



San Francisco Ethics Commission

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Date: September 1, 2023

To: Members of the Ethics Commission

From: Michael Canning, Acting Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 06 – Discussion of legislative proposal from the Board of Supervisors prohibiting City officials from receiving compensation from departmental contractors.**

Summary and Action Requested

This memo provides an overview of legislation ([File #230484](#)) that would prohibit City officers and employees from receiving compensation from departmental contractors, which has been referred from the Board of Supervisors. Staff recommends the Commission discuss this legislation with Staff and representatives from Supervisor Safai's office to identify relevant questions, concerns, and priorities for the Commission's consideration of the legislation.

Background & Role of Ethics Commission

This legislation regarding employment with departmental contractors was first introduced by Supervisor Safai in April and referred to the Ethics Commission in May. Staff worked with Supervisor Safai's office on revisions to the legislation, which strengthened the legislation and aligned it more with policy changes the Commission had previously expressed support for through its draft ballot measure. Specifically, Staff suggested the rule apply to all officers, not just elected officers, and that a provision that would have allowed waivers for this rule be removed. A revised version of the legislation was substituted on June 27 and is the version presented as **Attachment 1**. The associated legislative digest is included as **Attachment 2**.

This legislation would amend Section 3.218 of the Campaign and Governmental Conduct Code to specify that employment with departmental contractors is prohibited. Per Section 3.204, the Board of Supervisors may only amend Article III, Chapter 2 if the legislation is first approved by a four-fifths vote of the Ethics Commission.

Proposed Legislation

Overview of Legislation

This legislation would prohibit City officers and employees from being employed by or otherwise receiving compensation for work from an individual or entity that has a contract with the department of that officer or employee. This legislation is intended to address both real, and perceived, conflicts that arise when City officials are employed by entities that contract with their departments.

Last year, it was [widely reported](#) that the City’s director of jail health services was working for a nonprofit organization that contracted with her department. In this role, the City official was earning \$123,000 annually from an organization contracting with her department, in addition to her more than \$425,000 in City compensation from the Department of Public Health. The City official has since [resigned from her position](#) with the nonprofit organization. However, following this reporting, [at least 300 other officials within DPH filed requests to have their secondary employment approved](#), indicating the existence of a larger issue with unapproved additional employment in the City. It is unclear how many of these additional employment requests are for employment with entities that are also contracting with the official’s department or how many other officials throughout the City may be employed by departmental contractors.

By prohibiting City officials from being employed by entities that contract with their department, this legislation seeks to preserve the impartiality of City decision-making processes and avoid the appearance that City officials’ decision-making abilities may be compromised by conflicting interests.

In early discussions with Supervisor Safai’s Office, Ethics Staff suggested the rule apply to all officers, in addition to employees and elected officers, since appointed officers can play important roles in contract approvals and as public officers are frequently the face of many departmental decisions, which makes it all the more important to avoid any appearance of corruption in their actions. Staff also suggested an initial waiver process also be removed, as waiver processes can be easily abused, be applied inconsistently, be cumbersome to administer, and often serve to weaken overall rules. Both of these suggestions were made and are currently reflected in the legislation in **Attachment 1**.

All departmental Statements of Incompatible Activities (SIAs) already prohibit City officials from engaging in outside activities that are subject to the control, inspection, review, audit, or enforcement of their department. This means that, among other things, City officials are already prohibited from working directly on projects that are funded by, or otherwise controlled by their department. The legislation before the Commission today would explicitly prohibit all employment with an entity that contracts with the City official’s department, regardless of if the City official’s work for the entity is related to the entity’s contract with the official’s department.

Additionally, some departmental SIAs already have explicit rules prohibiting employment with departmental contractors. For example, the [SIA for DPH](#) does not have this explicit rule, whereas the [SIA for MTA](#) does. The legislation proposed by the Board of Supervisors would create a standardized rule that could be applied consistently across all City departments.

Status of Similar Rule in Ethics Commission Ballot Measure

The [Ethics Commission’s 2024 ballot measure](#), which was approved by the Commission in August of 2023, had contained a similar rule to the one proposed by this legislation from the Board of Supervisors. However, during its August 2023 meeting, the Commission amended the ballot measure to remove this rule, prior to sending the measure to voters.

The language in the Commission’s ballot measure was broader than what is in Board’s legislation. The ballot measure language would have prohibited City officials from “having a financial interest in” entities that contract with their department, with “financial interest” being broader, capturing gifts and investments, whereas the legislation from the Board of Supervisors is specific to employment and compensation received for work.

