



San Francisco Ethics Commission

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Date: September 23, 2024

To: Members of the Ethics Commission

From: Michael Canning, Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 08 – Discussion and Possible Action Regarding Proposed Amendments to Incompatible Activities Regulations to Implement Proposition D**

Summary and Action Requested

This memorandum presents draft regulations for Section 3.218 of the Campaign and Governmental Conduct Code (C&GCC), as it will be amended on October 12 by Proposition D (approved March 2024).

Staff recommends the Commission review, discuss, and approve the proposed regulations as drafted.

Regulations for Section 3.218 Regarding Incompatible Activities

In March, voters approved Proposition D, a measure placed on the ballot by the Ethics Commission to strengthen and standardize the City's ethics rules. Proposition D will become operative on October 12.

Section 3.218 of the C&GCC currently sets forth rules regarding departmental Statements of Incompatible Activities (SIAs). Departmental SIAs are based on a template created by the Ethics Commission, restate some core ethics rules, and contain some rules that are unique to specific departments. Proposition D will amend Section 3.218 to eliminate departmental SIAs and move the core rules from those SIAs into the amended Section 3.218. Section 3.218 as amended, will contain rules for City officers and employees regarding activities that are incompatible with their City service. An excerpt from Proposition D regarding Section 3.218 has been provided as [Attachment 1](#).

Last October, the Commission held [two interested persons meetings](#) to discuss potential regulations regarding Section 3.218, should it be approved by voters. The purpose of these meetings was 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.

The interested persons meetings in October were attended by various stakeholders, including those affiliated with the Mayor's office, the War Memorial Board of Trustees, the League of Women

Voters, and the San Francisco Human Services Network. In general, participants were supportive of the Commission enacting regulations to address the matters discussed during the meetings.

In January, [Staff shared draft regulations for Section 3.218 with the Commission](#) and recommended moving forward with noticing the draft regulations to bargaining units, to give them the opportunity to meet-and-confer over the proposals if desired. In April, [Staff updated the Commission](#) that these meetings were underway and scheduled for April and May.

Since noticing the draft regulations to bargaining units in March, Staff met with the Municipal Executives Association (MEA) in April and exchanged several communications with MEA over the regulations. At the same time, Staff also continued engagement with other City stakeholders, including representatives from the Mayor’s Office, the City Administrator’s Office, and the Office of Economic and Workforce Development. On August 30, the Employment Relations Division (ERD) of the Department of Human Resources sent a close out notice to MEA, stating that the City had met its meet-and-confer obligation and considers the matter closed.

The communications above led to revisions to the draft regulations that are detailed in the table below. Regulations 3.218-2, 3.218-7, and 3.218-8 have all been added since the draft regulations were last shared with the Commission in January.

The draft regulation amendments are presented as [Attachment 2](#) and summarized in the table below. These draft regulations have been developed to clarify terms in, create limited exceptions to, specify the scope of, and assist with the implementation of Section 3.218, prior to it becoming operative on October 12.

Table 1: Overview of Draft Regulations for Section 3.218

Regulation	Description & Rationale
<p>3.218-1 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Actions on Behalf of Oneself or One’s Immediate Family</p>	<p>Description: Specifies that while an officer or employee may be party to or otherwise appear before their department or commission on behalf of themselves or an immediate family member, they must also not participate in and must fully abstain from any involvement in such matters as part of their City duties.</p> <p>Rationale: While it is important for City officials to be able to engage with City services on their own behalf or the behalf of their immediate family, it is inappropriate for officials to then be involved in those same matters as a part of their City duties.</p> <p>Example: If a City building inspector also owns a home in the City, there may be situations (major renovations, etc.) where that City official’s property needs to be inspected by their department. The City official should be able to access City services the same as any other City resident. However, the City official should also be prohibited from participating in such matters, in any way, in their capacity as a City official.</p>

