



# San Francisco Ethics Commission

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Date: October 6, 2023

To: Members of the Ethics Commission

From: Michael Canning, Acting Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 06 – Update, discussion, and possible action regarding the March 2024 Ethics Commission Ballot Measure focused on gifts, training, and other City ethics laws.**

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## Summary and Action Requested

This memo provides the Commission with an update on the status of the [ballot measure](#) that the Commission approved for the March 5, 2024 ballot during its August meeting. In addition to an update regarding the development of additional regulations, this memorandum also presents a draft ballot argument for the Commission to consider and recommends that the Commission vote to authorize the Chair to submit a ballot argument and potential rebuttal argument to the Department of Elections on behalf of the Commission.

## Update Regarding the Development of Additional Regulations

As described during the September meeting, Staff has been moving forward with the development of potential regulations regarding Section 3.218 of the Campaign and Governmental Conduct Code, as potentially amended by the March 2024 Ethics Commission Ballot Measure.

Section 3.218 of the Campaign and Governmental Conduct Code currently sets forth rules regarding departmental Statements of Incompatible Activities (SIAs). The Ethics Commission's 2024 ballot measure would amend Section 3.218 to eliminate departmental SIAs and move the rules from those SIAs into the amended Section 3.218. An excerpt from the Commission's ballot measure regarding Section 3.218 has been provided as **Attachment 1**.

On September 29, Staff [announced two interested persons meetings](#) to be held on October 17 and October 19 to discuss potential regulations regarding Section 3.218, should it be approved by voters. Details regarding this meeting are provided through the announcement in **Attachment 2**. The purpose of these meetings is to create additional opportunities for stakeholders and members of the public to share their thoughts and priorities with the Commission regarding regulations for the potential implementation of this section.

As with the Section 3.205 and Section 3.216 regulation amendments already approved by the Commission in August, any subsequent regulations regarding the ballot measure would only become operative if, and when, the ballot measure becomes operative. If approved by voters in March, the ballot measure would become operative roughly six months after the results of the election are certified.

Following the upcoming interested persons meetings, draft regulations will be developed and presented to the Commission for additional discussion. A meet-and-confer process with City bargaining units may need to be completed prior to the Commission voting on any such regulations.

### **Approval and Submission of Ballot Arguments and Rebuttals**

The official Voter Information Pamphlets produced by the Department of Elections generally contain “ballot arguments” regarding each measure on the ballot. Additionally, shorter “rebuttal arguments” can be submitted in response to the ballot arguments of another party. In the past, the Ethics Commission has proved the proponent arguments for the ballot measures it has placed on the ballot. The deadline for submitting ballot arguments for the March 5, 2024 election is December 14 and the deadline for submitting a potential rebuttal argument will be December 18.

A draft ballot argument has been provided for discussion in **Attachment 3**. The draft in **Attachment 3** also includes information from the Department of Elections regarding the word limit and word count rules. The Commission’s ballot argument must be limited to factual information and not be used to express a political message for or against the ballot measure. The draft in **Attachment 3** has been reviewed by the City Attorney’s Office, which has confirmed that the language used is not prohibited by the City’s rules against political activity. Note that the draft currently refers to the measure as “Proposition TBD” as the Department of Election will not designate the official letter for the ballot measure until December 11.

The Department of Elections has said it will accept ballot arguments from the Chair on behalf of the Commission without requiring any additional documentation or authorization. However, after consulting with the City Attorney’s Office, Staff is recommending that for good measure, the Commission vote to explicitly authorize the Chair to submit a ballot argument and potential rebuttal on behalf of the Commission.

### **Recommended Next Steps**

The Commission should discuss the attached draft ballot argument and communicate any suggested revisions or thoughts for the Chair to consider regarding either the ballot argument or potential rebuttal. Staff then recommends the Commission vote to formally authorize the Chair to submit a ballot argument and potentially a rebuttal argument to the Department of Elections on behalf of the Commission.

