



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

September 16, 2016

By Electronic Mail

Anita D Stearns Mayo  
Special Counsel  
Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
San Francisco, CA 94111-5998

Dear Ms. Mayo:

This letter responds to your inquiry that we received by electronic mail on September 1, 2016, regarding San Francisco Campaign & Governmental Conduct Code Sec. 3.230. Thank you for your patience as we've sorted through your questions, here internally, and also with the City Attorney's office to understand the City's historical interpretation of Sec. 3.230.

Please note that the following general information is provided as informal guidance as your questions were general in nature and not about any specific circumstances. Of course, if you would like to seek formal advice regarding any prospective actions, we would be happy to provide that for any specific facts you can provide.

In sum, you asked the following:

Noting that Section 3.1-103 (including (a)(2) and (b)(2)) and Section 3.1-420 of the City's Campaign & Governmental Conduct Code ("Code") identify members of the San Francisco Unified School District ("SFUSD") Board of Education and SFUSD employees as individuals required to file statements of economic interests, does the restriction on political activities of Section 3.230 of the Code applies to these SFUSD designated officers and employees?

For the following reasons, Sec. 3.230 does not appear to apply to these SFUSD officers and employees.

### Applicable Law

Section 3.230 (a) of the City's Campaign & Governmental Conduct Code states:

#### "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."

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.

SEC. 3.1-102. FILING REQUIREMENTS.

(a) Officers and Employees. Each officer and employee of the City and County of San Francisco holding a position designated in this Chapter, other than those officials identified in Section 3.1-500, shall file statements disclosing the information required by the disclosure categories set forth in this Chapter on such forms as may be specified by the Fair Political Practices Commission in a format specified by the Ethics Commission ..."

Section 3.1-103, in turn, identifies members of the Board of the SF Unified School District (at subsection (a)(2)) and the Superintendent of the SFUSD (at subsection (b)(2)), as filers who must submit their Statements of Economic Interests with the Ethics Commission.

Section 3.1-420 lists all remaining SFUSD positions required to be disclosed, however individuals in those positions are required to file statements of economic interests with the Superintendent.

**Analysis**

You are correct that the term "officer" as used in Article III, Chapter 1 of the Code means in part, any member of a board or commission required to file an SEI, as well as any person appointed as the CEO under such board or commission. The SFUSD Board and Superintendent are identified as filers in Sec 3.1-103(a)(2) and (b)(2). Members of the SFUSD Board and the Superintendent, therefore, are "officers" for purposes of these filing provisions.

Based on our review of the legislative record, when the term "officer" was defined in 2009, "[t]he amendment adds new section 3.203 to define "officer" and "City elective office" for the purposes of Chapter 2." (See page 2 of July 8, 2009 Ethics Commission staff memo contained in the Board of Supervisor Agenda Packet for File No. 091013, copy attached). Notably, among the Chapter 2 provisions at that time was Sec. 3.230 – added in 2003 by San Francisco Voters through passage of Proposition E – with its following prohibitions 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.

At the same time, however, it appears that the definition of "officer" was also intended to specifically *exclude* SFUSD Board Members and the Superintendent. According to the July 2009 Staff memo:

"An 'officer' would not include a member of a separate non-City legal entity such as the Board of Education and the Superintendent of Schools, who are currently not subject to the City's conflict of interest laws." (Staff Memo, p. 2)

This appears consistent with the distinction in current law at Section 3.1-103 between officers in Subsections (a)(1) and (b)(1) who must file Statements of Economic Interests along with an ethics training certification and Sunshine Ordinance Training declarations, and those in Subsections (a)(2) and (b)(2) whose filings reference only Statements of Economic Interests. That is, the former are subject to the City's ethics and Sunshine provisions and training requirements, while the latter are not. At the same time, it is reasonable to question how Sec. 3.230 should be interpreted given the clear reference to defining "officer...for purposes of Chapter 2."