<p>3.218-2 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Definition of “on behalf of oneself”</p>	<p>Description: Specifies that “on behalf of oneself” includes on behalf of the City officer or employee’s single-member LLC, sole proprietorship, or similar entity.</p> <p>Rationale: As described above, it is important for City officials to be able to engage with City services on their own behalf or the behalf of their immediate family. This should extend to entities owned by the City official, when there is no other owner who could potentially represent the entity in the matter before the department.</p> <p>Example: Similar to the prior example, if a City building inspector is the sole proprietor of a business that owns a property in the City, there may be situations (major renovations, etc.) where that property needs to be inspected by their department. The City official should be able to access City services for their business in the same as any other City resident. However, the City official should also be prohibited from participating in such matters, in any way, in their capacity as a City official.</p>
<p>3.218-3 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Employment with an Entity Engaging in Activities Subject to the Department’s Jurisdiction</p>	<p>Description: Specifies that merely being employed by an entity that engages in activities subject to the department’s jurisdiction is not prohibited by Section 3.218(a)(1), as long as 1) the City official does not personally and substantially engage in activities that are subject to their department’s jurisdiction for their non-City employer and 2) that they do not participate in matters explicitly involving their non-City employer as part of their City duties.</p> <p>The regulation also illustrates the types of activities that would still be prohibited by Section 3.218(a)(1), which include working in a position that is majority-funded by the officer or employee’s City department and liaising with their department on behalf of their non-City employer.</p> <p>Rationale: Many City officials have additional employment outside of their role with the City. While this is often reasonable and appropriate, additional consideration is warranted when that outside employer engages in activities that are subject to the City official’s department, as this could lead to both real, and perceived, conflicts of interest. The proposed regulation would allow this outside employment to occur, while maintaining guardrails to prevent the City official from potentially using their City position to inappropriately benefit themselves or their outside employer.</p> <p>Example: A City employee has a second job waiting tables at a San Francisco restaurant, while their City duties require them to perform health inspections of City restaurants. This regulation would specify that Section 3.218(a)(1) does not prohibit this outside employment. However, the City employee would be prohibited from working on things for the restaurant that are going to come before their department (such as communicating with other inspectors from their department about the restaurant). Additionally, as part of their City</p>

	<p>duties, this City employee must not participate in and must fully abstain from any involvement in any matters explicitly involving the restaurant.</p>
<p>3.218-4 (new) 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</p>	<p>Description: Specifies that owning or exercising management or control over an entity that engages in activities subject to the department’s jurisdiction is allowed if: 1) the City official does not engage in activities that are subject to their department’s jurisdiction for the non-City entity, 2) on behalf of the City, the City official does not participate in and fully abstains from matters involving the non-City entity, and 3) the entity does not contract with the City official’s department.</p> <p>Defines being an “officer or exercising management or control” over an entity as 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.</p> <p>Rationale: City officials may have ownership interests in outside entities or serve on the boards of non-City organizations. Such activity can often be reasonable and appropriate. However, when those outside entities engage in activities that are subject to the department’s jurisdiction, additional consideration is warranted to avoid both real, and perceived, conflicts of interest. This regulation would specify that such activity is not prohibited by Section 3.218(a)(1) as long as certain conditions are met, which serve as guardrails to prevent the City official from potentially using their City position to inappropriately benefit themselves or the entity they are affiliated with.</p> <p>The language defining being an “officer or exercising management or control” is similar to what already exists Section 3.222, which prohibits City officers from contracting with the City. The regulation simplifies the language in Section 3.222 and captures ownership of limited liability companies.</p> <p>Example: A City employee owns 25% of their family’s restaurant that operates in the City. Part of their City duties involve reviewing and issuing permits to City restaurants. This regulation would specify that merely having this ownership interest is not prohibited by Section 3.218(a)(1). However, the City employee would be prohibited from engaging in activities that are subject to their department’s jurisdiction on behalf of their restaurant and would be prohibited from participating in any matters regarding their restaurant as a City employee. Additionally, the employee’s ownership of the restaurant would be incompatible with their City employment if the restaurant was contracting with their City department, as prohibited by Section 3.218(a)(1)(A) and Draft Regulation 3.218-6 (below).</p>

