

**Full Text of Regulations related to Conflicts of Interest**  
**September 14, 2008**

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**Regulation 3.202-1. Construction – Reliance on Examples**

The application of Ethics Commission Regulations may differ depending upon the facts of each actual situation. The examples provided in the Regulations are hypothetical situations that should not be relied upon if the facts of an actual situation differ.

**Regulation 3.212-1. Decisions Involving Family Members—Limited to Employment**

The prohibition in section 3.212 is limited to "employment actions" involving family members and does not apply to an appointment to, or other decisions related to, holding a City office or position that is nonsalaried. The payment of per diem, health benefits, or fees for attending meetings does not constitute salary.

**Regulation 3.214-1. Disclosure of Personal, Professional & Business Relationships – Basic Rule; Guide to Determining Whether Disclosure is Required**

To determine whether section 3.214 requires a City officer or employee to disclose on the public record a personal, professional, or business relationship, proceed with the following analysis:

- (a) Determine whether the City officer or employee is making a governmental decision. See San Francisco Ethics Commission Regulation 3.214-2 to determine whether a City officer or employee is making a governmental decision. If the City officer or employee is making a governmental decision proceed to subsection (b). If the City officer or employee is not making a governmental decision, no disclosure is required.
- (b) Determine whether the City officer or employee has a personal, professional or business relationship with an individual who is the subject of a governmental decision being made by the officer or employee. See San Francisco Ethics Commission Regulation 3.214-3 to determine whether an individual is the subject of the governmental decision. Proceed to subsection (d) if the City officer or employee has a personal, professional, or business relationship with an individual who is the subject of the governmental decision being made by the officer or employee. Proceed to subsection (c) if the City officer or employee does not have a personal, professional or business relationship with the individual who is the subject of the governmental decision being made by the officer or employee.
- (c) Determine whether the City officer or employee has a personal, professional or business relationship with an individual who has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee. See San Francisco Ethics Commission Regulation 3.214-4 to determine whether an individual has an ownership or financial interest in the subject of the governmental decision. Proceed to subsection (d) if the City officer or employee has a personal, professional, or business relationship with an individual who has an ownership or

financial interest in the subject of the governmental decision being made by the officer or employee. If the City officer or employee does not have a personal, professional or business relationship with an individual who is the subject of or has an ownership or financial interest in the subject of the governmental decision being made by the officer or employee, no disclosure is required.

- (d) Determine whether, as a result of the personal, professional, or business relationship with the individual who is the subject of or has an ownership or financial interest in the subject of the governmental decision, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. See San Francisco Ethics Commission Regulation 3.214-5 to determine whether the ability of an officer or employee to act for the benefit of the public can reasonably be questioned. If as a result of the personal, professional, or business relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned, disclosure is required. If as a result of the personal, professional, or business relationship, the ability of the officer or employee to act for the benefit of the public could not reasonably be questioned, disclosure is not required.

**Regulation 3.214-2. Disclosure of Personal, Professional & Business Relationships – Determining Whether a City Officer or Employee is Making a Governmental Decision**

- (a) A City officer or employee is making a governmental decision any time the officer or employee: (1) votes on a matter; (2) appoints a person; (3) obligates or commits his or her department, board, commission or agency to any course of action; (4) enters into any contractual agreement on behalf of his or her department, board, commission or agency; (5) determines not to act within the meaning of subsection (a)(1), (a)(2), (a)(3), or (a)(4).
- (b) A City officer or employee is not making a governmental decision when: (1) the governmental decision must be approved by other City officers or employees within the same department, board, commission or agency of the City officer or employee; or (2) the City officer or employee provides advice to City officers and employees in a different department, board, commission or agency who are responsible for making the governmental decision.

Example 1. An employee at the Port of San Francisco reviews a rent reduction request from one of the Port's tenants and drafts a recommendation to the Port Commission regarding the request. Because the Port Commission, not the employee, must decide whether to grant the tenant's request, the decision regarding whether to grant the request is not a governmental decision being made by the employee.

