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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: May 19, 2016

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director
By: Catherine Argumedo

Re: **AGENDA ITEM 4 – Request from Julienne Christensen for waivers from post-employment restrictions in San Francisco Campaign & Governmental Conduct Code sections 3.234(a)(2), 3.234(b)(1), and 3.234(a)(3)**

Summary: This memorandum provides an overview and Staff's recommendation regarding waiver requests received from Julienne Christensen on May 9, 2016.

Action Requested: Staff recommends that the Commission deny two waiver requests and approve one waiver request.

Overview

On May 9, 2016, the Ethics Commission received a written request for waivers from Julienne Christensen.¹ Ms. Christensen is a former member of the Board of Supervisors, representing District 3, and is currently not employed. She has requested that the Ethics Commission grant her three waivers: (1) regarding the one-year restriction on communicating with her former department, set forth in San Francisco Campaign and Governmental Conduct Code ("SF C&GCC") section 3.234(a)(2)("former department communications ban"); (2) regarding the one-year restriction on communicating with City departments, set forth in SF C&GCC section 3.234(b)(1)("former Board Member communications ban"); and (3) regarding the restriction on employment with parties that contract with the City, set forth in SF C&GCC section 3.234(a)(3) ("employment with a contractor ban").

For the reasons discussed below, Staff recommends that the Commission deny the waiver requests regarding the communications ban and approve the waiver request regarding the employment ban. Ms. Christensen has been notified that this matter would be on the Commission's agenda for the May 23, 2016 meeting and has indicated she will attend the meeting to address any questions the Commission may have.

Procedures for Considering Post-Employment Waiver Requests

¹ See Attachment 1.

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 Ms. Christensen's waiver requests at its May 23, 2016 meeting. At the meeting, per Ethics Commission Regulation 3.234-4(a)(3), Ms. Christensen and a designated representative from her former department, the Board of Supervisors, 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 Ms. Christensen's requested waiver of the former department and former Board Member communications ban of section 3.234(a)(2) and (b)(1) 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).*

Pursuant to Ethics Commission regulations, the Commission may grant Ms. Christensen's requested waiver of the employment with a contractor ban of section 3.234(a)(3) only if the Commission makes a finding that imposing the restriction would cause extreme hardship for the individual. In making this determination, the Commission may consider:

- (1) the vocation of the individual;
- (2) the range of employers for whom the individual could work;
- (3) the steps the individual has taken to find new employment; and
- (4) any other factors the Commission deems relevant. *EC Regulation 3.234-4(a)(5).*

Background

Mayor Ed Lee appointed Ms. Christensen as the member of the Board of Supervisors ("Board") representing District 3 on January 7, 2015. She was sworn into office the following day. Ms. Christensen ran for election to the District 3 Board seat on the November 2015 ballot but was not elected. Her term as a member of the Board of Supervisors ended on December 8, 2015.

According to Ms. Christensen, she seeks the waivers of the post-employment restrictions in order to be considered for part-time employment by a non-profit created to service the newly formed Dogpatch and Northwest Potrero Hill Green Benefits District (DNWPH GBD).² The DNWPH GBD is located within the City's 10th Supervisorial District. Ms. Christensen informed staff that a candidate for the non-profit's new Executive Director would be selected this month. She also stated that, if granted the waivers, she would use the opportunity to apply her two decades of civic and professional experience to benefit the residents of Dogpatch and Potrero Hill and the citizens of San Francisco.

² A copy of the job description is attached to this memorandum.

Relevant Laws³

Policy Purpose of Post-Employment Restrictions

In pertinent part, 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 ... 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 ... 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. One-Year Restriction on Communications

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.

For a former member of the Board of Supervisors, Section 3.234(b)(1) extends the one-year prohibition in SF C&GCC 3.234(a)(2) 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.

Ethics Regulation 3.234-2(a) applies this ban 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.

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.

2. Restriction on Employment with Parties that Contract with the City

Section 3.234(a)(3) of the San Francisco Campaign and Governmental Conduct Code provides the following permanent restriction on 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.

Ethics Regulation 3.234-3(a) applies this ban 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.

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, Ethics Regulation 3.234-3(b) suggests 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.

Ethics Regulation 3.234-5(e) defines to "participate personally" as to participate directly, and includes the participation of a subordinate when the subordinate is under the direction and supervision of an officer or employee. It also states that to "participate substantially" means that the officer's or employee's involvement is, or reasonably appears to be, significant to the matter. The Regulation further defines "significant to the matter" as requiring 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.