### **Attachments:**

**Attachment 1:** Section 3.218 – Excerpt from Ethics Commission 2024 Ballot Measure

**Attachment 2:** IP Meeting Notice - 3.218 Regs 2023

**Attachment 3:** Draft Ethics Ballot Measure Argument - 10.6.23

# Attachment 1

1 Excerpt from 2024 Ethics Commission Ballot Measure  
2 (Full Measure Available Here: <https://sfethics.org/Ethics-Measure-Adopted-8-18-2023>)  
3

4 **SEC. 3.218. INCOMPATIBLE ACTIVITIES.**

5 ~~(a) **Prohibition.** No officer or employee of the City and County may engage in any~~  
6 ~~employment, activity, or enterprise that the department, board, commission, or agency of which~~  
7 ~~he or she is a member or employee has identified as incompatible in a statement of incompatible~~  
8 ~~activities adopted under this Section. No officer or employee may be subject to discipline or~~  
9 ~~penalties under this Section unless he or she has been provided an opportunity to demonstrate~~  
10 ~~that his or her activity is not in fact inconsistent, incompatible or in conflict with the duties of the~~  
11 ~~officer or employee.~~

12 ~~(b) **Statement of Incompatible Activities.** Every department, board, commission, and~~  
13 ~~agency of the City and County shall, by August 1 of the year after which this Section becomes~~  
14 ~~effective, submit to the Ethics Commission a statement of incompatible activities. No statement~~  
15 ~~of incompatible activities shall become effective until approved by the Ethics Commission after a~~  
16 ~~finding that the activities are incompatible under the criteria set forth in Subsection (c). After~~  
17 ~~initial approval by the Ethics Commission, a department, board, commission or agency of the~~  
18 ~~City and County may, subject to the approval of the Ethics Commission, amend its statement of~~  
19 ~~incompatible activities. The Ethics Commission may, at any time, amend the statement of~~  
20 ~~incompatible activities of any department, board, commission or agency of the City and County.~~

21 ~~(c) **Required Language.** Each statement of incompatible activities shall list those~~  
22 ~~outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers~~  
23 ~~and employees of the department, board, commission, or agency of the City and County. This~~  
24 ~~list shall include, but need not be limited to, activities that involve: (1) the use of the time,~~  
25 ~~facilities, equipment and supplies of the City and County; or the badge, uniform, prestige, or~~  
26 ~~influence of the City and County officer or employee's position for private gain or advantage; (2)~~  
27 ~~the receipt or acceptance by an officer or employee of the City and County of any money or other~~

1 *thing of value from anyone other than the City and County for the performance of an act that the*  
2 *officer or employee would be required or expected to render in the regular course of his or her*  
3 *service or employment with the City and County; (3) the performance of an act in a capacity*  
4 *other than as an officer or employee of the City and County that may later be subject directly or*  
5 *indirectly to the control, inspection, review, audit or enforcement of the City and County officer*  
6 *or employee's department, board, commission or agency; and (4) time demands that would*  
7 *render performance of the City and County officer or employee's duties less efficient. The Ethics*  
8 *Commission may permit City boards and commissions to exclude any required language from*  
9 *their statement of incompatible activities if their members, by law, must be appointed in whole or*  
10 *in part to represent any profession, trade, business, union or association.*

11 ~~*(d) Meet and Confer. No statement of incompatible activities or any amendment thereto*~~  
12 ~~*shall become operative until the City and County has satisfied the meet and confer requirements*~~  
13 ~~*of State law.*~~

14 ~~*(e) Notice. Every department, board, commission and agency of the City and County*~~  
15 ~~*shall annually provide to its officers and employees a copy of its statement of incompatible*~~  
16 ~~*activities.*~~

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

20 *(a) Prohibitions. City officers and employees shall not engage in the following*  
21 *activities:*

22 *(1) Activities Subject to the Department's Jurisdiction. City officers and*  
23 *employees shall not engage in activities that are subject to the control, inspection, review, audit,*  
24 *permitting, enforcement, contracting, or are otherwise within the responsibility of the officer or*  
25 *employee's department. But City officers and employees may engage in certain activities*  
26 *including, but not limited to, the following: being a party to a matter before or otherwise*  
27 *appearing before one's own department or commission on behalf of oneself or one's immediate*

1 family, filing or otherwise pursuing claims against the City on one's own behalf, making a public  
2 records disclosure request or other request for information as permitted by law, attending and  
3 participating in a meeting of a board, commission, or other policy body under the Brown Act or  
4 Sunshine Ordinance, and engaging in non-compensated, volunteer activity for a nonprofit  
5 organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(5).  
6 Incompatible activities prohibited by this subsection (a)(1) shall include, but are not limited, to  
7 the following:

8 (A) contracting with one's own department or serving on the board of  
9 directors for an entity that contracts with one's own department (but this prohibition shall not  
10 extend to any entity solely because an officer or employee's spouse or registered domestic  
11 partner serves as a member of its board of directors);

12 (B) acquiring an ownership interest in real property, if the officer or  
13 employee had participated personally and substantially in the permitting or inspection of that  
14 property within the 12 months prior to the acquisition; and

15 (C) having or acquiring a financial interest in any financial products  
16 issued or regulated by the officer or employee's department.

