

Conflict of Interest & Other Prohibited Activities Regulations (San Francisco Campaign and Governmental Conduct Code Section 3.200 et seq)

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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 3.205(a)-1. Ethics Training Annual Deadline

Each City officer or employee required to annually complete the ethics training shall do so no later than April 1. If a deadline falls on a weekend or on a State holiday, the deadline is the next regular business day. An officer or employee who assumed office between October 1 and March 31 and timely completed the required ethics training pursuant to the deadline contained in Regulation 3.205(a)-2 shall not be required to complete the required ethics training by the April 1 immediately following assumption of office.

Regulation 3.205(a)-2. Ethics Training Deadline When Assuming a Position

(a) Each City officer or employee who assumes a position that requires them to annually complete the ethics training, shall do so within 30 days of assuming their position. The assuming office training requirement contained in this subsection (a) does not apply if the officer or employee previously held a City position that required them to complete the annual ethics training and the officer or employee completed the training by the annual training deadline contained in Regulation 3.205(a)-1 immediately prior to assumption of office.

(b) A violation of Article III Chapter 2 of the Campaign and Governmental Conduct Code shall not be subject to monetary penalties under Section 3.242 if all of the following are true:

(1) the violation occurred prior to the training deadline set forth in subsection (a) of this regulation or the date which the officer or employee completes the training, whichever is earlier; and

(2) the officer or employee has not previously been required to complete, nor has completed, the ethics training in the twelve months prior to assuming the position; and

(3) the violation was not willful or knowing.

Regulation 3.205(c)-1. Deadline for Annual Notice

The annual summary of relevant state and local ethics laws provided by the Ethics Commission shall be provided to officers and employees by every department, board, commission, and

agency no later than April 1 of each year. If a deadline falls on a weekend or on a State holiday, the deadline is the next regular business day.

Regulation 3.209-1: Recusal Notification

Any member of a City board or commission who is required by section 3.209(b) to file a recusal notification form must do so by filing Form SFEC-3.209. The Commission may require that this form be filed in electronic format.

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 of 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 3.203, 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): 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; (f) constitute oral or written public comment that becomes part of the record of a public hearing; (g) are made at a public forum or rally; or (h) are made via petition or social media.

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 rules contained in section 3.216(b).

(a) Gifts, other than cash, that constitute routine office courtesies with an aggregate value of \$25 or less per occasion provided to an officer or employee without regard to official status by a restricted source at the restricted source's place of business at such times that the officer or employee must visit the restricted source's place of business in order to carry out City duties. Gifts received by any officer or employee under this exception from any single restricted source must not exceed four occasions during a calendar year. The total, aggregate value of the routine office courtesies received by a single officer or employee on an occasion must be \$25 or less for this exception to apply, even if multiple restricted sources pay for the routine office

courtesies. Routine office courtesies include bottled water, coffee, small snacks, a pad of paper, and writing instruments. Routine office courtesies do not include alcohol.

Example: An employee of a department must visit the place of business of a company doing business with the department in order to assess the company's compliance with the laws administered by the department. During the site visit, the employee may accept routine office courtesies that are offered such as coffee, tea, juice, pastry or bagels, as long as their aggregate value does not exceed \$25 per employee for the duration of the visit, provided that the employee has not already accepted such routine office courtesies from the restricted source on four occasions during the calendar year.

(b) Free attendance at a widely attended convention, conference, seminar, symposium, or ribbon-cutting or ceremony, including before or after construction, where attendance is appropriate to the official duties of the officer or employee and the organizer of the event provides the free attendance voluntarily. A gift is provided voluntarily if it is given freely, without pressure or coercion.

(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 an event organizer's offer of free attendance at the event for an accompanying individual.

Example: Staff of a City department are invited to attend a conference on best practices in the industry that is organized by a restricted source. The event organizer provides free attendance to the department's staff without the department asking for free attendance. Staff may accept free attendance to the conference. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

(c) 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: 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.