<p>3.218-5 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Definition of “Engaging in Non-compensated, Volunteer Activity for a Nonprofit Organization”</p>	<p>Description: Specifies that the exception for non-compensated, volunteer activity in Section 3.218(a)(1) does include serving on the board of directors of a nonprofit organization, only if 1) in their capacity as a City official, they do not participate in and fully abstain from any involvement in any matters explicitly involving the nonprofit organization and 2) the nonprofit organization does not contract with their City department.</p> <p>Rationale: The exception in Section 3.218(a)(1) that allows for “engaging in non-compensated, volunteer activity for a nonprofit organization” was understood by Staff as intended to address direct service volunteer work (planting trees, tutoring children, etc.), not serving on the board of directors of a nonprofit organization. However, stakeholders have expressed that it can be important for City officials to serve on nonprofit boards, even when those nonprofits engage in activities subject to their department’s jurisdiction. This regulation would allow City officials to volunteer their time on nonprofit boards, with guardrails in place to prevent the City official from potentially using their City position to inappropriately benefit themselves or the nonprofit organization they are affiliated with.</p>
<p>3.218-6 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Definition of “Contracting With One’s Own Department”</p>	<p>Description: Specifies that “contracting with one’s own department” includes being an officer or exercising management or control over an entity that contracts with the City official’s department. Defines being an “officer or exercising management or control” over an entity as 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. And specifies that this prohibition also applies to subcontracts.</p> <p>Rationale: Section 3.218(a)(1)(A) clearly prohibits City officials from contracting with their own department. This regulation clarifies that this prohibition includes City officials owning or leading an entity that contracts with their department. This language is similar to what already exists Section 3.222, which prohibits City officers from contracting with the City. The regulation simplifies the language in Section 3.222 and captures ownership of limited liability companies. Specifying that Section 3.218(a)(1)(A) applies to subcontracts is also consistent with the similar rule in Section 3.222.</p>
<p>3.218-7 (new)</p> <p>Activities Subject to the Department’s Jurisdiction – Definition of “Serving</p>	<p>Description: Specifies that “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 1) the City officer or employee is serving on the board as part of their City duties, 2) is representing the City or their department on the board, and 3) is not receiving any compensation, other than from the City, for their service on the board.</p>

<p>on the Board of Directors”</p>	<p>Rationale: The rules in Section 3.218 are generally focused on prohibiting ‘outside activities,’ not activities that are being done as part of a City official’s City duties. However, City stakeholders have raised concerns about situations where an officer or employee is required to serve on the board of directors of an entity, including entities that contract with their department, as part of their City duties. This regulation provides added clarity that serving on the board of directors of certain entities is not prohibited, as long as such board service is part of the official’s City duties.</p> <p>Comparable language has also been duplicated above in Regulation 3.218-4, to likewise specify that such board service is not prohibited by other aspects of Section 3.218.</p> <p>Example: A department has a contract with a nonprofit organization and as part of that contract, the department has agreed to have one of their City employees sit on the nonprofit’s board of directors to represent the City. This regulation clarifies that such service is not prohibited by Section 3.218, as the service is part of their City duties and that they are representing the City on the board. This would only apply if the employee were not receiving any compensation from the nonprofit.</p>
<p>3.218-8 (new) Definition of “Department”</p>	<p>Description: Defines “department” for the purposes of Section 3.218 as the department, board, commission, office, or other unit of government which a City officer or employee directly serves. The regulation also sets out a series of factors the Commission can use when determining what unit of government an officer or employee directly serves.</p> <p>Rationale: The Ethics Commission has an existing regulation (Regulation 3.216(b)-3) that defines “department” for the purposes of Section 3.216(b), which is the rule against gifts from restricted sources. Using this definition, the Ethics Commission is able to identify units of government that are considered their own department for the purposes of Section 3.216. The proposed regulation would duplicate Regulation 3.216(b)-3 to apply it to Section 3.218.</p> <p>Several City departments have complex relationships with other departments, despite them essentially operating as separate entities. This regulation will allow the Commission to identify situations where two related units of government should be treated as separate departments for the purposes of Section 3.218. Staff intends to make such determinations available on the Commission’s website so City officers and employees can know how specific rules apply to their activities.</p> <p>Example: The Office of Economic and Workforce Development (OEWD) shares some administrative resources with the Small Business Commission (SBC) and the Office of Small Business (OSB),</p>

