herself or the City, the prohibitions do not apply.
- (3) Determine whether the representation is before any court, or before any state, federal, or local agency, or any employee or officer thereof. If the representation is not before any of these entities or officials, the prohibitions do not apply.
- (4) Determine whether the representation is made with an intent to influence the court or agency or the officer or employee thereof. If the representation is not made with an intent to influence, the prohibitions do not apply.
- (5) Determine whether the representation is in connection with a particular matter:
 - (A) in which the City is a party or has a direct and substantial interest;
 - (B) in which the former officer or employee participated personally and substantially as a City officer or employee; and
 - (C) which involved a specific party or parties at the time of such participation.

If the representation is not in connection with a particular matter as noted above, the prohibitions do not apply.

(6) Determine whether the duties being performed by the former officer or employee consist of activities that fall within the exception for serving as a witness based on the former officer's or employee's personal knowledge, without compensation other than fees regularly provided for by law or regulation of witnesses. If the duties of the former officer or employee fall within the exception for witness testimony, the prohibitions do not apply.

Regulation 3.234-2. One Year Restriction on Communicating with Former Department

(a) Scope of Restriction. Subsection 3.234(a)(2) applies to attempts to influence any government decisions made by the department, board, commission, office or unit of government for which an officer or employee served, including decisions in which the officer or employee had no prior involvement as well as decisions related to matters that first arise after the officer or employee has left the department, board, commission, office or unit of government.

(b) Basic Rule; Guide to Determining Whether the One-Year Restriction Applies. To determine whether subsection 3.234(a)(2) prohibits a current or former City officer or employee from communicating orally, in writing or in any other manner with the department, board, commission, office or unit of government for which the officer or employee served, proceed with the following analysis:

- (1) Determine whether the officer or employee has terminated his or her service to the particular department, board, commission, office or unit of government. If the officer or employee has not terminated his or her service to the department, board, commission, office or unit of government, the prohibition does not apply. If the officer or employee remains an officer or employee of the City but has terminated his or her service with the department, board, commission, office or unit of government, then the prohibition may apply.
- (2) Determine whether more than one year has elapsed since the officer or employee terminated his or her service with the department, board, commission, office or unit of government. If more than one year has elapsed, the prohibition does not apply.
- (3) Determine whether the officer or employee is representing a person or entity other than himself, herself or the City. If the officer or employee is representing himself, herself or the City, the prohibition does not apply.
- (4) Determine whether the communication from the officer or employee is being made with an intent to influence a government decision. If the communication is not being made with an intent to influence a government decision, the prohibition does not apply.

Regulation 3.234-3. Restrictions on Future Employment with Parties that Contract with the City

(a) Scope of Restriction. Subsection 3.234(a)(3) applies to any and all employment arrangements, including but not limited to employment as a full or part-time employee, consultant or independent contractor and any and all forms of compensation. A person or entity enters into a contract

with the City when either the contract or a modification to the contract is executed.

(b) Basic Rule; Guide to Determining Whether the Restriction on Future Employment Applies. To determine whether subsection 3.234(a)(3) prohibits a current or former officer or employee from accepting employment or receiving compensation from a particular person or entity, proceed with the following analysis:

- (1) Determine whether the officer or employee has accepted employment or has received or become entitled to compensation from a person or entity other than the City. If the officer or employee has not accepted employment or received or become entitled to compensation, the prohibition does not apply.
- (2) Determine whether the person or entity offering or providing employment or compensation to the officer or employee entered into any contracts with the City during the 12 months prior to the officer or employee's acceptance of employment or the officer or employee's receipt or entitlement to compensation. If the person or entity did not enter into any such contracts with the City, the prohibition does not apply.
- (3) Determine whether the officer or employee participated personally and substantially in the award of any such contracts. If the officer or employee did not participate personally and substantially in the award of any such contracts, the prohibition does not apply.

Regulation 3.234-4. Waivers

(a) Requests for Waivers from Post-Employment Restrictions.