In researching your question, we consulted with the Office of the City Attorney. That office has advised that it has historically read the reference in Sec. 3.230(a) to "*City officer and employee*" to exclude School Board members and SFUSD employees (emphasis added).

Regarding the term "employee," while that term is not defined in the Code it is defined in Appendix of the SF Charter (A8.365-1) and specifically exempts SFUSD employees:

"Employee" shall mean any person who is appointed to a position created by or which is under the jurisdiction of the City and County, whose compensation is paid by the City and County, and who is under the control of the City and County as to employment, direction and discharge and *does not include persons who occupy classified or certificated positions with the San Francisco Unified School District or the Community College District or who work for the City as independent contractors.* (Emphasis added).

Please note that we are requesting a formal written opinion from the City Attorney's Office office to confirm our understanding of their reading of the law and help ensure our office can provide full, accurate and timely guidance on this issue going forward.

## Conclusion

Taken together, therefore, and absent any formal opinion by the Office of the City Attorney or Ethics Commission to the contrary, we can only conclude in this informal advice letter that the political activities restrictions of City law at Sec. 3.230 cannot be construed to apply to SFUSD Board Members, the Superintendent, or SFUSD employees. Should any formal opinion we receive from the City Attorney's Office reach a different conclusion, we will, of course, notify you to that effect.

I hope this information is of assistance to you, and again, thank you for seeking clarification on the laws from our office. If you have any questions or would like any further information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "LeeAnn Pelham", followed by a long horizontal flourish.

LeeAnn Pelham  
Executive Director

Attachment




DENNIS J. HERRERA  
City Attorney

ANDREW SHEN  
Deputy City Attorney

Direct Dial: (415) 554-4780  
Email: andrew.shen@sfgov.org

## MEMORANDUM

TO: LeeAnn Pelham, Executive Director  
FROM: Andrew Shen   
Deputy City Attorney  
DATE: October 5, 2016  
RE: Potential Application of San Francisco Campaign and Governmental Conduct Code  
Section 3.230 to the San Francisco Unified School District

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You have asked our Office for a written opinion addressing the potential application of San Francisco Campaign and Governmental Conduct Code Section 3.230 to the San Francisco Unified School District's ("SFUSD's") Board of Education, Superintendent, and employees.

### SUMMARY OF ADVICE

San Francisco Campaign and Governmental Conduct Code ("C&GC Code") Section 3.230, which establishes certain political activity restrictions, does not apply to the SFUSD's Board of Education, Superintendent, and employees. Section 3.230 explicitly provides that its restrictions apply to *City* officers and employees, and the plain meaning of this reference indicates that this provision does not apply to the SFUSD, a non-City entity. Further, it is likely that a court would conclude that the City could lack the authority to enact political activity restrictions on SFUSD personnel because the Education Code expressly preempts any local regulation on this issue. But the SFUSD Board of Education could choose to apply political activity restrictions based on Section 3.230 to the SFUSD.

### BACKGROUND

In your request for a written opinion, you mention that the Ethics Commission has recently received multiple inquiries about the application of Section 3.230, and in particular Section 3.230(a), to the SFUSD's Board of Education, Superintendent, and employees.

#### A. The San Francisco Campaign and Governmental Conduct Code

Section 3.230 of the C&GC Code limits the types of political activities that City officers and employees may engage in:

#### 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.

## MEMORANDUM

TO: LeeAnn Pelham, Executive Director  
DATE: October 5, 2016  
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RE: Potential Application of San Francisco Campaign and Governmental Conduct Code Section 3.230 to the San Francisco Unified School District

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(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.

This Chapter of the C&GC Code does not define "City officer or employee." But it does offer the following definition of "officer":

"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.