	<p>which in some ways are considered a division of OEWD. However, based on information provided by OEWD and consultation with the City Attorney’s Office, the Small Business Commission and the Office of Small Business should be considered their own department, distinct from OEWD, for the purposes of Section 3.216 and 3.218.</p> <p>This would mean that, for example, an SBC/OSB employee who only serves SBC/OSB would only be prohibited by Section 3.218 from contracting with SBC/OSB, not from OEWD. However, it is possible that a City employee could serve both SBC/OSB and OEWD; in such a situation, the employee would be prohibited from contracting with both SBC/OSB and OEWD, as they would directly serve both units of government.</p>
<p>3.218-1 – 3.218-8 (current)</p>	<p>Description: Current Ethics Commission Regulations 3.218-1 through 3.218-8 would be removed as part of this proposed regulation change.</p> <p>Rationale: The current regulations regarding Section 3.218 will no longer be relevant once Proposition D becomes operative on October 12, as the current regulations are focused on departmental SIAs which will cease to exist at that time.</p>

Following the interested persons meetings in October, Staff also engaged directly with officials from the Department of Public Health (DPH) regarding these regulations, including Greg Wagner, who is the current Chief Operating Officer of DPH. The officials from DPH shared concerns, which were largely over how DPH nurses, some of whom work additional shifts for non-City healthcare providers, may be impacted by Section 3.218. Based on this feedback from DPH, Staff revised earlier drafts, which were then also shared with DPH officials. Earlier in January, Staff met for a second time with DPH officials, who said the current draft regulations addressed their main concerns, while also maintaining strong conflict of interest rules. Staff intends to remain in contact with DPH and has encouraged DPH to contact the Commission in the future if other potential issues arise. Staff would like to thank DPH for their time and willingness to collaborate on these draft regulations.

Staff would also like to thank the representatives from the Mayor’s Office, the City Administrator’s Office, and the Office of Economic and Workforce Development for their input into these draft regulations, as well as all who attended last year’s interested persons meetings on this topic.

Recommended Next Steps

With Proposition D becoming operative on October 12, Staff recommends the Commission vote to approve the proposed regulations during its September meeting. This will allow Staff time to give advice to City officers and employees regarding Section 3.218 based on the amended regulations prior to the rules changing on October 12. Approval in September will also give Staff time to ensure the Commission’s engagement and compliance materials align with amended regulations before the October operative date.

As of August 30, the City has met its obligations to meet-and-confer with bargaining units, so that duty does not prevent the Commission from acting. Additionally, the draft regulations from [Attachment 2](#) have been noticed to the public more than 10 days prior to the Commission's September meeting, as required by [Charter Section 4.104](#). Thus, the Commission may vote to adopt the proposed regulations during its September meeting if desired.

Staff recommends the Commission vote to approve the proposed regulations as drafted.

Attachments:

Attachment 1: [Section 3.218 – Excerpt from Ethics Commission 2024 Ballot Measure](#)

Attachment 2: [Draft Regulations for Section 3.218 – 9.16.24](#)

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



ETHICS COMMISSION

Approved by Ethics Commission: TBD

Draft Regulations to San Francisco Campaign and Governmental Conduct Code – San Francisco Government Ethics Ordinance Section 3.218

Effective and Operative Dates.