- (1) Requests for waivers from permanent and one-year bans. Any current or former City officer or employee may submit a request to the Commission for a waiver from the permanent bans on working or advising on particular matters imposed by subsection 3.234(a)(1) or the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(2). Such requests must be in writing and include information describing the former position held by the officer or employee; the particular matter for which the waiver is sought; the individual's prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. The individual must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her former department, board, commission, office, or unit of government.
- (2) Requests for waivers of ban on compensation from City contractors. Any current or former City officer or employee may submit a request to the Commission for a waiver from the ban on receiving compensation from certain City contractors imposed by subsection 3.234(a)(3). Such a request must be in writing and include information describing the name and business activity of the potential new employer of the officer or employee; the contracts that the officer or employee personally and substantially participated in awarding to his or her potential new employer during the 12 months prior to the officer's or employee's acceptance of employment or receipt of or entitlement to compensation; the exact nature of the officer or employee's participation in awarding those contracts; and reasons why imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the City officer or employee. The City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of the department, board, commission, office, or unit of government for which the officer or employee served at the time he or she participated in awarding the contract.
- (3) Consideration of waiver requests. The Ethics Commission shall consider, at its next regularly scheduled meeting, any request that meets the criteria set forth in subsections (a)(1) or (a)(2) of this Regulation, provided that such request is received at least two calendar weeks in advance of the meeting. The Commission shall not consider at its next meeting any waiver request that does not comply with this deadline. The individual who has requested the waiver, or his or her representative, and a designated representative from the department, board, commission, office or unit of government of the individual, may make a presentation to the Commission supporting or opposing the waiver request. The Commission may set reasonable time limits on such presentations in accordance with the Sunshine Ordinance and the Brown Act.
- (4) Approval of waiver requests from permanent and one-year bans. The Commission shall not approve any request for a waiver from the permanent or one-year bans made under subsection 3.234(c)(1) unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage. In making this determination, the Commission may consider: the nature and scope of the communications the individual will have with his or her former department, board, commission, office, or unit of government; the subject matter of such communications; the former position held by the officer or employee; the type of inside knowledge that the individual may possess; and any other factors the Commission deems relevant.
- (5) Approval of waiver requests from ban on compensation from City contractors. The Commission shall not approve any request for a waiver from the ban on receiving compensation from certain City contractors made under subsection 3.234(c)(3) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the individual. In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant.

(b) Waivers for Former Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations.

- (1) Waivers from the permanent and one-year bans. The Ethics Commission may waive the permanent bans on working or advising on particular matters and the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(1) and 3.234(a)(2) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the Commission's own initiative; at the request of the appointing authority of a member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association; or at the request of an individual who was appointed or is being considered for appointment to a board or commission to represent a profession, trade, business, union or association.
- (2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.234(c)(2) must be made at a public meeting. Requests for waivers made by an appointing authority or a member of a board or commission must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the restrictions are not waived; the ability of the commissioner or board member to engage in his or her particular vocation if the restrictions are not waived; and any other factors the Commission deems relevant.
- (c) Notice. The Commission shall maintain a list of waivers granted under subsection 3.234(c) and post the list on the Commission's web page.

Regulation 3.234-5. Definitions

For the purposes of Section 3.234, the terms listed below shall mean:

- (a) Department, board, commission, office or other unit of government for which a City officer or employee served.
 - (1) The department, board, commission, office or other unit of government for which a City officer or employee served shall be:
 - (A) the unit of City government that the officer or employee directly served at the time he or she left City service or transferred to another department, board, commission, office or other unit of City government, including any government unit to which the officer or employee was loaned at that time; and
 - (B) any other unit of City government subject to the direction and control of the body of City government described in subsection (a)(1)(A) of this regulation.
 - (2) The following factors shall be used to determine the unit of government for which an officer or employee directly served:
 - (A) the unit of government that controlled the budget, personnel and other operations related to the officer's or employee's position;
 - (B) the department or agency on which the officer's or employee's position was listed in the City's conflict of interest code (Article III, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code);
 - (C) whether the law creating a unit of government suggests that it was a separate entity; and

(D) any other factors the Ethics Commission deems relevant.

Example 1. The General Services Agency (GSA) is comprised of a broad array of departments, divisions, programs, and offices reporting to the Office of the City Administrator. Among the departments under GSA's oversight is the Department of Technology (DT). A former employee of DT would be considered a former employee of the DT and not of GSA or the other departments under GSA's control. Although DT is under the direction and control of GSA, DT and the other departments under GSA function as separate departments. In contrast, a former employee in the City Administrator's Office would be considered to have served GSA and DT and all other departments under GSA because all those departments are under the direction and control of the City Administrator.