Example 2. An employee in the Department of Human Resources provides advice to the Director of Elections about the procedures for hiring an exempt employee. Because the employee has provided advice to a City employee in a different department about a governmental decision that the other employee is responsible for making, the decision to hire the exempt employee is not a governmental decision being made by the employee in the Department of Human Resources.

Example 3. A member of the Arts Commission votes to award a grant to a non-profit organization, but the final grant agreement between the City and the non-profit organization must be approved by the Board of Supervisors. Even though the Board of Supervisors must ultimately approve the agreement, by voting on the grant, the member of the Arts Commission is making a governmental decision. The exception for when a governmental decision must be approved by other City officers or employees within the same department, board, commission or agency does not apply because the vote is the final action taken by the Arts Commission. No other City officer or employee within the same department, board, commission or agency will need to approve this decision. Likewise, the exception for when the City officer or employee provides advice to City officers and employees in a different department, board, commission or agency who are responsible for making the governmental decision does not apply because by voting to award the grant to the non-profit organization, the members of the Arts Commission are doing more than merely providing advice to the Board of Supervisors. The members of the Arts Commission are making a governmental decision to provide funding to the non-profit organization so long as the Board of Supervisors grants final approval.

**Regulation 3.214-3. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual is the Subject of a Governmental Decision**

An individual is the subject of a governmental decision when that individual personally or by an agent: (a) initiates the proceeding in which the governmental decision will be made by filing an application, claim, appeal, or similar request; (b) is a named party in the proceeding in which the governmental decision will be made; or (c) attempts to influence any City officer or employee who is responsible for making the governmental decision. No individual or entity is the subject of a governmental decision that is an action of general application such as rulemaking, legislation, or the formulation of general policy, standards or objectives.

Example 1. John Smith filed an appeal with the Assessment Appeals Board to challenge the Assessor's valuation of his home. Because Mr. Smith. filed the appeal, he initiated the proceeding before the Assessment Appeals Board and is therefore an individual who is the subject of a governmental decision.

Example 2. Jane Brown and William Jones each submitted a response to a request for proposals issued by the Department of Health. Although the Department of Health will award the final contract to only one of these individuals, each of the individuals is the subject of a governmental decision because each of them has submitted a proposal.

Example 3. The Board of Supervisors is considering legislation that will require all dog walkers in the City to register with the Animal Care and Control Commission and file disclosure reports regarding how many dogs are walked per week and where the dogs are taken on their walks. A dog walker testifies in opposition to the legislation before the Board's City Services Committee. Although the dog walker attempted to influence members of the Board of Supervisors who are responsible for making the decision whether to approve the proposed legislation, the dog walker is not an individual who is

the subject of a governmental decision because the governmental decision being made is an action of general application.

**Regulation 3.214-4. Disclosure of Personal, Professional & Business Relationships – Determining Whether an Individual has an Ownership or Financial Interest in the Subject of a Governmental Decision**

An individual has an ownership or financial interest in the subject of a governmental decision when that individual: (a) has an investment interest of \$2,000 or more in a business entity that is the subject of the governmental decision; (b) has received income of \$500 or more in the previous 12-months from an individual or entity that is the subject of the governmental decision; or (c) holds a position as director, officer, partner, or trustee with a business or non-profit entity that is the subject of the governmental decision.

Example 1. An investor has recently purchased \$50,000 of XYZ Incorporated's stock. XYZ Incorporated is the subject of a governmental decision before the Assessment Appeals Board because it has filed an appeal to challenge the Assessor's determined value of an office building it owns in the financial district. Because the investor has an investment interest of \$2,000 or more in XYZ Incorporated, he is an individual who has an ownership or financial interest in the subject of a governmental decision.

Example 2. A local non-profit organization is seeking a grant from the Small Business Commission to plant trees outside of small businesses located on Haight Street. One member of the Commission is also a member of the non-profit's Board of Directors. A second member of the Commission is a general dues paying member of the non-profit organization. The Commissioner who is also a member of the non-profit's board of directors is an individual who has an ownership or financial interest in the subject of a governmental decision because she is an officer of a non-profit organization that is the subject of a government decision. But the Commissioner who is a general dues paying member of the non-profit is not an individual who has an ownership or financial interest in the subject of a governmental decision because, although he is affiliated with the non-profit seeking a grant from the Commission, he does not hold a position as a director, officer, partner, or trustee with the non-profit.