17 (2) **Selective Assistance.** City officers and employees shall not provide  
18 assistance or advice that is not generally available to all persons, in a manner that confers an  
19 advantage on any person who is doing business or seeking to do business with the City. This  
20 subsection (a)(2) shall not prohibit an officer or employee from communicating with individual  
21 applicants regarding the individual's application, bid, or proposal, provided that such assistance  
22 is provided on an impartial basis to all applicants who request it and is part of the officer or  
23 employee's City duties.

24 (3) **Use of City Resources.** City officers and employees shall not engage in the  
25 use, other than minimal or incidental use, of the time, facilities, equipment, or supplies of the  
26 City for private gain or advantage. Nothing in this subsection (a)(3) shall be interpreted or  
27 applied to interfere with, restrict, or supersede any rights or entitlements of employees,

1 recognized employee organizations, or their members under state law or regulation or pursuant  
2 to provisions of a collective bargaining agreement to use City facilities, equipment, or resources.

3 (4) Use of Prestige of Office. City officers and employees shall not engage in the  
4 use of any marker (including without limitation a badge, uniform, or business card), prestige, or  
5 influence of the City officer or employee's position for private gain or advantage.

6 (5) Use of City Work Product. City officers and employees shall not sell,  
7 publish, or otherwise use, in exchange for anything of value and without appropriate  
8 authorization, any non-public materials that were prepared on City time or while using City  
9 facilities, property (including without limitation, intellectual property), equipment, or other  
10 materials. Nothing in this subsection (a)(5) shall be interpreted or applied to interfere with,  
11 restrict, or supersede any rights or entitlements of employees, recognized employee  
12 organizations, or their members under state law or regulation or pursuant to provisions of a  
13 collective bargaining agreement to use public materials for collective bargaining agreement  
14 negotiations.

15 (6) Acting as an Unauthorized City Representative. City officers and employees  
16 shall not hold themselves out as a representative of their departments, or as an agent acting on  
17 behalf of their departments, unless authorized to do so, including the use of City letterhead, title,  
18 e-mail, business card, or any other resource for any communication that may lead the recipient  
19 of the communication to think that the officer or employee is acting in an official capacity when  
20 the officer or employee is not.

21 (7) Compensation for City Duties or Advice. City officers and employees shall  
22 not receive or accept a payment from anyone other than the City for the performance of a  
23 specific service or act the officer or employee would be expected to render or perform in the  
24 regular course of their City duties or for advice about the processes of the City directly related  
25 to the officer or employee's duties and responsibilities or the processes of the officer or  
26 employee's department.

1                   (8) **Lobbying Activity.** City officers and employees shall not receive or accept a  
2 payment from anyone other than the City in exchange for communicating with any other City  
3 officer or employee within their own department with the intent to influence an administrative or  
4 legislative action.

5                   (b) **Excessive Time Demands or Regular Disqualifications.** No City appointed  
6 department head or employee may engage in any activity that either imposes excessive time  
7 demands such that it materially impairs the appointed department head's or employee's  
8 performance of their City duties or that disqualifies the appointed department head or employee  
9 from their City assignments or responsibilities on a regular basis.

10                   (1) **Advance Written Determination.** An appointed department head or  
11 employee may seek an advance written determination from the decision-maker specified in  
12 subsection (b)(2) below as to whether a proposed outside activity would impose excessive time  
13 demands or require regular disqualifications and would therefore be prohibited under this  
14 subsection (b).

15                   (2) **Decision-Maker.**

16                   (A) For a request by an employee, the department head of the employee's  
17 department or the department head's designee shall be the decision-maker on a request for an  
18 advance written determination. If the department head delegates the decision-making to a  
19 designee and if the designee determines that the proposed activity imposes excessive time  
20 demands or results in regular disqualifications, the employee may appeal that determination to  
21 the department head.

22                   (B) For a request by an appointed department head, the department  
23 head's appointing authority shall be the decision-maker on a request for an advance written  
24 determination.

25                   (C) The decision-maker shall respond to the request by providing a  
26 written determination to the requestor by mail, email, personal delivery, or other reliable means.  
27 For a request by an employee, the decision-maker shall provide the determination within a



1 reasonable period of time depending on the circumstances and the complexity of the request, but  
2 not later than 20 working days from the date of the request. If the decision-maker does not  
3 provide a written determination to the employee within 20 working days from the date of the  
4 employee's request, the proposed activity will be determined not to violate this Subsection  
5 3.218(b).