Current Status of Legislation and Potential Next Steps

A meet and confer over the departmental contractor employment legislation has been initiated and there has been one meeting with City bargaining units over the legislation. Prior to the Commission voting on its 2024 ballot measure during the August meeting, Supervisor Safai's office requested DHR pause the meet and confer over this legislation, as the Chair had indicated she would not be placing the item on the Commission's agenda while the Commission was still considering a comparable rule through its ballot measure.

Now that the Commission has submitted its ballot measure to voters, with the rule regarding financial interests removed, Staff anticipates Supervisor Safai's office will resume the meet and confer with City bargaining units regarding the proposed legislation.

Staff has confirmed that a representative from Supervisor Safai's office will be able to attend Commission's meeting in September to discuss the proposed legislation with the Commission. This will be an opportunity for the Commission and the public to ask questions, raise concerns, and identify priorities for this legislation, should the Commission wish to consider its adoption.

Staff would like to highlight that it may be necessary to amend the proposed location of this rule in the Code, so as not to conflict with the Ethics Commission ballot measure that will be before voters in March of 2024. The proposed legislation from the Board of Supervisors would currently amend the C&GCC to insert the proposed employment rule into Section 3.218. However, Section 3.218 of the C&GCC is potentially going to be amended by voters through the Commission's ballot measure. This could complicate the potential amendment process and implementation of both the measure and employment legislation.

To address this concern, Staff would recommend the rule proposed by Supervisor Safai be moved from Section 3.218 and instead be placed in Section 3.206. Section 3.206 is not potentially going to be amended through the Commission's ballot measure, so this rule being added to Section 3.206 would not give rise to complications with the ballot measure and the change could occur at any time, independent of the ballot measure. Additionally, Section 3.206 focuses on financial conflicts of interest and already contains the City's rule regarding future employment, therefore Section 3.206 would also be a reasonable place for this employment rule to be located.

Recommended Next Steps

Staff recommends the Commission discuss the proposed legislation with Staff and the representative from Supervisor Safai's office and communicate any questions, concerns, or priorities the commissioners may have regarding this legislation. If the Commission is interested in continuing to consider this legislation, Staff can continue working with Supervisor Safai's office on the legislation and work with DHR to resume and conclude the meet and confer over the proposed legislation.

Attachments:

Attachment 1: Legislation Version 2 – File No. 230484

Attachment 2: Legislative Digest Version 2 – File No. 230484

ATTACHMENT 1

1 [Campaign and Governmental Conduct Code - Incompatible Activities]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to provide that it**
4 **is an incompatible activity for City officers and employees to be employed by or**
5 **receive compensation from a department contractor.**

6 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
7 **Additions to Codes** are in *single-underline italics Times New Roman font*.
8 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
9 **Board amendment additions** are in Arial font.
10 **Board amendment deletions** are in ~~Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

10

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

12

13 Section 1. Findings.

14 (a) City employment comes with the responsibility to avoid real and perceived conflicts
15 of interest. Engaging in secondary employment in addition to an employee’s City service may
16 raise real or perceived conflicts of interest when the outside job intersects with the employee’s
17 City duties. Requirements contained in the City’s Civil Service Rules and local ethics laws are
18 intended to prevent City employees and officials from engaging in outside employment that is
19 inconsistent with City service.

20 (b) The City’s Civil Service Rules require an employee to seek approval from their
21 appointing authority and the Human Resources Director prior to engaging in secondary
22 employment. The Human Resources Director may deny a request for secondary employment
23 that interferes with, is in conflict with, or is contrary to the interests of the employee’s City
24 service, among other bases for denial. Despite the requirement to seek advance approval,

25

1 the City recently discovered that a significant number of employees engaged in unauthorized
2 secondary employment.

3 (c) City law requires each City department to adopt a statement of incompatible
4 activities identifying the outside activities that are inconsistent with or conflict with the duties of
5 employees of the department. An employee may not engage in an outside activity prohibited
6 by the department's statement of incompatible activities unless the employee's appointing
7 authority determines in advance that the outside activity is not incompatible with the
8 employee's job.

9 (d) The statements of incompatible activities for some departments include a provision
10 prohibiting employees from engaging in paid work for contractors of the department. The
11 practice of employees separately working for contractors of their departments poses ethical
12 concerns, even when the paid work does not create an actual financial conflict of interest for
13 the employee. The practice raises questions of loyalty, impartiality, and whether the
14 employee is using their City position to gain private advantage.

15 (e) Establishing a Citywide policy prohibiting City officers and employees from working
16 for contractors of their department will increase trust in City government and reduce the
17 potential for corruption and conflicts of interest.