Waiver considerations for the one-year restriction in SF C&GCC section 3.234(a)(2)

A request for a waiver of the restriction in SF C&GCC section 3.234(a)(2) 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 she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of her former department. EC Reg. 3.234-4(a)(1).

Pursuant to SF C&GCC section 3.234(c)(1), the Commission may waive the restrictions in section 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 this restriction 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.

Waiver considerations for the employment restriction in SF C&GCC section 3.234(a)(3)

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).

A request for a waiver 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 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. EC Reg. 3.234-4(a)(2).

Pursuant to SF C&GCC section 3.234(c)(3), the Commission may waive the restrictions in section 3.234(a)(3) if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee. The Commission shall not approve any request for a waiver from this restriction unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the individual. EC Reg. 3.234-4(a)(5).

EC Reg. 3.234-4(a)(5) provides that in making its determination whether imposing the restriction would cause extreme hardship to the individual, 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.

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 the post-employment restriction in SF C&GCC section 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 Ms. Christensen.

In addition, as noted above, to determine that imposing the post-employment restriction in SF C&GCC section 3.234(a)(3) would cause extreme hardship for Ms. Christensen, the Commission may consider factors that include 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. These factors are evaluated below in connection with the waiver requests submitted by Ms. Christensen.

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

So that she may be considered for the position as the Executive Director of the Dogpatch and Northwest Potrero Hill Green Benefit District (DNWPH GBD), a non-profit organization that will administer and manage the newly-created benefit district, Ms. Christensen seeks a waiver from the one-year restriction in SF C&GCC section 3.234(a)(2) on communicating with her former department. Because she served as a member of the Board of Supervisors, SF C&GCC section 3.234(b)(1) expands this restriction on communication for Ms. Christensen to the entire City and County. The one-year period expires on December 8, 2016 and Ms. Christensen is seeking a waiver for the remaining portion of the one-year period.

Nature, scope, and subject matter of communications

Ms. Christensen seeks to accept a position as the DNWPH GBD's new Executive Director, which is a part-time position. Ms. Christensen stated that the district's purpose was to augment City services, get property owners involved, and seek public and private funding for more services. The non-profit is charged with accepting the assessment funds once they are collected by the Assessor's Office from property owners within the DNWPH GBD. According to the meetings at which the district's formation was discussed before the Board of Supervisors and its Committees, the funds assessed from property owners in the district will go towards the following areas: green space maintenance, capital improvements, citizens' accountability, transparency, and technology, and operations. These functions will include, among others, landscaping, park cleanup, tree maintenance, repair of irrigation systems, graffiti abatement, garbage cleanup, neighborhood public relations, fundraising, creation of a website, design, strategic planning, new playgrounds, benches, dog runs, painting, and outreach to neighbors.

Ms. Christensen stated that her duties as the part-time Executive Director would include setting up the infrastructure of the non-profit, creating a new website and communication database, ensuring legal and accounting matters are in order for the non-profit, conducting outreach with the district's residents and business owners, and setting future priorities for the district. Ms. Christensen stated she also hoped, if selected for the position, to create a drop-in office for residents and business-owners, in order to provide more transparency and outreach to the community.

According to the job description, the Executive Director for DNWPH GBD has four primary project responsibilities: 1. Organizational Management and Development; 2. Program Development and Implementation; 3. Community Engagement and "Customer Service;" and 4. Fiscal Management and Fundraising. Among the specific duties are to "advocate for the GBD at City Hall" and to "build strategic relationships" with various City departments, including Department of Public Works, SF Municipal Transportation Agency, Planning Department, SF Public Utilities Commission, Recreation and Parks Department, and the District 10 Supervisor's Office. The incoming Executive Director will also oversee the \$500,000 annual revenue that the GBD hopes to grow 5-10% annually over the next 10 years, as well as prepare and publish reports as required by the City-GBD agreement.

Based on this job description, as Executive Director, it appears Ms. Christensen would communicate with a range of City offices on a regular basis, and for purposes of advancing the district program set forth in the agreement with the City. Examples of communications that could be made in this position, according to Ms. Christensen, would be arranging City services, such as requesting additional patrols from the San Francisco Police Department, requesting assistance from the Department of Public Works for graffiti abatement, or requesting assistance from the Department of Recreation and Parks regarding parks and open spaces in the district. The Executive Director is also expected to advocate at City Hall for the DNWPH GBD and build strategic relationships with various City officials and departments.