- (d) Informational material as defined by California Code of Regulations Title 2, regulation 18942.1.
- (e) A payment that is not used and that, pursuant to California Code of Regulations Title 2, regulation 18941, is returned, donated, or for which reimbursement is paid.
- (f) A payment from: the official's spouse or former spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grand nephew, grand niece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph.
- (g) A campaign contribution required to be reported under Title 9 of the California Government Code.
- (h) Any devise or inheritance.
- (i) Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.
- (j) Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in California Code of Regulations Title 2, regulation 18950 (b)(2)), so long as the admission is provided by the person who organizes the event. Admission, food, and nominal items provided as part of a paid admission to those attending, may also be provided to one additional official, who is attending the event to support or assist the official who is making the speech. For purpose of this subdivision, "nominal" means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.
- (k) Payments for campaign activities as specified in California Code of Regulations Title 2, regulation 18950.3.

(l) A ticket provided to an official and one guest of the official for the admission to a facility, event, show, or performance for an entertainment, amusement, recreational, cultural, or similar purpose at which the official performs a ceremonial role on behalf of the official's agency, as defined in California Code of Regulations Title 2, regulation 18942.3, so long as the official's agency complies with the posting provisions set forth in California Code of Regulations Title 2, regulation 18944.1, subdivision (d).

(m) A single ticket provided by a nonprofit organization to a fundraiser event hosted by the nonprofit organization if the ticket is used by an official for whom attendance at the event is necessary to carry out the official's City duties and the official's department complies with the disclosure requirements contained in section 3.217 of the Code. "Nonprofit organization" means an organization with tax exempt status under 26 United States Code Section 501(c)(3). Purposes that are "necessary to carry out the official's City duties" may include attending an event to share information with other attendees, to build and maintain relationships with grant recipients or potential grant recipients for purposes of City business, or to show departmental support for City-funded projects, so long as such tasks are part of the official's City duties. The ticket may not be used for employee appreciation or as a reward for public service.

(n) A single ticket to an arts exhibit, performance, athletic, sporting, cultural, or other entertainment event or production provided by an organization holding the exhibit, performance, event, or production if the ticket is used by an official for whom attendance at the exhibit, performance, event, or production is necessary to carry out the official's City duties and the official's department complies with the disclosure requirements contained in section 3.217 of the Code. Purposes that are "necessary to carry out the official's City duties" may include monitoring City-funded or permitted events, or assessing local events to inform future funding or permitting decisions, and ensuring proper use of City facilities, so long as such tasks are part of the official's City duties. Employees of City departments that regularly fund or permit arts, recreational, and culture events and productions, shall be allowed to accept a single additional ticket for a guest to accompany them to the event or production. No ticket provided under this exception to a City official or, for employees of departments that regularly fund or permit arts, recreational, and culture events and productions, a guest, may be given or accepted for employee appreciation or as a reward for public service.

(o) A personalized plaque or trophy valued at less than \$250, limited to one plaque or trophy, per calendar year, per restricted source.

(p) A personalized greeting card, letter, or postcard.

(q) A payment that is provided at a free or discounted rate to members of the general public, without regard to the officer or employee's status as a City official, such as promotional discounts or merchandise (swag bags, buttons, stickers, branded t-shirts, etc.), attendance at community events, food or product samples, product demonstrations.

(r) Branded promotional items of nominal value from a nonprofit organization. "Branded promotional items" can include pens, pencils, mouse pads, mugs, water bottles, calendars, t-shirts, hats, buttons, stickers, or similar items, which are branded with the nonprofit organization's name or logo, or the name or logo of a program or project of the nonprofit organization. "Nonprofit organization" means an organization with tax exempt status under 26 United States Code Section 501(c)(3).

Regulation 3.216(b)-6 – License, permit, or other entitlement for use.