- (a) **Effective Date.** As provided in Charter Section 15.102, these regulations will become effective 60 days after adoption unless vetoed by two-thirds of all the members of the Board of Supervisors.
- (b) **Operative Date.** These regulations will become operative on the date that the ballot measure submitted to voters by the Ethics Commission for consideration on the March 5, 2024 ballot becomes operative. If such measure is not approved by the voters, these regulations shall not become operative.

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.



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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



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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;



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- (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 3.218-1. Incompatible Activities — Approval of and Amendments to Statements of Incompatible Activities

~~Every department, board, commission and agency of the City and County is required to submit to the Ethics Commission a statement of incompatible activities listing those outside activities that are inconsistent, incompatible, or in conflict with the duties of the officers and employees of that department, board, commission or agency. All statements of incompatible activities as well as any amendments to previously adopted statements must be approved in accordance with this regulation.~~

~~(a) Submission to the Ethics Commission.~~

~~(1) Submission deadlines. The initial statement must be submitted within six months of the creation of the department, unless the Ethics Commission extends the time for good cause. Amendments to a statement previously approved may be submitted at any time.~~

~~(2) Materials submitted. Every statement or amendment shall be submitted in writing to the Ethics Commission in both paper and electronic form. In addition to each statement or amendment, every department, board, commission or agency shall submit a list of the unions that represent the officers and employees affected by the proposed statement or amendment. A department, board, commission or agency may provide any supporting materials that the department, board, commission or agency believes would assist the Ethics Commission.~~

~~(b) Waivers of Required Language. Boards and commissions whose members, by law, must be appointed in whole or in part to represent any profession, trade, business, union or association may request permission from the Ethics Commission to exclude any of the language required by section 3.218(c). Such requests must be made at the time a board or commission submits a statement or amendment to the Ethics Commission and must set forth specific reasons why the exclusion is necessary. In making a determination whether to grant permission to exclude required language from a statement, the Ethics 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 commissioner or board member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.~~



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~~(c) Hearing before the Ethics Commission. The Ethics Commission shall hold a hearing to consider each statement or amendment. No later than 7 calendar days before the hearing, the Ethics Commission shall provide notice of the hearing to: (1) the department, board, commission or agency that submitted the statement or amendment; (2) the unions, if any, that represent the officers or employees affected by the proposed statement or amendment; and (3) the Civil Service Commission. The Ethics Commission shall provide the department, board, commission or agency that submitted the statement or amendment, the unions that represent the officers or employees affected by the proposed statement or amendment, and the Civil Service Commission with an opportunity to make a presentation regarding the proposed statement or amendment. The Ethics Commission may amend a proposed statement or amendment.~~

~~(d) Meet and Confer. The Ethics Commission encourages City departments, boards, commissions and agencies to include the unions that represent their officers and employees in the process of drafting and amending statements of incompatible activities before submitting the statement or amendment to the Ethics Commission. Prior to the Ethics Commission's approval or amendment of any statement that would affect officers or employees represented by a union, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent the affected officers or employees.~~

~~(e) Final Approval. The Ethics Commission shall, at a public meeting, finally approve a statement of incompatible activities or any amendment thereto. The Commission may finally approve or amend the statement on the same date that it holds the hearing described in subsection (c) of this regulation. Within two business days of such approval, the Executive Director shall provide to the department, board, commission or agency a copy of the final version of its approved statement of incompatible activities.~~

Regulation 3.218-2. Incompatible Activities – Notice

~~By April 1 of each year, every department, board, commission or agency must annually provide to its officers and employees a copy of its Statement of Incompatible Activities (SIA). Departments, boards, commissions and agencies of the City and County may satisfy this requirement by doing all of the following:~~

~~(1) posting the SIA on the department, board, commission or agency's web page;~~