C&GC Code § 3.203(a). Article III, Chapter 1 of the Campaign and Governmental Conduct Code, often referred as the Conflict of Interest Code, lists all positions in local government agencies require the filing of a Fair Political Practices Commission Form 700 Statement of Economic Interests. Even though the Board of Supervisors generally does not adopt ethics rules for non-City agencies, State law requires the Board of Supervisors to approve Form 700 filing requirements for non-City agencies located wholly within the City's boundaries. *See* Cal. Gov. Code §§ 82011, 87303. For that reason, the Conflict of Interest Code addresses Form 700 filing requirements for City agencies as well as non-City agencies such as the Community College District, the SFUSD, the Successor Agency to the Redevelopment Agency, and the San Francisco County Transportation Authority. C&GC Code §§ 3.1-190, 3.1-420, 3.1-423, and 3.1-435.

In 2009, the City added Section 3.203 to Article III, Chapter 2. In July 2009, the Ethics Commission approved this amendment, and the accompanying staff memorandum explained what the proposed definition of "officer" would *not* include:

An "officer" would not include a member of a separate non-City legal entity such as the Board of Education and the Superintendent of Schools, who are currently not subject to the City's conflict of interest laws.

The Ethics Commission forwarded this staff memorandum to the Board of Supervisors when it, in turn, considered and approved the proposed definition in November 2009. Consistent with this staff memorandum, our Office has long advised the Ethics Commission's staff that the provisions contained in Article III, Chapter 2 of the Campaign and Governmental Conduct Code, including Section 3.230, do not apply to SFUSD officers and employees.

#### **B. The California Education Code**

State law, California Education Code Sections 7050-58, places political activity restrictions on school district officers and employees. Section 7050 provides that the "political activities of school employees are of significant statewide concern" and that the following sections "supersede all provisions on this subject in any city, county, or city and county charter as well as in the general law of this state." These Education Code provisions address the solicitation of campaign contributions, although more narrowly than C&GC Code Section 3.230

## MEMORANDUM

TO: LeeAnn Pelham, Executive Director  
DATE: October 5, 2016  
PAGE: 3  
RE: Potential Application of San Francisco Campaign and Governmental Conduct Code Section 3.230 to the San Francisco Unified School District

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by establishing limits on the solicitation and receipt of campaign contributions during working hours only. *See* Cal. Ed. Code § 7056.

## DISCUSSION

To ascertain the intended scope of an ordinance, courts “look first to the language of the statute, giving effect to its plain meaning.” *Burden v. Snowden* 2 Cal.4th 556, 562 (Cal. 1992) (citations and quotations omitted). “Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.” *Id.* Here, Section 3.230, whenever it refers to “officer or employee,” includes the modifier “City.” The plain meaning of these references to “City” indicates that “City officer or employee” is narrower than any governmental “officer or employee” and refers only to *City* officers and employees.

School districts such as SFUSD are state agencies distinct from cities and counties. *See Belanger v. Madera Unified School Dist.*, 963 F.2d 248, 253 (9th Cir. 1992) (“California public schools have long been treated as state agencies under California law.”); *San Francisco Unified School Dist. v. City and County of San Francisco*, 205 Cal.App.4th 1070, 1073 (Cal. Ct. App. 2012) (“The School District and City share coterminous geographic boundaries but are separate and autonomous government entities.”). Thus, Section 3.230’s repeated references to *City* officers and employees establish that it does not apply to *SFUSD* officers and employees. And while the plain meaning of “City” excludes the SFUSD, and there is thus little need to refer to any legislative history, the Ethics Commission’s July 2009 memo confirms that the definition of “officer” – even without the “City” modifier – was intended to exclude SFUSD personnel.

You have stated that persons inquiring about the application of Section 3.230 have argued that Section 3.203’s definition of “officer” – which refers to “any member of a board or commission required by Article III, Chapter 1 of this Code to file statements of economic interests” – suggests that SFUSD officers and employees are subject to Section 3.230 because the SFUSD is included in Article III, Chapter 1. But such an interpretation ignores the repeated references to “City” in Section 3.230. *See Wells v. One2One Learning Foundation*, 39 Cal.4th 1164, 1207 (2006) (noting “principle of statutory construction that interpretations which render any part of a statute superfluous are to be avoided”). And, as explained above, the inclusion of the SFUSD in the City’s Conflict of Interest Code does not suggest that the SFUSD is a City agency. Under State law, the Board of Supervisors is required to include the SFUSD simply because of the school district’s location wholly within the City and County of San Francisco. *See* Cal. Gov. Code §§ 82011, 87303.