**Regulation 3.214-5. Disclosure of Personal, Professional & Business Relationships – Determining Whether the Ability of an Officer or Employee to Act for the Benefit of the Public Can Reasonably Be Questioned**

- (a) The ability of an officer or employee to act for the benefit of the public can reasonably be questioned if:
- (1) the officer or employee knows or has reason to know that an individual with whom the officer or employee has a personal, professional or business relationship is the subject of or has an ownership or financial interest in the subject of a governmental decision; and
  - (2) the personal, professional or business relationship the City officer or employee has with the individual who is the subject of or who has an ownership or financial interest in the subject of the governmental decision being made by the officer or

employee is a personal, professional, or business relationship as those relationships are defined in subsection (b) of this regulation.

(b) Whenever used in section 3.214, the phrase "personal, professional or business relationship" shall mean a relationship as described in subsections (b)(1), (b)(2), and (b)(3) of this regulation, which arises out of the private personal, professional or business activities of a City officer or employee and does not arise solely from the officer or employee's official duties.

(1) Personal relationship. A personal relationship is a relationship involving a family member or a personal friend, but does not include a mere acquaintance.

(2) Professional relationship. A professional relationship is a relationship with a person based on regular contact in a professional capacity, including regular contact in conducting volunteer and charitable activities.

(3) Business relationship. An officer has a business relationship with a person if, within the two years prior to the decision, the person was a client, business partner, colleague, or did business with the officer or employee's business. A business relationship does not include a person with whom the officer or employee does business in a personal capacity, such as a grocery store owner.

Example 1. A member of the Planning Commission has a daughter who attends school with the daughter of an applicant for a permit pending before the Planning Commission. The daughters are friends, and the Planning Commissioner knows the applicant and says hello at school functions, but the Planning Commissioner and the applicant do not socialize. The member of the Planning Commission is not required to disclose this relationship because the applicant is a mere acquaintance and therefore the relationship is not considered a "personal relationship" within the meaning of section 3.214.

Example 2. A member of the Planning Commission serves on the Board of Directors of his daughter's private school. The head of the parent teacher organization at the school is an applicant for a permit pending before the Planning Commission. The Board of Directors works closely with the parent teacher organization on fundraising for the school. The member of the Planning Commission should disclose this relationship because he has a "professional relationship" with the applicant within the meaning of section 3.214, based on his regular contact with in conducting volunteer or charitable activity with the applicant.

Example 3. A member of the Planning Commission provides tax-consulting services. The applicant for a permit pending before the Commission is a former client, as well as the owner of the small drug store where the Planning Commissioner shops. The Planning Commissioner must disclose this relationship if the applicant was a client of his within the previous two years because this would constitute a "business relationship" under section 3.214. If the person was a client more than two years ago, the Planning Commissioner would not be deemed to have a business relationship based on his patronage of the applicant's store because a "business relationship" under section 3.214 does not include a person with whom the officer or employee does business in a personal capacity. But if the Commissioner and the applicant had developed a personal friendship,

he may be required to disclose that relationship as a "personal relationship" under section 3.214.

Example 4. A member of the Planning Commission previously served on the City's Library Commission. An applicant for a permit pending before the Commission often appeared before the Library Commission while the Commissioner served on that body. The member of the Planning Commission has no other relationship with the applicant other than his experience dealing with the applicant at the Library Commission. The Commissioner does not need to disclose this relationship on the public record because the relationship arose solely from the Commissioner's official duties and is therefore not a personal, professional or business relationship within the meaning of section 3.214.

**Regulation 3.214-6. Disclosure of Personal, Professional & Business Relationships – Disclosure on the Public Record**

The minutes of a public meeting at which a governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the office of the City officer or employee's department, board, commission or agency shall constitute the public record. Disclosure on the public record must occur before the governmental decision is made and need be repeated when a decision is considered over multiple days or meetings.