~~(2) posting the SIA statement within the department, board, commission or agency's offices in the same place that other legal notices are posted; and~~

~~(3) either distributing a paper copy of the SIA to each officer or employee or distributing an electronic copy of the SIA to each officer or employee either (a) by sending an email that contains the SIA or an electronic link to the SIA to each officer or employee, or (b) if the department, board, commission or agency does not have the officer or employee's email address, by providing a handout to the officer or employee that references the~~



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~~SIA, provides the address of the SIA on the website of the department, board, commission or agency or the Ethics Commission, and directs the officer or employee to review the SIA in its entirety; or the Ethics Commission may opt to send such handout to all City employees via payroll inserts.~~

~~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 the each new officer at the time of appointment or each new employee at the time of hire in the manner described above.~~

Regulation 3.218-3. Incompatible Activities — Opportunity to Contest Incompatibility

~~No officer or employee may be subject to discipline or penalties for engaging in any employment, activity or enterprise that appears on the statement of incompatible activities of the officer or employee's department, board, commission or agency unless he or she has been provided an opportunity to demonstrate that the employment, activity or enterprise is not inconsistent, incompatible or in conflict with his or her duties. The requirement of an opportunity to demonstrate that an activity is not incompatible is satisfied if the employee has an opportunity to be heard on this issue prior to the decision in any proceeding to impose penalties or discipline, including in any criminal or civil proceeding, any administrative action by the Ethics Commission, or any disciplinary proceeding by an appointing authority.~~

Regulation 3.218-4: Advance Written Determination

~~(a) A request for an advance written determination under the Statement of Incompatible Activities (SIA) is separate from a written opinion request to the Ethics Commission under the San Francisco Charter. The process for an advance written determination is set forth in section III.C of the SIA; the process for a written opinion request to the Ethics Commission is set forth in section C3.699-12 of the San Francisco Charter.~~

~~(b) A person seeking a determination that an activity is not inconsistent, incompatible or in conflict with his or her duties should seek an advance written determination from the decision-maker designated in the SIA. The decision-makers for each officer and employee are listed in section III.C.2 of the SIA.~~

~~(c) When making a determination, the decision-maker shall consider the factors set forth in the SIA. If the decision-maker makes a written determination that the proposed activity is not inconsistent, incompatible or in conflict with the requestor's duties, the requestor shall have immunity from any subsequent enforcement action for a violation of the SIA based on the proposed activity if the material facts are as presented in the requestor's written submission.~~



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~~(d) If a decision-maker for an advance written determination request from an employee fails to respond within 20 days from the date the request is received, the decision-maker is deemed to have determined that the proposed activity is not inconsistent, incompatible or in conflict with the employee's duties. However, if the decision-maker subsequently determines, based on changed facts or circumstances or other good cause, that the activity is inconsistent, incompatible or in conflict with the employee's duties, the decision-maker must advise the employee to cease such activity by providing advance written notice to the employee specifying the changed facts or circumstances or other good cause. An employee who continues to engage in such activity after receiving such written notice will not have immunity from any subsequent enforcement action for a violation of the SIA.~~

~~(e) If the Ethics Commission is deemed the decision-maker for an advance written determination in the SIA, the following procedures will apply:~~

~~(1) The requestor must submit the request in writing on a form provided by the Ethics Commission, which will be available on the Commission's website. The requestor must identify the proposed activity and specify why the proposed activity is not incompatible with the department, board or commission's SIA.~~

~~(2) Upon receiving a request for an advance written determination, the Ethics Commission's Executive Director will make a preliminary written determination based on the factors set forth in the SIA. The Executive Director will distribute the preliminary written determination to the requestor and all members of the Commission for their review.~~