Notwithstanding the definition of "doing business with the department" contained in Article III, Chapter 2, neither an approval nor the application for approval of a license, permit, or other entitlement for use shall be deemed "doing business with the department" if the approval of such item is solely ministerial, secretarial, manual, or clerical. A person seeking, obtaining, or possessing such a license, permit, or other entitlement for use is not a "restricted source" for purposes of section 3.216, solely because of the license, permit, or other entitlement for use.

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 or employee under their supervision or from any candidate or applicant for a position as a subordinate or employee under their supervision 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, when unsolicited, 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 that terminates a subordinate relationship.

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

(vii) 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.

(viii) 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).

(ix) Any devise or inheritance.

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

(xi) 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.

(xii) 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.

(3) Occasion on which gifts are traditionally given. An occasion on which gifts are traditionally given is a holiday traditionally associated with gift giving, such as Christmas and Chanukah, a birthday, marriage, birth or adoption of a child, or bereavement following the death of an immediate family member.

(4) 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.

(5) Receipt of gift. A gift is received when a person exercises control over the gift.

(6) 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.

(7) Subordinate officer. An officer is a subordinate of (a) any other officer whose position, or a board on which the officer sits, is the appointing authority for the officer in question, and (b) any officer whose position, or a board on which the officer sits, is the appointing authority for the appointing authority for the officer in question.

Example: The City Administrator is the appointing authority for a department head. The department head is therefore a subordinate to the City Administrator. Additionally, because the Mayor is the appointing authority for the City Administrator, the department head is also a subordinate to the Mayor.

(8) Value. The value of a gift is determined by the actual value or where the actual value is unknown, making a reasonably good faith estimate of the fair market value of the item or service, comparing where possible similar items or services.

(9) Unsolicited. A gift is unsolicited if it is not requested and is given freely, without pressure or coercion. A contribution to a gift from multiple persons is unsolicited if the recipient of the gift did not request the contribution and 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 unsolicited if the request for the contribution is made by an officer or employee other than the recipient and includes a statement that an employee may choose to contribute less or not at all.

Regulation 3.216(d)-1: Gifts of Travel Notification

(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. Activities Subject to the Department's Jurisdiction – Actions on Behalf of Oneself or One's Immediate Family

A City officer or employee may be a party to a matter before or otherwise appear before their department or commission on behalf of themselves or an immediate family member, as described in Section 3.218(a)(1), if as part of their City duties, the City officer or employee does not participate in and fully abstains from any involvement, in any such matter.

Regulation 3.218-2. Activities Subject to the Department’s Jurisdiction – Definition of “on behalf of oneself”

“On behalf of oneself” as used in Section 3.218(a)(1), includes acting on behalf of the City officer or employee’s single-member LLC, sole proprietorship, or similar entity.

Regulation 3.218-3. Activities Subject to the Department’s Jurisdiction – Employment with an Entity Engaging in Activities Subject to the Department’s Jurisdiction

A City officer or employee may be employed by an entity that engages in Activities Subject to the Department’s Jurisdiction as defined in Section 3.218(a)(1) if (1) the officer or employee themselves does not personally and substantially engage in Activities Subject to the Department’s Jurisdiction as part of their employment by that entity and (2) as part of their City duties, the City officer or employee does not participate in and fully abstains from any involvement in any matters explicitly involving their non-City employer.

Engaging in Activities Subject to the Department’s Jurisdiction includes, but is not limited to, working in a position that is majority-funded by the officer or employee’s City department and liaising with their City department on behalf of their non-City employer.

Regulation 3.218-4. Activities Subject to the Department’s Jurisdiction – Being an Officer or Exercising Management or Control over an Entity Engaging in Activities Subject to the Department’s Jurisdiction

A City officer or employee may be an officer or exercise management or control over an entity that engages in Activities Subject to the Department’s Jurisdiction as defined in Section 3.218(a)(1) if (1) the officer or employee does not personally and substantially engage in any Activities that are Subject to the Department’s Jurisdiction in connection with their role with the non-City entity, and (2) as part of their City duties, the City officer or employee does not participate in and fully abstains from any involvement in any matters explicitly involving the entity for which they are an officer or exercise management or control, and (3) the employee or officer is not contracting with their own department within the meaning of Section 3.218(a)(1)(A) and Regulation 3.218-6.