Example 2. A former employee of the Bureau of Street Use and Mapping at the Department of Public Works would be considered a former employee of the Department of Public Works. Although the Department of Public Works is divided into several different bureaus, the Director of Public Works is responsible for the budget, personnel and operations of each bureau; positions within the Bureau of Street Use and Mapping are listed in the City's conflict of interest code under the Department of Public Works; and the laws creating the Department of Public Works do not suggest that each bureau is a separate department.

(b) Direct and Substantial Interest in a Particular Matter.

The City has a direct and substantial interest in a particular matter if the City is the subject of the proceeding or transaction or would be significantly affected by the result of the proceeding or transaction. If it is unclear whether the City has a direct and substantial interest in a particular matter, the Commission shall consider the importance of the City's interest in the matter; the potential impact the outcome of a matter will have on these interests; as well as any other factors the Commission deems relevant.

Example. An investigator in the City Attorney's Office participated personally and substantially in preparing the City's case against a landlord who was in violation of several of the City's building code regulations. After the investigator leaves City employment, a private attorney representing the tenants of the landlord being sued by the City wishes to hire the former investigator to help with a lawsuit brought against the landlord by the tenants. The former investigator may not assist the private attorney in the lawsuit. Although the City is not a subject of the lawsuit, the City has an important interest in the outcome of a case that involves the same party and facts. Results in the tenants' lawsuit could affect the City's lawsuit. But if the City's case against the landlord has ended, the City no longer has a direct and substantial interest in the tenants' lawsuit, and the investigator may assist the private attorney, provided that this does not violate other restrictions such as the prohibition on the use of confidential information.

(c) Intent to influence.

(1) A current or former City officer or employee acts with an intent to influence when he or she communicates for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.

(2) A current or former City officer or employee does not act with an intent to influence for the purposes of section 3.234 when:

(A) his or her communications involve only routine requests for information such as a request for publicly available documents;

(B) he or she participates as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;

(C) he or she attends a general informational meeting, seminar, or similar event;

(D) he or she communicates with the press; or

(E) he or she seeks to influence an action that is solely ministerial, secretarial, manual or clerical.

Example 1. While with the City, an employee of the Department on the Environment drafted a report on one of the City's energy conservation programs. Two months after leaving the City, the former employee's new employer decides it would like to participate in the program and would like a copy of the report and information related to what documents it needs to file in order to be eligible to participate in the program. The former employee may contact the Department on the Environment to request a copy of the report and may ask general questions related to what documents must be filed to participate in the program because such communications involve only routine requests for information and are not made with an intent to influence.

Example 2. A former member of the Port Commission is hired by a shipping company three months after leaving City service. The shipping company is interested in bidding on the rights to develop one of the City's piers but will be unable to meet the City's deadline for submitting development proposals. The former member of the Port Commission may not contact employees at the Port to seek an extension on the deadline for submitting proposals. Such communications would be made with an intent to influence because they would be made for the purpose of delaying a government decision. Similarly, if the shipping company submits a development proposal to the Port, the former member of the Port Commission may not be listed as a participant in the proposal because the communication would be made for the purpose of influencing the governmental decision regarding which company will be the winning bidder.

(d) Particular Matter. A particular matter involves a specific proceeding affecting the legal rights of parties or an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, applications, requests for rulings, litigation, or investigations.

Rulemaking, legislation, the formulation of general policy, standards or objectives, or other actions of general application are not particular matters. Two matters are the same matter if they involve the same facts or related issues, involve the same or related parties, and relate to the same confidential information or legal issues. Two matters are not the same merely because the second matter is related to or arises out of the first matter, if they involve different parties, different subject matters or different factual and legal issues.

Example 1. A Civil Service Commission employee participated in drafting a rule related to outside employment. Two years after she terminated her employment with the City, one of the City's unions asked the former employee to represent one of its members before the Civil Service Commission on a matter that involved applying the outside employment rule. Because the original rulemaking process did not involve a particular matter, the permanent post-employment restrictions would not prohibit the former employee from representing the union member in this matter.