~~(A) If the requestor disagrees with the preliminary written determination, the requestor may request the Commission to review the matter. To make such a request, the requestor must submit a written request to the Ethics Commission within five calendar days of the date of the preliminary written determination. The written request must include a supplemental statement setting forth reasons why the requestor disagrees with the preliminary written determination and may include any additional information as to why the proposed activity is not inconsistent, incompatible or in conflict with his or her duties. Upon receipt of the request for review, the Executive Director will forward it to the Ethics Commission.~~

~~(B) If any member of the Commission wishes to calendar the preliminary written determination for discussion at a Commission meeting, the Commission member must so inform the Executive Director no later than ten calendar days after the date of the preliminary written determination or five calendar days after the date that the Executive Director forwards to the Commission the requestor's request for review, whichever is later. A matter will be calendared only if two or more members request that it be~~



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~~calendared. The Commission may calendar a matter regardless of whether the requestor submits a request for review pursuant to subsection (A).~~

~~(3) If the matter is not calendared, the Executive Director's determination will stand as the Ethics Commission's final written determination.~~

~~(4) If the matter is calendared, it will be on the agenda of the Commission's next meeting, subject to the discretion of the Commission's Chairperson. At the meeting, the Executive Director will make a presentation and the requestor will be invited to attend and present his or her request. The Executive Director's preliminary determination will stand as the final written determination unless three members of the Commission vote to overrule it at the meeting.~~

~~(f) On a semi-annual basis during the first two years that the SIAs are in effect, and upon notice from the Ethics Commission, all departments, boards and commissions will forward to the Ethics Commission a summary of complaints of alleged violations of the SIAs and their dispositions, copies of all requests for advance written determination, and copies of all written determinations made by the department, board or commission.~~

~~Regulation 3.218-5: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Complaints Received by a Department, Board or Commission~~

~~(a) If a department, board or commission receives a complaint regarding an employee's alleged violation of the department, board or commission's Statement of Incompatible Activities (SIA), the department, board or commission will investigate the matter. The department, board or commission will provide an opportunity for the employee to explain why the activity should be deemed not inconsistent, incompatible, or in conflict with his or her duties. If the department, board or commission determines that the activity is inconsistent, incompatible or in conflict with the employee's duties, the department, board or commission may impose discipline as appropriate. If the department, board or commission chooses to do so, the department, board or commission may refer the complaint to the Ethics Commission.~~

~~(b) If a department, board or commission receives a complaint regarding an officer's alleged violation of the department, board or commission's SIA, the department, board or commission will consult with Ethics Commission staff to determine the most appropriate entity to investigate the matter.~~



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~~Regulation 3.218-6: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Complaints Received by the Ethics Commission~~

~~(a) If the Ethics Commission receives a complaint regarding an employee or officer's alleged violation of a Statement of Incompatible Activities (SIA), the Ethics Commission staff will determine (i) whether the matter has already been resolved by the department, board or commission of the respondent; and (ii) whether the respondent has been given an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her City duties.~~

~~(b) If the matter has been resolved by the department, and the respondent has been given an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties, then the Ethics Commission staff will not take action in most cases, but will consult with the department, board or commission to determine the most appropriate course of action.~~

~~(c) If the matter is pending at the department, board or commission, the Ethics Commission staff will not take action in most cases, but will consult with the department, board or commission to determine the most appropriate course of action. If the Ethics Commission staff determines that it is not necessary for the Commission to engage in an immediate investigation of the matter, the Commission staff will defer to the department, board or commission to complete its investigation.~~

~~(d) If the matter is a new matter where the department, board or commission has not investigated or taken any action, the Commission staff will determine whether it should take action pursuant to Charter section C3.699-13 and the Ethics Commission Regulations for Investigations and Enforcement Proceedings. The Commission staff may determine that the matter is more appropriately handled by the department, board or commission and refer the matter to the department, board or commission.~~

~~(e) In investigating any alleged violations of a SIA, the Commission staff may contact the department head or other staff at the department, board or commission for information.~~

~~Regulation 3.218-7: Handling Complaints of Alleged Violations of the Statement of Incompatible Activities: Preliminary Review and Advance Written Determination~~

