



San Francisco Ethics Commission

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December 14, 2022

Honorable Members of the San Francisco Board of Supervisors
Attention: Angela Calvillo, Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Ethics Commission Response to Supervisor Safai Letter of Inquiry Regarding Ethics Reviews
When a Public Health Employee Receives Additional Income from a Public Health Contractor**

Dear Members of the Board:

At the Board of Supervisors Meeting of November 29, 2022, Supervisor Safai issued a Letter of Inquiry to the Ethics Commission, the Department of Human Resources (DHR), and the Department of Public Health (DPH), regarding whether there is an Ethics review when a DPH employee receives outside income from a contractor with their department. This communication provides the response of the Ethics Commission to that inquiry and addresses ethics rules and processes that are within the jurisdiction of the Ethics Commission.¹

Departmental Statement of Incompatible Activities (SIAs)

To ensure that governmental duties are conducted without any regard for personal interest or gain, City law subjects all officers and employees of the City to the provisions of their department, board or commission Statement of Incompatible Activities (SIA). Adopted by each department, the SIA describes activities that are considered in conflict with or incompatible with the duties of officials and employees in that department. Statements identify the kinds of outside activities, including self-employment, that are incompatible with the mission of the Department and are restricted for departmental officers and employees. These activities can include those that conflict with official duties, have excessive time

¹ City employees seeking additional employment are also subject to City provisions not within the jurisdiction of the Ethics Commission that require approval of outside employment by the City's Human Resource Director. See [DHR's Additional Employment Request \(AER\) Form](#), which requires approval for additional employment from their appointing authority and the Human Resources Director prior to engaging in that outside employment. [Civil Service Rule 118](#) and the AER Form specify the conditions in which an AER may be denied and include when the duties or responsibilities of the additional employment are: *"inconsistent, incompatible or in conflict with the employee's City duties or responsibilities"* or *"contrary to the interests of City service in general or could lead to situations that would discredit the City."*

demands, or are subject to the review of the department. Prohibitions can apply to these activities whether they are compensated or uncompensated.

To help officials and employees know where to access their department's SIA and familiarize themselves with its provisions, the Ethics Commission provides an [annual SIA reminder notice](#) to every department, board, commission and agency that City law requires SIAs to be distributed to all employees each year by April 1. In addition, to ensure that new officers and employees are notified of the SIA, each department, board, commission, and agency must provide a copy of its SIA to each new officer at the time of appointment or each new employee at the time of hire.

SIA Provisions Regarding Approval of Outside Employment

Among departmental SIAs provisions are processes related to outside employment. When an employee seeks, or engages in, additional employment outside of their City job, the SIA establishes an Advance Written Determination (AWD) process to allow a City officer or employee to request and receive a written determination by an appropriate decision-maker as to whether the proposed outside employment is not incompatible with certain requirements and prohibitions contained in the department's SIA. The criteria to be assessed in this review process are established in the SIA and are:

- does a proposed outside activity conflict with the mission of the department or their official duties;
- does the proposed activity impose excessive time demands;
- is the proposed activity subject to the review of their department;
- does the activity provide selective assistance; and
- is the activity otherwise incompatible and therefore prohibited.

SIAs also identify for each department the person or entity with authority to provide an AWD to the officer or employee requesting the determination. A written determination from the appropriate decision-maker that an activity is not incompatible provides the requestor with immunity from any subsequent enforcement action for a violation of the SIA, if the material facts are as presented in the requestor's written submission. Requests for AWDs, including approvals and denials, are public records to the extent permitted by law.

Statement of Incompatible Activities for Department of Public Health

The [Department of Public Health's SIA \(Attached\)](#) contains rules that prohibit DPH officers and employees from engaging in activities that conflict with their official duties, have excessive time demands, are subject to the review of their department, or provide selective assistance to someone seeking a City contract.

For employees of DPH, the decision-maker for an Advanced Written Determination is the Director of the department or the Director's designee. The DPH SIA provides that for requests from the Director of the

department, their decision-maker is their appointing authority, while Members of the Health Commission may seek an AWD from their appointing authority, the Health Commission, or the Ethics Commission.

With regard to prohibiting activities that are subject to the review of the department, most departmental SIAs state this prohibition as follows: *“no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department.”* In general, this language would include entities that are contracting with the employee’s department. This means an AWD concluding that the activities are not incompatible would be required for the employee to be employed by an entity that has a contract with their department.

While the DPH SIA contains this standard SIA language, it also contains a unique addition, which states:

“Nothing in this subsection prohibits any employee or officer from working for or receiving income or compensation from a health care provider network subject to review of the Department.”

This additional language explicitly allows DPH employees to engage in additional employment with health care provider networks that are subject to the review of DPH, without needing to first obtain an AWD. This special exception has been in the DPH SIA since it was first established in 2008.

Ethics Commission Seeks to Strengthen Citywide Consistency in Incompatible Activity Review Standards

Following its in-depth review of ethics laws and their application citywide, on December 6, 2021, the [Ethics Commission published a report](#) that included recommendations to strengthen essential ethics provisions of City law. Departmental SIAs and Advance Written Determinations were areas addressed among the Commission’s recommendations.

To promote more clear, consistent, and effective application of ethics rules across the City, the Commission’s report recommended that the rules contained in separate departmental SIAs instead be elevated and codified as part of the City’s Campaign and Governmental Conduct Code and that departmental SIAs be discontinued. In doing so, outside activities subject to a department’s control, inspection, review, audit, or enforcement would be prohibited by citywide law. Whereas departmental AWDs would be retained for potential incompatible activities that involve excessive time demands and other regular disqualifications. The Ethics Commission is continuing to pursue this amendment to City law among other essential ethics reforms through enactment of a future ballot measure.

Other Ethics Guidance and Reviews

In addition to the City’s current SIA provisions, the Ethics Commission also provides ethics guidance and conducts other reviews as follows:

Advice: City officers or employees may request either informal advice or formal opinions from the Ethics Commission to assess whether any prospective action, including additional employment, complies with ethics rules.

Investigations: The Ethics Commission may conduct confidential investigations and enforce violations of state and local ethics laws related to the additional employment of City officers and employees.

Post-Filing Compliance Reviews: Additionally, the Ethics Commission is currently working to develop a process for conducting annual post-filing compliance reviews of the Statements of Economic Interests (Form 700s) filed by City officers and designated employees, aligned with the [Controller's recommendations from June 2020](#). In ongoing collaboration with that office about potential elements and available data tools, the Ethics Commission believes these reviews will provide additional regular oversight of economic interests that Form 700 filers publicly disclose and potentially shed new light on conflicts issues, including those that may arise with outside employment by City officers and employees.

If you have any questions about the attached regulations, please feel free to contact me or Senior Policy Analyst, Michael Canning at (415) 252-3100.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham, Executive Director

Attachment

cc:

Carol Isen, Director of Department of Human Resources

Dr. Grant Colfax, Director of Department of Public Health

Brad Russi, Office of the City Attorney