Lastly, even if the plain language of Section 3.230 could be read to include them, the City likely could not impose these political activity restrictions on SFUSD officers and employees. As Education Code Section 7050 states, the permissible political activities of SFUSD personnel is a matter of statewide concern, and thus an issue to be addressed solely through state law rather than local regulation.

## CONCLUSION

For the foregoing reasons, Section 3.230’s political activity restrictions do not apply to SFUSD officers and employees. But the SFUSD and its Board of Education may adopt its own political activity restrictions that add to the restrictions already set forth in the Education Code.

File No. 091013

Committee Item No. 14  
Board Item No. 6

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 11-5-09

Board of Supervisors Meeting

Date 11.17.09

**Cmte Board**

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<input type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
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**OTHER**

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Completed by: Linda Wong  
Completed by: Alisa Somera

Date November 2, 2009  
Date November 10, 2009

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

22

[Application of City's conflict of interest laws to City officers.]

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending sections 3.222 and 3.224 to clarify the application of prohibitions to City officers, and by adding sections 3.201 and 3.203 to name the Government Ethics Ordinance, to permit waiver of contracting prohibition, and to define "officer."

NOTE: Additions are single-underline italics Times New Roman;  
deletions are ~~strike through italics Times New Roman~~;  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough-normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby amended by amending Sections 3.222 and 3.224, to read as follows:

SEC. 3.222. PROHIBITING ~~MEMBERS OF BOARDS AND COMMISSIONS~~ OFFICERS  
FROM CONTRACTING WITH THE CITY AND COUNTY.

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

~~(1) Board or Commission. The term "board or commission" means an appointed board or commission created by Charter or ordinance of the City and County, but does not include advisory boards or commissions.~~

(12) 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.

(23) 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.

1 (34) Contract. The term "contract" means any agreement ~~to which the City and County is~~  
2 ~~a party~~, other than a grant ~~funded in whole or in part by the City and County~~ or an agreement for  
3 employment ~~with the City and County~~ in exchange for salary and benefits.

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

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

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

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

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

19 (A) An officer or director of a corporation;

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

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

23 (D) A general partner or limited partner with more than 20 percent beneficial interest  
24 in the partnership; or  
25

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

3 (3) A contract or subcontract ~~with the City and County~~ entered into before a member of  
4 a board or commission commenced his or her service; ~~or~~

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

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

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

10 ~~(de)~~ Limitation. Failure of ~~a member of a board or commission~~ an officer to comply with  
11 this Section shall not be grounds for invalidating any contract with the City and County.

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

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

18 (b) Exceptions. This section shall not apply to any communication by: (1) an officer of  
19 the City and County on behalf of the City and County; (2) an officer of the City and County on  
20 behalf of a business, union, or organization of which the officer is a member or full-time  
21 employee; (3) an associate, partner or employee of an officer of the City and County, unless it  
22 is clear from the totality of the circumstances that the associate, partner or employee is merely  
23 acting as an agent of the City and County officer; or (4) a City officer in his or her capacity as  
24 a licensed attorney engaged in the practice of law, which includes representing clients in  
25 communications with the City Attorney's Office, District Attorney's Office, Public Defender's

1 Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by  
2 the City, representatives of the City who are named in a pending litigation matter or witnesses  
3 or potential witnesses in a pending litigation matter.

4 (c) Waiver. The Ethics Commission may waive the prohibitions in this section for any  
5 ~~member of a City board or commission officer~~ who, by law, must be appointed to represent any  
6 profession, trade, business, union or association.