Former position and type of knowledge possessed

Ms. Christensen was sworn in as a member of the Board of Supervisors, representing District 3, on January 8, 2016. She sat as a member of the Board of Supervisors until December 8, 2015. While a member of the Board of Supervisors, Ms. Christensen also was a member of the Board's Government Audit and Oversight Committee.

Over the course of several years, neighborhood advocates and residents worked to establish a property-based business improvement district in Supervisorial District 10, to be known as the "Dogpatch & Northwest Potrero Hill Green Benefit District." In 2015, the Board of Supervisors and various of its

committees held hearings and took action on various resolutions in order to establish the DNWPH GBD. There is no record of any opposition by members of the public or any other parties to the creation of this district during any of the public meetings held by the Board or its committees.

The resolution for the intention to establish the DNWPH GBD was assigned by the President of the Board on May 19, 2015. The matter was heard before the Land Use and Transportation Committee on June 1, 2015. Ms. Christensen was not a member of the Land Use and Transportation Committee and was not present at the meeting on that date.

During the Land Use and Transportation Committee meeting on June 1, 2015, which was the first committee meeting about the district, Director Mohammed Nuru of the Department of Public Works (DPW) stated that this greens district would be the first in the nation and that the formation of the district was modeled on the Mayor's Office of Economic and Workforce Development (OEWD) program. He stated that the district had been promoted by Tenth District Supervisor Malia Cohen and many District 10 community advocates, residents, and business owners. Jonathan Goldberg, from DPW, explained that the district would obtain funding from the City's levy of a multi-year assessment on identified parcels in the district.

The full Board considered resolutions relating to the creation of the DNWPH GBD on July 7, 2015, July 28, 2015, July 31, 2015, and December 8, 2015. The Board did not take any action on the matter during the July 28, 2015 meeting. Ms. Christensen was present for the July 7 and 31, 2015 votes and voted in favor of the resolutions.

The DNWPH GBD was considered at the same time as two other community benefit districts: the Yerba Buena Community Benefit District and the Greater Rincon Hill Community Benefit District. The Board and its committees voted to approve agreements for the other two community benefits districts without objection and unanimously, as it did with DNWPH GBD.

On December 3, 2015, the resolution approving an agreement with the nonprofit Owners' Association for the administration and management of the DNWPH GBD was before the Government Audit and Oversight Committee. In the same motion, the two other agreements with non-profits for the administration and management of separate Community Benefits Districts were also recommended to the full Board of Supervisors on the same motion. All three GAO committee members voted for the recommendation, including Ms. Christensen. While, prior to the vote, Ms. Christensen stated that she "loved CBDs," there was no other substantive discussion of the item at the meeting.

On December 8, 2015, the full Board of Supervisors voted unanimously to approve the agreement with the nonprofit Owners' Association for administration and management of the established DNWPH GBD, for a period commencing upon Board approval through June 30, 2025. The agreement is included in Legislative File #151189. Ms. Christensen was no longer a member of the Board of Supervisors when the final agreement was approved by the Board and did not participate in the vote or meeting.

Ms. Christensen informed staff that she did not participate in the drafting or amendments of any documents or agreement relating to the creation of the DNWPH GBD. She stated that she had no meetings with anyone regarding the matter and that she had no other participation regarding the creation of the DNWPH GBD other than her vote to approve a resolution relating to the district.

Other considerations

Ms. Christensen informed staff that the Executive Director position will be the only employee for DNWPH GBD for the first year. The incoming Executive Director will not have an administrative assistant or any other assistance during the initial set-up of the organization. Therefore, there will be no other individual to perform these duties and communicate on behalf of the DNWPH GBD.

Prior Similar Waiver Considerations by the Commission

Since 2010, the Commission has considered seven waiver requests regarding the one-year restriction on communication in SF C&GCC section 3.234(a)(2). Five requests were granted and two were not granted.

Analysis and Recommendation

As a former Member of the Board of Supervisors, Ms. Christensen had a unique and significant policymaking role on matters City-wide. The high-level nature, breadth and temporal proximity of her former position presents the potential that representation at this time on behalf of DNWPH GBD with former City colleagues and employees could create a potential for, or the appearance of, undue influence or unfair advantage. While former legislators do not have authority to approve City budgets or legislation, their potential influence or appearance of influence with other officials or employees with whom they worked while in office does not necessarily cease when they are no longer in office. The “cooling off” periods for post-service communication are designed to lessen the potential that such relationships create, or appear to create, any undue influence or advantage that can call into question the objectivity of governmental decision-making.