18

19 Section 2. The Campaign and Governmental Conduct Code is hereby amended by
20 revising Article III, Chapter 2, Section 3.218, to read as follows:

21 **SEC. 3.218. INCOMPATIBLE ACTIVITIES.**

22 (a) Prohibition. No officer or employee of the City and County may engage in any
23 employment, activity, or enterprise that the department, board, commission, or agency of
24 which he or she is a member or employee has identified as incompatible in a statement of
25 incompatible activities adopted under this Section. No officer or employee may be subject to

1 discipline or penalties under this Section unless he or she has been provided an opportunity
2 to demonstrate that his or her activity is not in fact inconsistent, incompatible or in conflict with
3 the duties of the officer or employee.

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

14 (c) Required Language. Each statement of incompatible activities shall list those
15 outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers
16 and employees of the department, board, commission, or agency of the City and County. This
17 list shall include, but need not be limited to, activities that involve: (1) the use of the time,
18 facilities, equipment and supplies of the City and County; or the badge, uniform, prestige, or
19 influence of the City and County officer or employee's position for private gain or advantage;
20 (2) the receipt or acceptance by an officer or employee of the City and County of any money
21 or other thing of value from anyone other than the City and County for the performance of an
22 act that the officer or employee would be required or expected to render in the regular course
23 of his or her service or employment with the City and County; (3) the performance of an act in
24 a capacity other than as an officer or employee of the City and County that may later be
25 subject directly or indirectly to the control, inspection, review, audit or enforcement of the City

1 and County officer or employee's department, board, commission or agency; and (4) time
2 demands that would render performance of the City and County officer or employee's duties
3 less efficient. The Ethics Commission may permit City boards and commissions to exclude
4 any required language from their statement of incompatible activities if their members, by law,
5 must be appointed in whole or in part to represent any profession, trade, business, union or
6 association.

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

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

13 ~~(f) Existing Civil Service Rules. Rules and Regulations relating to outside activities previously~~
14 ~~adopted or approved by the Civil Service Commission shall remain in effect until statements of~~
15 ~~incompatible activities are adopted pursuant to this Section.~~

16 (f) Compensation from Department Contractors. Notwithstanding any provision of a
17 department's statement of incompatible activities, it shall be an incompatible activity prohibited by
18 subsection (a) of this Section 3.218 for a City officer or employee to be employed by or otherwise
19 receive compensation for work from an individual or entity that has a contract, as that term is defined
20 in Section 1.126, with the department of the City officer or employee. This subsection (f) shall not
21 apply where the contract is with a federal, state, or local government entity. This subsection (f) shall
22 not apply to compensation received by the spouse or registered domestic partner of a City officer or
23 employee.

1 Section 3. Requirements for Amendment by the Board of Supervisors.

2 (a) As set forth in Section 3.204 of the Campaign and Governmental Conduct Code,
3 approved by the voters as Proposition E at the November 4, 2003 election, an amendment to
4 Article III, Chapter 2 of the Campaign and Governmental Conduct Code, which includes
5 Section 3.218, may be made if:

6 (1) the amendment furthers the purposes of Article III, Chapter 2 of the
7 Campaign and Governmental Conduct Code;

8 (2) the Ethics Commission approves the amendment in advance of Board of
9 Supervisors approval by at least a four-fifths vote of all its members;

10 (3) the amendment is available for public review at least 30 days before the
11 amendment is considered by the Board of Supervisors or any committee of the Board of
12 Supervisors; and

13 (4) the Board of Supervisors approves the amendment by at least a two-thirds
14 vote of all its members.

15 (b) At its meeting of _____, the Ethics Commission approved this
16 ordinance by a vote of _____.

17 (c) This ordinance has been available for public review for at least 30 days before
18 consideration by a committee of the Board of Supervisors.

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20 Section 4. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor’s veto of the ordinance.

1 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/ Bradley A. Russi
11 BRADLEY A. RUSSI
12 Deputy City Attorney

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ATTACHMENT 2

REVISED LEGISLATIVE DIGEST

(Substituted, 6/27/2023)

[Campaign and Governmental Conduct Code - Incompatible Activities]

Ordinance amending the Campaign and Governmental Conduct Code to provide that it is an incompatible activity for City officers and employees to be employed by or receive compensation from a department contractor.

Existing Law

Existing law requires each City department to develop a statement of incompatible activities and submit it to the Ethics Commission for approval. The statement of incompatible activities identifies the outside activities that are incompatible with service in the department. Employees and officers of the department are prohibited from engaging in outside activities identified as incompatible in the statement of incompatible activities. The law requires the statements to include specified provisions, and departments may also include additional provisions.

Amendments to Current Law

The proposed ordinance would amend the Campaign and Governmental Conduct Code to provide that being employed by or otherwise receiving compensation for work from a contractor of a department is a prohibited incompatible activity for an officer or employee of the department.

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