7 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby  
8 amended by adding Sections 3.201 and 3.203, to read as follows:

9 SEC. 3.201. CITATION

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

11 SEC. 3.203. DEFINITIONS.

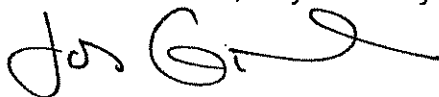
12 Whenever in this Chapter the following words or phrases are used, they shall mean:

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

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

20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22 By:



23 JON GIVNER  
24 Deputy City Attorney  
25

## LEGISLATIVE DIGEST

[Application of City's conflict of interest laws to City officers.]

**Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending sections 3.222 and 3.224 to clarify the application of prohibitions to City officers and to permit the Ethics Commission to waive the prohibition on officers contracting with the City, and by adding sections 3.201 and 3.203 to name the Government Ethics Ordinance and to define "officer."**

### Existing Law

Chapter Two of Article III of the City's Campaign and Governmental Conduct Code regulates conflicts of interest and other prohibited activities. Many of the rules set out in the Chapter apply explicitly to officers and employees. These include section 3.208 (prohibiting consideration for City appointments or nominations), section 3.210 (prohibiting voting on own character or conduct), section 3.212 (prohibiting decisions involving family members' employment), section 3.214 (requiring disclosure of personal, professional or business relationships), section 3.216 (gift restrictions), section 3.218 (incompatible activities), section 3.224 (prohibiting compensated advocacy), section 3.226 (prohibiting consideration for referrals), section 3.228 (prohibiting disclosure of confidential information), section 3.230 (prohibition on political activity with City resources), and section 3.234 (post-employment restrictions). Section 3.222 of the Chapter, which prohibits contracting with the City and other local entities, does not apply specifically to "officers." Instead, that section applies to members of City boards and commissions, excluding members of advisory bodies.

Some members of City boards and commissions who file Statements of Economic Interests under the City's Conflict of Interest Code are not "officers," as that term is defined in City law. The term "officer" is defined in Administrative Code section 1.50 to mean: elected City officeholders; members of the Board of Education; members of boards and commissions appointed by the Mayor and the Board of Supervisors; members of the Building Inspection Commission, Ethics Commission, Elections Commission, Retirement Board, Health Service Board, Sunshine Ordinance Task Force, Youth Commission, Small Business Commission and Board of Law Library Trustees; the Superintendent of Schools; the executive appointed as the chief executive officer under each board or commission; the Controller; the City Administrator; the head of each department under the Mayor; and any other person so designated by law.

Chapter Two of Article III does not have a title for citation, unlike Chapter One of Article III (the Conflict of Interest Code) or Chapter One of Article I (the Campaign Finance Reform Ordinance).

### Amendments to Current Law

This legislation would define "officer" for the purpose of the Chapter to mean any person holding City elective office; any member of a board or commission required to file statements of economic interests; any person appointed as the chief executive officer under a board or commission; the head of each City department; the Controller; and the City Administrator.

The legislation also would amend section 3.222, the contracting prohibition, so it would apply to all officers rather than only members of boards and commissions. The legislation also would add an exception to allow officers to enter settlement agreements regarding claims or other legal disputes, and would allow the Ethics Commission to waive the contracting prohibition for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. The legislation also would clarify that section 3.222 prohibits officers not only from entering contracts with the City and other local entities, but also from bidding on, negotiating for, or otherwise attempting to enter such contracts.

The legislation would amend section 3.234, the compensated advocacy ban, which currently allows the Ethics Commission to grant waivers to board or commission members, to allow such waivers for "officers" instead.

The legislation also would rename the Chapter as the Government Ethics Ordinance.

### Background Information

The proposal amends Article III, Chapter Two of the Campaign and Governmental Conduct Code, which was originally approved by the voters. Section 3.204 of the Campaign and Governmental Conduct code expressly authorizes amendment of Article III, Chapter Two only if:

- 1) the amendment furthers the purposes of the Chapter;
- 2) the amendment is submitted to the Ethics Commission and recommended by its members by a four-fifths vote;
- 3) the legislation is made available for public review for 30 days; and
- 4) the Board of Supervisors adopts the legislation by a two-thirds vote.