The one-year communication restriction, therefore, appears to be fairly strict by intention. Ethics Regulation 3.234-2(a) states that the one-year communication restriction applies to attempts to influence *any* government decisions, including decisions in which the officer or employee had *no prior involvement* (emphasis added). Ms. Christensen voted on three different resolutions relating to the creation of the DNWPH district.

Because Ms. Christensen’s communications with City departments, as the Executive Director of DNWPH GBD, could create the potential for or appearance of undue influence with City officers or employees, and because her actions on to approve creation of the district were substantial personal involvement in the matter, Ethics Commission Staff recommends that the Commission not grant the waiver of the one-year communication ban of SF C&GCC section 3.234(a)(2).

Restriction on Employment by a City Contractor Waiver Request - SF C&GCC section 3.234(a)(3)

Ms. Christensen also seeks a waiver from the one-year restriction in SF C&GCC section 3.234(a)(3) on receiving compensation from a City contractor, so that she may accept a part-time position as the new Executive Director of DNWPH GBD. Ms. Christensen’s 12-month restriction expires on December 8, 2016 and Ms. Christensen is seeking a waiver of the portion of the 12-month period that remains between now and then.

As noted earlier, Ethics Regulation 3.234-3(b) suggests an analysis to determine whether SF C&GCC section 3.234(a)(3) prohibits a current or former officer or employee from accepting employment or receiving compensation from a particular person or entity.

- In this case, Ms. Christensen has not yet accepted employment from DNWPH GBD, but is seeking to do so.

- Her potential new employer is an entity that has entered into an agreement with the City during the 12 months prior to her acceptance of employment, as the contract was approved by the Board of Supervisors on December 8, 2015 and signed by the Mayor on December 16, 2015.
- Ms. Christensen voted to approve resolutions in relations to the creation of her potential employer three times in 2015 as a member of the Board of Supervisors. Ms. Christensen's votes as a member of the Board of Supervisors relating to the creation of the district rise to the level of participating "personally and substantially" in the approval of the agreement.

Based on an analysis of these factors, therefore, SF C&GCC section 3.234(a)(3) prohibits Ms. Christensen from accepting employment from DNWPH GBD until December 4, 2016, after the 12-month period expires.

However, as also noted earlier, the Commission may waive the post-employment restriction in SF C&GCC section 3.234(a)(3) if it determines that imposing the restriction would cause extreme hardship for the requester. Factors to consider in that determination may include 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. These factors are evaluated below in connection with the waiver requests submitted by Ms. Christensen.

Vocation of Individual.

Prior to sitting as a member of the Board of Supervisors, and since the mid-1990s, Ms. Christensen worked as a product appearance consultant. In addition to her professional work, Ms. Christensen also worked to improve parks, libraries, streets, and public transportation in San Francisco, mostly in District 3. Ms. Christensen stated that she has planted 355 street trees. In 2013, Ms. Christensen stated that she reduced her design workload to lead private sector fundraising for the new North Beach Library and later for the renovation of the Joe DiMaggio Playground.

By accepting the appointment to the Board of Supervisors in January 2015, Ms. Christensen stated, she decided to transition to working solely in the public realm. Ms. Christensen has stated that she has attempted to find work in the public realm for many months. She stated that the position with DNWPH GBD is a great opportunity for her as it permits her to use her two decades of experience for the residents and business-owners of the DNWPH district.

Range of Employers for Whom the Individual Could Work.

As Ms. Christensen has decided to focus on working in the public realm, she has stated that her employment opportunities are limited. She estimates that a similar position to the one with DNWPH GBD would likely not be presented again within the next few years.

Steps the Individual Has Taken to Find New Employment.

Ms. Christensen informed staff that she has been working tirelessly over the past six months to find employment in the public sector. She stated that she has started looking in her old field of work as well, but has not been successful other than a few small projects. Ms. Christensen stated that her husband has also had a recent transition in employment. Ms. Christensen stated that, prior to her exit from the Board of Supervisors, she had been offered Commission appointments, but stated she was eager to participate and contribute to the City and its residents with her experience. She stated that she has a commitment to work in the public realm and is concerned about missing this opportunity with DNWPH GBD. Ms. Christensen stated that she has made the shortlist of candidates for the Executive Director

position and has been made aware that, if the Commission does not approve her waiver requests, DNWPH GBD will fill the position with another candidate.