Engaging in Activities Subject to the Department’s Jurisdiction includes, but is not limited to, working in a position that is majority-funded by the officer or employee’s City department and liaising with their City department on behalf of their non-City entity.

Being an “officer or exercising management or control” over an entity means occupying the role of officer, director, partner, or other position that exercises management or control over an entity, owning more than five percent of a publicly traded entity, or owning more than 20% of a non-publicly traded entity.

Notwithstanding the above, Section 3.218(a)(1) does not prohibit an officer or employee from serving on the board of directors of a public or quasi-public body, or a nonprofit organization, if the City officer or employee is serving on the board as part of their City duties, is representing the City or their department on the board, and is not receiving any compensation, other than from the City, for their service on the board.

For the purposes of this regulation, a City officer or employee is serving on a board as part of their City duties, only if the service is required by law or by a contract with the City, or if they have written documentation from their department head or appointing authority certifying that their service on the board is part of their City duties. Department heads may not certify that their own service on a board is part of their City duties and must get documentation from their appointing authority in order to serve.

Regulation 3.218-5. Activities Subject to the Department’s Jurisdiction – Definition of “Engaging in Non-compensated, Volunteer Activity for a Nonprofit Organization”

“Engaging in non-compensated, volunteer activity for a nonprofit organization,” as used in section 3.218(a)(1), allows a City officer or employee to serve on the board of a nonprofit organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(5), only if (1) in their capacity as a City officer or employee, they do not participate in and fully abstain from any involvement in any matters explicitly involving the nonprofit organization and (2) that organization does not contract with their City department.

Regulation 3.218-6. Activities Subject to the Department’s Jurisdiction – Definition of “Contracting With One’s Own Department”

“Contracting with one’s own department,” as used in section 3.218(a)(1)(A), includes being an officer or exercising management or control over an entity that contracts with the City officer or employee’s department. Being an “officer or exercising management or control” over an entity means occupying the role of officer, director, partner, or other position that exercises

management or control over an entity, owning more than five percent of a publicly traded entity, or owning more than 20% of a non-publicly traded entity.

“Contracting with one’s own department,” as used in section 3.218(a)(1)(A), includes subcontracting to perform any work that a primary contractor has an agreement to perform with the City officer or employee’s department. Subcontracting includes being an officer or exercising management or control over an entity that subcontracts to perform any work that a primary contractor has an agreement to perform with the City officer or employee’s department.

Regulation 3.218-7. Activities Subject to the Department’s Jurisdiction – Definition of “Serving on the Board of Directors”

“Serving on the board of directors,” as used in section 3.218(a)(1)(A), does not include serving on the board of directors of a public or quasi-public body, or a nonprofit organization, if the City officer or employee is serving on the board as part of their City duties, is representing the City or their department on the board, and is not receiving any compensation, other than from the City, for their service on the board.

For the purposes of this regulation, a City officer or employee is serving on a board as part of their City duties, only if the service is required by law or by a contract with the City, or if they have written documentation from their department head or appointing authority certifying that their service on the board is part of their City duties. Department heads may not certify that their own service on a board is part of their City duties and must get documentation from their appointing authority in order to serve.

Regulation 3.218-8. Definition of “Department”

(a) As used in section 3.218 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 3.220-1. 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 either of its next two regularly scheduled meetings, any waiver request that meets the criteria of this regulation. 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 their 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 they have provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of their 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 their 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 they have 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 they participated in awarding the contract.

(3) Consideration of waiver requests. The Ethics Commission shall consider, at either of its next two regularly scheduled meetings, any request that meets the criteria set forth in subsections (a)(1) or (a)(2) of this Regulation. The individual who has requested the waiver, or their 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 their 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 either of its next two regularly scheduled meetings, any waiver request that meets the criteria of this regulation. 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 their 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 .