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

RECEIVED  
OCT 5 2009  
AM 8:56

## MEMORANDUM

TO: Ethics Commission

FROM: Angela Calvillo, Clerk of the Board

DATE: August 17, 2009

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Rules Committee

BY \_\_\_\_\_

SAN FRANCISCO  
ETHICS COMMISSION

2009 AUG 17 PM 3:48

FILED

The Board of Supervisors Rules Committee has received the following proposed ordinance, which is being referred to the Ethics Commission for comment and recommendation.

**File: 091013**

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending sections 3.222 and 3.224 to clarify the application of prohibitions to City officers, and by adding sections 3.201 and 3.203 to name the Government Ethics Ordinance, to permit waiver of contracting prohibition, and to define "officer."

Please return this cover sheet with the Commission's response to **Linda Wong, Clerk, Rules Committee.**

\*\*\*\*\*

RESPONSE FROM ETHICS COMMISSION - Date: \_\_\_\_\_

☒ No Comment  
☒ Recommendation Attached

  
Chairperson, Ethics Commission



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAMIEENNE S. STUDLEY  
CHAIRPERSON

SUSAN J. HARRIMAN  
VICE-CHAIRPERSON

EMI GUSUKUMA  
COMMISSIONER

EILEEN HANSEN  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: July 17, 2009

To: Members, Board of Supervisors

From: John St. Croix, Executive Director

Re: Legislation to Amend Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code

RECEIVED  
OFFICE OF THE CLERK  
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At its meeting on July 12, 2009, the Ethics Commission, by a vote of 5-0, approved amendments to the conflict of interest provisions that appear in Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code. The proposed amendments would define "officer" for the purposes of Chapter 2, apply the conflict of interest laws in that Chapter to "officers," make several modifications to the City's contracting ban for members of boards and commissions, and rename Chapter 2 as the Government Ethics Ordinance ("GEO").

I am attaching a staff memo that the Commission considered in approving the amendments, and will be pleased to work with you in ensuring their passage.

Please let me know if you have questions.

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# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: July 8, 2009

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Legislation to clarify application of conflict of interest provisions under  
Chapter 2, Article III of San Francisco Campaign and Governmental Conduct  
Code

At its April 13, 2009 meeting, the Commission approved a formal advice letter to Patrick Buscovich, a structural engineer who had been appointed to the Board of Examiners. The Commission advised that Mr. Buscovich was not subject to the compensated advocacy ban in Campaign and Governmental Conduct Code section 3.224 because members of the Board of Examiners are not "officers" of the City, as defined in local law. In a letter dated June 12, 2009, the District Attorney declined to concur in the Commission's advice. Although staff disagrees with the legal analysis and conclusions in that letter, staff agrees with the District Attorney's policy concern that appointed members of local decision-making should comply with the City's conflict of interest laws.

For that reason, staff proposes that the Commission approve amendments to the conflict of interest provisions that appear in Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code. The proposed amendments would define "officer" for the purposes of Chapter 2, apply the conflict of interest laws in that Chapter to "officers," make several modifications to the City's contracting ban for members of boards and commissions, and rename Chapter 2 as the Government Ethics Ordinance ("GEO").

### Section 3.201 (page 4 of draft amendments)

The amendment adds new section 3.201 to provide a title for Chapter 2 of Article III of the San Francisco Campaign and Government Conduct Code, which will be the "Government Ethics Ordinance," or "GEO." Because Chapter 2 sets forth most of the conflict of interest rules that govern City officers and employees, staff believes that giving it an easier name to remember would be appropriate.

Section 3.203 (page 4 of draft amendments)

The amendment adds new section 3.203 to define “officer” and “City elective office” for the purposes of Chapter 2. “Officer” would mean any person holding City elective office, any member of a board or commission who is required to file a Statement of Economic Interests (“SEI” or Form 700), any person appointed as the chief executive officer of a board or commission, a department head, the Controller, and the City Administrator. An “officer” would not include a member of a separate non-City legal entity such as the Board of Education and the Superintendent of Schools, who are currently not subject to the City’s conflict of interest laws. Under this new definition, members of the Board of Examiners would be City officers subject to local conflict of interest laws.