Prior Similar Waiver Considerations by the Commission

To date, the Commission has previously considered two waiver requests of SF C&GCC section 3.234(c)(3). Both were decided in 2011. In both cases, former City employees sought waivers in order to accept positions with entities that had contracted with the City. In one case, a former Director of the Mayor's Office of Housing had signed five contracts on behalf of the City with the organization in the previous 12 months, "actively participating in the awarding" of three of those contracts. The former employee's waiver request asserted that the restriction would affect his ability to seek employment with any local non-profit organizations working in affordable housing. In the other case, a former project manager at the Mayor's Office of Economic and Workforce Development worked for approximately 12 months on the City's efforts to secure the America's Cup race and had been a member of the Host City Agreement negotiation for the race. The former employee worked exclusively on the agreement between the City, the Committee (a non-profit corporation formed to marshal private and corporate support for the City to win the campaign), and the America's Cup Authority; she was then offered the position of Executive Director of the Committee. That former employee's waiver request asserted that she would experience hardship if she would be unable to pursue her career plans. In both of those cases, Ethics Commission at that time voted to approve the waiver requests to enable those former employees to work with a party that held a City contract.

Analysis and Recommendation

Ms. Christensen's actions while on the Board of Supervisors constitute substantial participation in the matter as contemplated by Ethics Regulation 3.234-5(e). However, Ms. Christensen has asserted that this restriction limits her ability to seek employment, causes her financial hardship, and restricts her ability to pursue a career involving direct public service. She stated in her request that the skill set required to advance the goals of the GBD is aligned with her unusual career path and that her former vocation is no longer a viable option for her full time employment at this time. Ms. Christensen states that she has attempted to find employment in the public sector since she left office in December 2015.

In both waiver requests previously considered and granted by the Commission, the former employees had actively participated in negotiating and participating in awarding of contracts to their prospective employers. Yet the Commission, at the time, found extreme hardship in those cases and permitted both employees to work for the employers who held contracts with the City. In this matter, Ms. Christensen voted three times in relation to the creation of the DNWPH GBD, but had no other involvement in the negotiation or drafting of the agreement between the City and the district. It appears that her involvement in the agreement is significantly less than the previous two individuals who sought and were granted waivers of this restriction.

Therefore, staff recommends that the Ethics Commission not deny Ms. Christensen's waiver request from the restrictions in SF C&GCC section 3.234(a)(3).

Attachments:

- Waiver requests from Julienne Christensen
- Job description for Executive Director position at DNWPH GBD
- Chapter II of San Francisco Campaign and Governmental Conduct Code
- Ethics Commission Regulations Related to Conflicts of Interest

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26 Child Street
San Francisco, California 94133

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SAN FRANCISCO
ETHICS COMMISSION

May 9, 2016

Ms. LeeAnn Pelham
City and County of San Francisco Ethics Commission
25 Van Ness Avenue, Ste 220
San Francisco, California 04102

Dear Ms. Pelham:

I was appointed in January, 2015 to fill a vacancy on the Board of Supervisors and served for 11 months, ending December 8, 2015.

I am seeking a waiver for the one-year ban on communicating with City departments in Campaign and Governmental Conduct Code section 3.234(a)(2) and 3.234(b)(1) and the one-year ban on employment with parties that contract with the City under Campaign and Government Conduct Code section 3.234(a)(3). I understand the Ethics Commission may waive the first restriction under section 3.234(c)(1) if it determines that a waiver would not create the potential for undue influence or unfair advantage, and that the Commission may waive the second restriction under section 3.234(c)(3) if the Commission determines that imposing the restriction would cause extreme hardship for me. I am requesting that a hearing on this waiver be calendared for the Ethics Commission meeting of May 23, 2016.

Matter for which waiver is sought:

I am requesting the waiver of the one-year restrictions because of the opportunity to be considered for part time (60% FTE) employment by a non-profit created to service the newly formed Dogpatch and Northwest Potrero Hill Green Benefits District.

A dozen Community Benefits Districts or Business Improvement Districts have been formed across San Francisco - at Union Square, Fisherman's Wharf, the Yerba Buena Arts District and at smaller commercial areas like Lower Polk and Top of Broadway - to augment City services and maintain the public realm through sidewalk cleaning, graffiti abatement, homeless outreach, beautification, etc. The CBDs are organized under the oversight of the Mayor's Office of Economic and Workforce Development, report annually to the Board of Supervisors and are subject to the Brown Act.

The Dogpatch and Northwest Potrero Hill Green Benefits District utilizes this same organizational structure but is unique in focusing on neighborhood greening - on sidewalk plantings, street trees, parklets, parks, plazas, gardens and other green infrastructure. These efforts are especially important to help maintain the character

of the Dogpatch and Potrero neighborhoods as they experience the transformation of the Mission Bay neighborhoods to the north and the Bayview and India Basin neighborhoods to the south and as their own neighborhood population doubles, perhaps even triples, over the next few years.