6 (3) **Effect.** An advance written determination approved by the appropriate  
7 decision-maker that an activity does not impose excessive time demands or require regular  
8 disqualifications provides the officer or employee immunity from any subsequent enforcement  
9 action for a violation of subsection (b) if the material facts are as presented in the appointed  
10 department head or employee's request for an advance written determination. An advance  
11 written determination cannot exempt the requestor from any other applicable laws.

12 (4) **Public Records.** Requests for advance written determinations and advance  
13 written determinations, including approvals and denials, are public records.

14 (c) **Statements of Incompatible Activities.** Statements of Incompatible Activities adopted  
15 and approved prior to March 5, 2024 are hereby repealed and shall no longer have any legal  
16 effect. Any administrative or disciplinary proceedings initiated prior to the repeal of a Statement  
17 of Incompatible Activities alleging violations of the Statement of Incompatible Activities may  
18 continue.

19

# Attachment 2



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## Announcement of Interested Persons Meetings to Discuss Potential Regulations Regarding Incompatible Activities

Tuesday, October 17, 2023 – 12:00 PM to 1:30 PM

And

Thursday, October 19, 2023 – 3:00 PM to 4:30 PM

*These meetings will be conducted remotely using an online meeting platform. If you would like to attend, please RSVP to [michael.a.canning@sfgov.org](mailto:michael.a.canning@sfgov.org) and you will be provided with a link to the meeting shortly before the date of the meeting.*

Please join staff from the Policy Division of the San Francisco Ethics Commission to share your thoughts on potential regulations to implement part of the [March 2024 Ethics Commission Ballot Measure](#), should it be approved by voters.

In August, the [Ethics Commission voted unanimously](#) to place an Ethics measure on the March 2024 ballot. During that same meeting, the Commission also voted to approve [related regulations](#), which will become operative if, and when, the ballot measure is approved by voters and becomes operative. The initial regulations approved in August were related to Section 3.205 and Section 3.216 of the Campaign and Governmental Conduct Code (C&GCC), as amended by the proposed ballot measure. The Ethics Commission is currently exploring whether additional regulations regarding the ballot measure may be helpful for the potential implementation of the measure, should it be approved by voters.

The current phase of this regulation development process is focused on Section 3.218 of the C&GCC, as amended by the proposed ballot measure. The amendments the ballot measure would make to [Section 3.218 are available here](#). Section 3.218 moves rules currently located in departmental Statements of Incompatible Activities (SIAs) into the C&GCC, where they can be applied uniformly across all City departments. This change would also discontinue the departmental SIAs. The rules in Section 3.218 prohibit outside activities by City officers and employees that are incompatible with their City service.

Aspects of Section 3.218 (as potentially amended by the March 2024 Ethics Commission Ballot Measure) that may be discussed during these meetings include:

- **Employment with Entities Subject to the Department's Jurisdiction:** Should City officers and employees be allowed to be employed by an entity that engages in activities that are subject to their department's jurisdiction (as described in Section 3.218(a)(1)) as long as they do not engage in such activities themselves?
- **Owning, Being an Officer of, or Exercising Management Control Over an Entity Subject to the Department's Jurisdiction:** Similar to the above, should Section 3.218(a)(1) prevent a City officer or employee from owning, being an officer of, or



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otherwise exercising management control over an entity that is subject to their department's jurisdiction (as described in Section 3.218(a)(1)), as long as the entity is not contracting with their department and the officer or employee does not engage in such activities themselves?

- **“Engaging in Non-compensated, Volunteer Activity for a Nonprofit Organization”**: The ballot measure specifies that engaging in “non-compensated, volunteer activity” is exempt from the prohibition in Section 3.218(a)(1). Should this exception apply to serving on the Board of Directors of a nonprofit organization, if as part of their City duties, the City officer or employee participates in making governmental decisions that will materially impact the nonprofit organization? In this situation, if the City officer or employee were to recuse themselves from participating in such government decisions, should they then be allowed to continue serving on the Board of Directors?
- **“Contracting With One’s Own Department”**: Section 3.218(a)(1)(A) prohibits City officers and employees from contracting with their own department. To what extent should this prohibit a City officer or employee from owning, being an officer of, or exercising management control over an entity contracting with their department?