~~(a) In handling a complaint that alleges that an officer or employee violated the Statement of Incompatible Activities (SIA) by engaging in an activity that is inconsistent, incompatible or in conflict with the duties of the officer or employee, the entity receiving the complaint (the enforcement body) must determine whether the officer or employee~~



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~~who is the subject of the complaint sought an advance written determination as set forth in the SIA.~~

~~(b) If the officer or employee who is the subject of the complaint did not seek an advance written determination, the officer or employee is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer or employee violated the SIA. The enforcement body must ensure that the officer or employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.~~

~~(c) If the officer or employee who is the subject of the complaint sought and received an advance written determination that the activity is not inconsistent, incompatible or in conflict with his or her City duties, the officer or employee is immune from discipline or penalties for engaging in that activity, if the material facts are as presented in the officer's or employee's written request for the advance written determination. The enforcement body may investigate whether the material facts are as presented in the officer's or employee's written request.~~

~~(d) If the subject of the complaint is an officer who sought an advance written determination and allegedly engaged in the activity before receiving a response, the officer is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer violated the SIA. The enforcement body must ensure that the officer who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.~~

~~(e) If the subject of the complaint is an employee who sought an advance written determination and allegedly engaged in the activity within 20 working days after making the request but before receiving a response, the employee is not immune from discipline or penalties for engaging in the activity during that time period. The enforcement body may investigate the allegations in the complaint to determine whether the employee violated the SIA. The enforcement body must ensure that the employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.~~

~~(f) If the subject of the complaint is an employee who sought an advance written determination and allegedly engaged in the activity more than 20 working days after making the request without receiving a response, the employee is immune from discipline or penalties for engaging in the activity if the material facts are as presented in the employee's submission of the advance written determination. The enforcement body~~



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~~may investigate whether the material facts are as presented in the employee's written request.~~

~~If the employee in this subsection subsequently receives written notice from the decision-maker pursuant to Regulation 3.218-4(d) that the employee must cease engaging in the activity based on changed facts or circumstances or other good cause, but the employee continues to engage in such activity after receiving the written notice, the employee will not have immunity from discipline or penalties for engaging in the activity.~~

~~(g) If the officer or employee who is the subject of the complaint has received an advance written determination that the activity is inconsistent, incompatible or in conflict with his or her City duties, and the officer or employee allegedly engaged in the activity, the officer or employee is not immune from discipline or penalties for engaging in the activity. The enforcement body may investigate the allegations in the complaint to determine whether the officer or employee violated the SIA. The enforcement body must ensure that the officer or employee who is the subject of the complaint is provided an opportunity to demonstrate that the activity is not inconsistent, incompatible or in conflict with his or her duties.~~

~~Regulation 3.218-8: Penalties Imposed by Ethics Commission for Violations of the Statement of Incompatible Activities~~

~~The Ethics Commission will determine violations and penalties for violations of the Statement of Incompatible Activities (SIA) in accordance with Charter section C3.699-13 and the Ethics Commission Regulations For Investigations And Enforcement Proceedings. In assessing penalties for a violation of the SIA, the Ethics Commission also will look to the following guidelines:~~

~~(a) For a first violation where the respondent violated the SIA by failing to disclose an activity that is required to be disclosed—but is not prohibited—under the SIA, the Commission will issue a warning letter to the respondent in most cases. In exceptional circumstances, the Ethics Commission may determine that additional penalties are appropriate.~~

~~(b) Penalties for other violations of the SIA will depend upon the Ethics Commission's assessment of the impact of the respondent's activities on the City and the department, board or commission as a whole; compliance with other applicable laws and rules; whether the violation was an isolated incident or part of a pattern of violations; whether the respondent or others were inappropriately enriched by the activity; whether the violation was negligent, knowing or intentional; and the intent and spirit of the SIA; and any other factors that the Ethics Commission deems appropriate and material.~~



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