If employed by the GBD, my contact with City departments, at least for the period of the restriction, would involve normal administrative interface about already-prescribed City services - i.e. coordinating street cleaning, homeless outreach, parks maintenance, etc. It may involve coordination of permits for parklets or street fairs, etc. It would involve some contact with the Supervisors in whose districts the GBD resides. City funding for the GBD is already prescribed.

My prior involvement in the matter:

The ban on employment applies in this case because, as a member of the Government Audit and Oversight Committee, I reviewed the proposed agreement with the nonprofit Owners' Association for administration/management of the established property-based Green Benefit District (pursuant to California Streets and Highway Code, Section 36651, for a period commencing upon Board approval, through June 30, 2025). On December 5, 2015, I voted yes on a motion to forward this item to the full Board with a positive recommendation for consideration on December 8, 2015.

My tenure on the Board ended prior to the vote on the GBD and I did not participate directly in approval of the agreement.

The GBD non-profit's agreement with the City is a pro forma document, a formalized MOU. This is not a competitively bid contract, as garbage or security services might be, but an up-or-down vote on whether this entity, which provides auxiliary services to a specified area, will exist or not. These matters are fairly routine and never, in my recollection, controversial. Agreements with two other Community Benefits Districts were also recommended to the full Board at the same time. All eventually passed unanimously.

Potential for undue influence or unfair advantage:

My connections with City departments and elected leaders are not the result of my 11 months on the Board of Supervisors, but the reverse: I was appointed to the Board based on my more than 20 years of pro bono service to the City and its residents. I have contributed thousands of hours to solving intractable problems and improving the public realm. These volunteer activities have come at great personal expense, both in loss of personal and professional time and in loss of income. I came to the Board already well familiar with two decades of Mayors, City department heads and staff. Moving from the role of neighborhood advocate to that of a political figure strained, rather than strengthened, many of those relationships, particularly after I left office.

There would be no detriment to other CBDs or other neighborhoods if I should take the Executive Director position, likely the opposite is true. The City-administered

portion of the budgets of each of the CBDs and the City-provided services for those areas are prescribed. It is the function of each of the CBD directors to coordinate and augment those budgets and services to optimize services and improvements. My hope is that, in my tenure with the GBD, I can help develop and promote solutions in other parts of the City as well as in Dogpatch and Potrero Hill.

I propose to the commission that the interests of the public would be better served by my continuing my community service by working for the Green Benefits District than by being prevented from doing so.

Hardships caused by the ban:

The restrictions imposed by the contractor employment ban limit my ability to seek employment, causing financial hardship and restricting my ability to pursue a career involving service in the public sector.

Since the mid 1990s I have held two nearly fulltime positions: In my professional, for-pay role as a product appearance consultant, I helped to develop products for companies including KitchenAid, Whirlpool, CorningWare, Pyrex, Microsoft and XBOX. In parallel - on a completely volunteer, pro bono basis - I worked to improve parks, libraries, streets and public transportation. I have helped the City resolve or avoid litigation related to wheelchair access to Coit Tower and unsafe conditions at the Helen Wills children's play area. I have written grants and led private fundraising efforts that have added almost \$4 million to help pay for City projects. I helped to solve especially challenging problems related to pedestrian safety, park planning and services, erosion and irrigation. I have planted 355 street trees.

In 2013, I reduced my design workload to lead private sector fundraising for furniture and equipment for the new North Beach Library (on which I worked for 11 years). I planned to return to my design practice full time at the end of that year. But the renovation of the Joe DiMaggio Playground (on which I worked for 16 years) came in over a million dollars over budget. To avoid further delays or cutbacks on that hard-won project, I continued to work in an unpaid capacity to secure additional funding, assuming, once again, that I would return to my design practice.

Then I received a call from the Mayor. David Chiu was headed for Sacramento and there was no obvious successor. District 3 had been vigorously represented in the 15 years since reinstatement of district elections. It was important to me that we be represented by someone well familiar with the communities, groups and individuals who make up our diverse and complex district, someone responsive and deeply committed to the needs of its residents. Putting aside my professional and financial concerns, I accepted the appointment to the Board of Supervisors.

My service on the Board was particularly challenging, requiring that I become a Supervisor and a candidate simultaneously. I had to close my design practice and lost significant opportunities as a result. Because of regime and staffing changes by my two major clients while I was serving on the Board, I am unable to regain work with those key companies.