We invite members of the public to share their thoughts about these topics and to share their ideas for any additional regulations that may be beneficial for the Ethics Commission to consider regarding Section 3.218, as it may be amended by the proposed ballot measure. Attendees are encouraged to review the amended version of [Section 3.218 here](#) prior to the meeting.

Regulations developed from this process may be subject to a meet and confer process with City bargaining units and would need to be considered and approved by the Ethics Commission during a public Commission meeting.

As with the Section 3.205 and Section 3.216 regulation amendments already approved, any subsequent regulations regarding the ballot measure would only become operative if, and when, the ballot measure becomes operative. If approved by voters in March, the ballot measure would become operative roughly six months after the results of the election are certified.

The two meetings will each have the same agenda, and participants are welcome to join one or both meetings.

Staff also welcomes written comments, which can be sent via email to [michael.a.canning@sfgov.org](mailto:michael.a.canning@sfgov.org), or via U.S. mail to San Francisco Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102.

**The meetings will be conducted remotely via Webex. The week of the meetings, Staff will distribute links to the meetings via email to all attendees who RSVP.**

For questions about the upcoming interested persons meetings, or to RSVP, please contact Michael Canning at [michael.a.canning@sfgov.org](mailto:michael.a.canning@sfgov.org). We welcome your input and hope to see you at one of our upcoming online meetings.

# Attachment 3

## Attachment 3

Ethics Commission Draft Ballot Argument For Ethics Proposition on March 2024 Ballot	Words Per Line:
Proposition TBD was placed on the ballot by a unanimous vote of the San Francisco Ethics Commission in response to recent investigations into corruption on the part of City officials and those doing business with the City. The Ethics Commission voted to place Proposition TBD on the ballot to address issues identified through these investigations, provide more consistent rules across City departments, and to promote government decisions that are, and appear to be, made on a fair and impartial basis.	12 6 12 10 9 10 13 2 T = 72
<b>Gifts and Bribery:</b> Proposition TBD would clarify and expand an existing rule that prohibits City officials from accepting gifts from certain restricted sources, such as people who have attempted to influence them and those doing business with their department. Proposition TBD would also clarify and expand the City’s anti-bribery rule and require department heads to disclose gifts given to City departments.	10 10 10 9 12 9 T = 60
<b>Ethics Training:</b> Proposition TBD would require annual ethics training for all City officers and employees who participate in making governmental decisions and are required to disclose their financial interests.	9 10 9 T = 28
<b>Incompatible Activities:</b> Proposition TBD would provide standardized rules for all City officials prohibiting outside activities that are inconsistent, incompatible, or in conflict with their City duties. This includes activities that are subject to their department’s control and the misuse of City resources or official positions for private gain.	6 10 10 11 10 T = 47
<b>Disclosure of Relationships:</b> Proposition TBD would allow for penalties to be imposed on City officials who do not disclose, as required by law, any personal, professional, or business relationships they have with anyone who is the subject of a government decision being made by the official.	8 14 9 13 1 T = 45
<b>Safeguarding Ethics Laws:</b> Proposition TBD would amend several chapters of the Campaign and Governmental Conduct Code to require any future legislative amendments be approved by supermajorities of both the Ethics Commission and the Board of Supervisors. The power of the voters to amend these chapters would not be affected.	7 6 9 9 10 T = 41
<i>San Francisco Ethics Commission</i>	1
<b>Total:</b> 72+60+28+47+45+41+1 =	294

## Word Limit and Word Count Rules

CAEC §9(a); SFMEC §§550, 575

Official Proponent Arguments and Opponent Arguments may not exceed 300 words, Rebuttal Arguments are limited to 250 words. Paid Ballot Arguments may not exceed 300 words. The Department uses the following guidelines for counting words. The decision of the Director of Elections concerning word count is final. Argument authors are encouraged to consult the Department regarding word count prior to submission.

Examples	Number of Words
Title of document, signature	n/a
Punctuation	n/a
Abbreviations or acronyms (SFSU, PTA, SFPD, U.S.M.C.)	1
Proper nouns, including geographical names (San Francisco, San Franciscans, Haight Ashbury)	1
Dates, whether numbers or a combination of words and numbers (3/5/2024 or March 5, 2024)	1
Numbers consisting of one or more digits (1,000,000), percentages (12%), fractions ( $\frac{1}{2}$ )	1
Numbers that are spelled out (one hundred)	Varies; count each word
Characters used in place of a word or number (&, #)	1
Phone numbers or internet addresses	1
True Source of Funds	n/a