“City elective officer” means an incumbent in the offices of the Mayor, the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender. It does not include a member of the Board of Education of the San Francisco Unified School District or a member of the Governing Board of the San Francisco Community College District. Candidates for such offices are subject to local campaign finance rules and must file their campaign disclosure statements with the Ethics Commission, but incumbents in those offices are not subject to the conflict of interest laws in Chapter 2.

Section 3.222 (pages 1-3 of draft amendments)

Under current law, members of appointed boards or commissions are barred from entering contracts or subcontracts with the City, the San Francisco Redevelopment Agency, Housing Authority, Unified School District, or Community College District where the amount of the contract or subcontract exceeds \$10,000. The proposed legislation would change section 3.222 in four ways:

First, the legislation would apply section 3.222 to “City officers” instead of members of appointed boards or commissions. Currently, some officers – such as department heads – are not subject to section 3.222. Current law also specifically exempts members of advisory boards or commissions from the contracting ban. In the past, for example, the Ethics Commission advised that a member of the Landmarks Preservation Advisory Board<sup>1</sup> was not subject to the contracting ban, even though members of that board were decision-making public officials required to file SEIs. *See Kelley Advice Letter, July 12, 2001.*

Amending section 3.222 to apply to officers (defined under new section 3.203 to include members of boards or commissions who are required to file SEIs) would simplify the law and ensure that all appointed decision-makers are subject to the same ethical restrictions. The change also would ensure that the various restrictions in Chapter 2 apply consistently. Currently, some restrictions, such as the compensated advocacy ban in section 3.224, apply to City “officers,” while the contracting ban in section 3.222 applies to “members of boards and commissions” – an overlapping but separate group of City officials. This amendment would apply section 3.222 to “officers” as well.

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<sup>1</sup> The Landmarks Preservation Advisory Board has dissolved and has been replaced by the Historic Preservation Commission, whose members are required to file SEIs.

Second, the legislation would authorize the Commission to waive the contracting ban for any officer who by law must be appointed to represent a profession, trade, business, union or association. This addition duplicates the waiver provision in section 3.224(c), which authorizes the Commission to consider a waiver from the compensated advocacy ban for the same category of board or commission members. Staff believes a waiver provision is appropriate to allow certain officers to contract with the City in extraordinary situations, based on case-specific findings by the Commission.

Third, the legislation would clarify that section 3.222 prohibits officers not only from entering contracts with the City and other local entities, but also from bidding on, negotiating for, or otherwise attempting to enter such contracts. Currently, the ordinance prohibits “contracting” with the City and other local agencies, but it does not explicitly prohibit officers from bidding on City contracts. So technically, a board or commission member could submit a bid and negotiate for a contract, and section 3.222 would not apply until the member actually enters the final contract. Staff believes this is an unintended loophole in the law. The purpose of section 3.222 is to ensure that contracts are, and appear to be, awarded on a fair and impartial basis. By prohibiting officers from contracting with the City, the ordinance eliminates “both actual and perceived favoritism or preferential treatment without creating unnecessary barriers to public service.” C&GC Code § 3.200(a)(1) and (3). To achieve this goal, section 3.222 should apply throughout the contracting process, not just at the moment the contract becomes final.

Fourth, the legislation would add an exception to allow officers to enter settlement agreements with the City and other local agencies regarding claims or other legal disputes. If an officer is engaged in litigation or any other legal dispute with the City or another local agency, local law should not prohibit the officer from settling that dispute. For that reason, staff recommends adding this exception to section 3.222.

#### Section 3.224 (pages 3-4)

Staff recommends that the Commission change the term “member of a City board or commission” to “officer,” in the waiver section of the compensated advocacy ban, section 3.224(c). This change will make section 3.224 consistent with the rest of the Chapter.