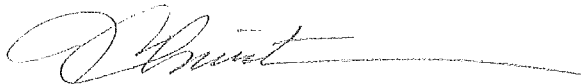
More important, my acceptance of the appointment was a conscious decision on my part to attempt to redirect my career focus to the public sector. I would like to continue serving the people of San Francisco, as I have done without compensation for over 20 years, but in a professional capacity. Lifting of the 3.234 restrictions would allow me to do that.

The skill set required to advance the goals of the GBD is uniquely aligned with my unusual career path. A candidate will be selected this month and the position filled. I would like to continue to be of service and this is a special opportunity to solidify that commitment. If granted a waiver by the Commission, I will use this opportunity to apply my decades of civic and professional experience to benefit the residents of Dogpatch and Potrero Hill and the citizens of San Francisco.

A copy of this waiver request is also being sent to Angela Calvillo, Clerk of the Board.

Thanks to you and the members of the Commission for your service.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Julienne Christensen', with a long horizontal flourish extending to the right.

Julienne Christensen

cc: Angela Calvillo, Clerk, San Francisco Board of Supervisors

Julie Christensen
JulienneChristensen@Gmail.com
(415) 269-1948

Civic Projects

400 Trees – 1994-1995

Planted 355 street trees in the City's northeast neighborhoods. Organized block captains, planned and supervised plantings.

Coit Tower / Pioneer Park – 1994-present

Made Coit Tower wheelchair accessible, avoiding pending lawsuits against the City. Solved serious pedestrian safety issues. Reduced erosion and improved irrigation. Helped raise \$1.5 million in project funding through grant writing and donor recognition programs. Managed community outreach.

Helen Wills Park – 2001-2005

Recruited pro bono designers and developed a park master plan that solved serious safety and security issues and made the park 100% ADA accessible. Wrote applications for state grants that provided \$1.5 million of project funding. Managed community outreach.

North Beach Pool – 1999-2006

Recruited pro bono architects and engineers and solved significant project design challenges related to safety, programming and circulation. Managed community outreach.

North Beach Library – 2003-2013

Managed sustained community outreach and advocacy over 11 years. Represented the community as an integral part of the City project team. Led private sector fundraising for furniture and equipment.

Joe DiMaggio Playground – 1999-2015

Managed sustained community outreach and advocacy over 16 years. Recruited pro bono designers and developed a preliminary park master plan. Spearheaded private sector fundraising.

Central Subway – 2013-present

Co-founded SFNextstop transit advocacy group; Elevated the subway extension to a City planning priority. Lobbied successfully for a Transportation Authority assessment of the costs and benefits of the subway extension.

Consulting and Mentoring – 1994-present

Co- Advised and assisted numerous nonprofits and community groups on community outreach, advocacy, fundraising, resource recruitment and event planning.



Dogpatch & Northwest Potrero Hill Green Benefit District (GBD) EXECUTIVE DIRECTOR POSITION DESCRIPTION

GBD MISSION STATEMENT

- Clean, maintain, enhance and expand existing and new sidewalk greenings, street trees, parklets, parks, plazas, gardens and green infrastructure throughout the GBD area
- Encourage and support community volunteer efforts to do the same
- Promote sound ecological practices with a locally controlled, sustainable, and transparent funding structure
- Demonstrate a high-level of transparency and accountability in how GBD funds are spent, leveraging state-of-the-art “citizen service” technology to track projects, expenses and service requests

ROLE DESCRIPTION

The Executive Director will manage and implement the projects, activities, and services of the Dogpatch & Northwest Potrero Hill Green Benefit District (the “GBD”), a newly established nonprofit special assessment district located in San Francisco. Guided by the voter-approved GBD Management Plan, the Executive Director will oversee the work of contractors and consultants, and report to a 13-member GBD Board of Directors.

This position is approximately 60% FTE, including some evening community meetings and weekend events. Preferred Start Date: May 2016

PRIMARY PROJECT RESPONSIBILITIES

Organizational Management and Development

- Lead, motivate, and develop the Board to accomplish its mission and goals, including managing the election process
- Work with the Board to develop an annual work plan and budget based on the GBD Management Plan
- Ensure compliance with all federal, state, and local regulations, with a special emphasis on the Brown Act
- Advocate for the GBD at City Hall; build strategic relationships with SF Public Works, SFMTA, Planning, SFPUC, SF Recreation and Parks Department, District 10 Supervisor’s Office and other City and County of San Francisco agencies and officials