Example 2. While with the City, an employee in the Assessor's office participated personally and substantially in the assessment of a new office building. After the employee retired, the owner of the office building asked the former employee to represent the owner in an appeal to the Assessment Appeals Board challenging the previous assessment. The former employee may not represent the owner of the office building before the Assessment Appeals Board because she has already participated personally and substantially in the assessment, which is a particular matter because it involved an isolated transaction between identifiable parties.

Example 3. While with the City, an employee in the Department of Parking and Traffic personally and substantially participated in reviewing proposals for a contract to perform maintenance work on the City's parking meters. Two years after the employee terminated his service with the City, the company that received the maintenance contract offered the former employee a job overseeing a team of workers that performs maintenance work under the contract. The former employee may perform work related to the implementation of the contract because implementation of the contract is not the same matter as making the contract. Although the work involves the same contract and the same parties, implementation involves different factual and legal issues than the making of the contract.

Example 4. A month after the employee in Example 3 started with his new company, a dispute arose over the monthly payment the City owed under the contract. The dispute involved the interpretation of some of the terms in the company's initial proposal to the City. Because the dispute involves the same parties, facts, legal issues and confidential information about a matter in which the former employee participated personally and substantially while with the City, the award of the contract and subsequent dispute of the meaning of the contract are considered the same matter. The employee may not perform work or provide assistance to his new company related to the contract dispute.

(e) Participate personally and substantially. Participate personally means to participate directly, and includes the participation of a subordinate when the subordinate is under the direction and supervision of an officer or employee. Participate substantially means that the officer's or employee's involvement is, or reasonably appears to be, significant to the matter. Significant to the matter requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participate substantially relates not only to the effort devoted to a matter, but also to the importance of the effort. While a series of peripheral involvements may be insubstantial, the

single act of approving or participation in a critical step may be substantial.

Example 1. An employee of the Department of Building Inspection did not perform the actual investigation of possible code violations at the remodeling of an apartment complex but was responsible for reviewing and approving the investigation report that her subordinates drafted and presented to the Building Inspection Commission. Although she did not do the actual investigation, the employee did participate personally and substantially. The employee participated personally in the investigation because she directed and supervised the work of her subordinates. The employee participated substantially in the investigation because her approval of the investigation report was a critical step in the matter.

Example 2. An employee of the Arts Commission is responsible for serving as the contact person for grant applicants for a particular City grant program. The employee's responsibilities include providing basic information to the grant applicants related to deadlines and required application documents as well as gathering all application packets and providing copies of such packets to the grant program's selection committee. The employee did not personally and substantially participate in awarding the grants to the eventual recipients for the purpose of the permanent post-employment bans. The employee's participation in awarding the grants was not personal because his actions did not directly relate to the award of the grant. His participation was not substantial because his actions merely related to administrative and peripheral issues.

(f) Termination of City Service. For the purpose of the permanent ban on switching sides in section 3.234(a)(1), an officer or employee terminates his or her service with the City when he or she has permanently separated from the City.

Example 1. A city employee does not permanently separate from the City until she has signed her separation forms. Accordingly, a City employee at the Department of Health who takes vacation time during her final two weeks with the City has not terminated her service with the City. Even though this employee is no longer performing any work at the Department of Health, she has not terminated her service with the City until the two-week vacation is over, and she has signed her separation forms.

Example 2. An employee in the Mayor's office takes a six-month leave of absence to finalize a screenplay she has been writing in her spare time. During her leave, this employee has not terminated her service to the City because she is on only a temporary leave of absence and has not permanently separated from the City.

Example 3. A member of the Fire Commission submits a letter of resignation to the Mayor with a future effective date. The officer terminates his service with the City on the date the resignation is effective, not on the date the letter is provided to the Mayor, because the date on which the resignation is effective is when the officer permanently separated from the City.

(g) Termination of Service to a Particular Department or Other Unit of the City. For the purpose of the one-year ban on communications in section 3.234(a)(2), an officer or employee terminates his or her service to the particular department, board, commission, office or unit of government when he or she: (a) terminates his or her service with City, as defined in subsection (f) of this Regulation; (b) takes a leave of absence from his or her department, board, commission, office or unit of government; or (c) transfers to or begins employment with another City department, board, commission, office or unit of government .

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