Program Development and Implementation

- Oversee the administration of all GBD service and capital third party contracts, including all contract negotiations, reporting requirements and future RFPs, to ensure cost-efficient and timely delivery of services
- Oversee grant reporting as needed
- Engage external legal support and supervise review of GBD contracts with service and capital providers
- Work with the Board to design new program initiatives aligned with the GBD Management Plan
- Monitor baseline service delivery from public agencies to ensure GBD-funded programs are supplemental in nature



Community Engagement and “Customer Service”

- Develop and execute comprehensive communications and branding strategies
- Lead outreach to GBD property owners and build an accurate property-owner database
- Actively manage and improve the GBD website as a communication, accountability and engagement tool
- Scope the feasibility of launching a GBD mobile app to track service requests and “real time” expenditures
- Work with existing neighborhood groups and stewardship organizations to ensure that GBD is enhancing their capacity and resources—not replacing them
- Launch and manage a “GBD Volunteer Program”

Fiscal Management and Fundraising

- Oversee \$500,000 annual revenue that will grow approximately 5-10% per year over the next 10 years
- Prepare the annual budget for approval by the Board
- Prepare and publish annual and mid-year reports as required by the City-GBD Agreement
- Authorize timely payment of invoices as well as ensuring timely deposits and transfers
- Work with the Board (and external consultants as needed) to develop and implement a fundraising campaign for specific projects and general operations
- Grant research and writing
- Together with GBD Board, seek and maintain a diverse donor base of individual, business, foundation, and government support beyond the annual assessment base

PREFERRED MINIMUM QUALIFICATIONS

- Highly motivated self-starter with the ability to work independently among a diverse community of stakeholders
- Strong organizational and project management skills
- Proven track record negotiating and managing contracts with third party service providers
- Proven track record creating and managing budgets
- Background in nonprofit financial oversight
- Detail-oriented with impeccable follow-through and accountability
- Strong public speaking and presentation skills
- Ability to create and implement a comprehensive strategic plan
- Ability to work with members of a diverse Board to engage their assistance
- Proficient computer skills including MS Word, Excel, Outlook, and Google drive

EDUCATION and/or EXPERIENCE

- Must have a bachelor’s degree from an accredited college or university (preferably in planning, business, nonprofit management, or related field). Graduate degree a plus.
- Prior work experience in a nonprofit or corporate management role, including negotiating and managing contracts with third party service providers is very desirable.
- Familiarity with San Francisco is a plus, but not required

EQUAL OPPORTUNITY

The GBD is an equal opportunity employer and does not discriminate on the basis of age, national origin, ethnicity, race, religion, ability, sexual orientation, gender or political affiliation.



COMPENSATION AND APPLICATION INFORMATION

The GBD offers competitive financial compensation based on experience. Employee status is 1099. Please submit a resume and cover letter to GBD@schaffercombs.com; include your FIRST and LAST name in the subject line.

Please do not contact the client directly. Schaffer&Combs is retained by GBD to manage the Executive Director search. Schaffer&Combs solves problems and provides growth solutions for mission-driven organizations.

File No. 120964, App. 2/4/2013, Eff. 3/6/2013, Oper. 1/1/2013)

(Derivation: Former Administrative Code Section 58.600)

SEC. 3.1-510. AGENCY POSITIONS THAT MANAGE PUBLIC INVESTMENTS FOR PURPOSES OF SECTION 87200 OF THE GOVERNMENT CODE.

Pursuant to state law, California Government Code section 87314, the following section identifies the local officials who manage public investments for the purposes of California Government Code section 87200.

<i>Designated Positions</i>	<i>Disclosure Categories</i>
Member, Retirement Board	1
Commission Secretary, Retirement System*	1
Executive Director, Retirement System	1
Chief Investment Officer, Retirement System*	1
Managing Director, Retirement System*	1
Treasurer	1
Chief Assistant Treasurer*	1
Cash Mgmt. and Investment Officer, Treasurer-Tax Collector's Office*	1
Asst. Cash Mgmt. and Investment Officer, Treasurer-Tax Collector's Office*	1

* These local officials shall file their statements of economic interests with their respective department's filing officer.

(Added; Ord. 320-10, File No. 101272, App. 12/23/2010; amended by Ord. 9-13, File No. 120964, App. 2/4/2013, Eff. 3/6/2013, Oper. 1/1/2013; Ord. 256-14, File No. 141003, App. 12/19/2014, Eff. 1/18/2015)

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) For a first violation where the respondent violated the SIA by failing to disclose an activity that is required to be disclosed – but is not prohibited – under the SIA, the Commission will issue a warning letter to the respondent in most cases. In exceptional circumstances, the Ethics Commission may determine that additional penalties are appropriate.

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

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 participated 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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