**Regulation 3.216(b)-1. Gifts from Restricted Sources – Definition of “doing business” with the department**

As used in section 3.216(b)(1), “doing business” with the department of the officer or employee means entering into or performing pursuant to a contract with the department of the officer or employee. “Doing business” does not include the receipt of or payment for services normally rendered by the City to residents and businesses such as sewer service, water and power, street maintenance and the like or providing a grant to a City department.

**Regulation 3.216(b)-2. Gifts from Restricted Sources – Definition of “knowingly attempted to influence the officer or employee in any legislative or administrative action”**

Except as provided below, “knowingly attempted to influence the officer or employee in any legislative or administrative action,” as used in section 3.216(b)(1), means the person has contacted or appeared before the employee or officer with an intent to influence a decision of the employee or officer, or the person otherwise has attempted to influence the officer or employee. The phrase “intent to influence” means any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision. Notwithstanding the foregoing, the following shall not be deemed to be an intent to influence an officer or employee in any legislative or administrative action for the purposes of section 3.216(b)(1): communications that (a) involve only routine requests for information such as a request for publicly available documents; (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding; (c) are made

while attending a general informational meeting, seminar, or similar event; (d) are made to the press; (e) involve an action that is solely ministerial, secretarial, manual or clerical; or (f) constitute oral or written public comment that becomes part of the record of a public hearing.

**Regulation 3.216(b)-3. Gifts from Restricted Sources – Definition of department**

- (a) As used in section 3.216(b) the term “department” shall mean:
- (1) The department, board, commission, office or other unit of government for which a City officer or employee directly serves;
  - (2) Any department, board, commission, office or other unit of government to which an officer or employee is loaned;
  - (3) Any other department, board, commission, office or other unit of government subject to the direction and control of the department for which a City officer or employee directly serves.
- (b) The following factors shall be used to determine the department for which a City officer or employee directly serves:
- (1) what government unit controls the budget, personnel and other operations related to the officer or employee's position;
  - (2) where the officer or employee's position is listed in the City's conflict of interest code (Article III, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code);
  - (3) whether the law creating a department suggests that it is a separate entity; and
  - (4) any other factors the Ethics Commission deems relevant.

**Regulation 3.216(b)-4. Definition of person**

- (a) For the purposes of section 3.216(b), the term "person" shall mean any individual, partnership, corporation, association, firm, committee, club or other organization or group of persons, however organized.
- (b) A person shall not be deemed a restricted source solely because that person is employed by a restricted source, provided that the gift is neither paid for by the employer nor provided at the direction of the employer.
- (c) A person shall not be deemed a restricted source solely because that person employs a restricted source, except that the employer shall be deemed a restricted source if the employee is doing business or seeking to do business with the department or attempting to influence the employee or officer either:
- (1) at the direction of the employer,
  - (2) in connection with his or her duties as an employee, or
  - (3) regarding a matter that will achieve, defeat, aid or hinder a goal or purpose that the employee is required or expected to achieve, defeat, aid or hinder in the course of employment.

**Regulation 3.216(b)-5. Gifts from Restricted Sources—Exemptions**

The following are not gifts subject to the ban in section 3.216(b).

- (a) Voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion, provided that no officer or employee may receive gifts from any restricted source under this exception on more than four occasions during a calendar year.

(b) Voluntary gifts, of food and drink, without regard to value, to be shared in the office among officers and employees.

(c) Free attendance at a widely attended convention, conference, seminar, or symposium where attendance is appropriate to the official duties of the officer or employee and the donor provides the free attendance voluntarily.

(1) "Free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event. "Free attendance" may also include attendance at meet-and-greet or hospitality sessions and meals offered in connection with the convention, conference, seminar, or symposium where networking or discussion opportunities may enable the officer or employee to establish working relationships that may inure to the benefit of the City. The term does not include entertainment collateral to the event.

(2) A "widely attended" event is an event that is open to individuals from throughout a given industry or profession, or an event that is open to individuals who represent a range of persons interested in a given matter.

(3) An officer or employee who attends such an event may not accept a sponsor's offer of free attendance at the event for an accompanying individual.

(d) Voluntary meals from a member of the investment, financial, or banking community provided to officers and employees who are responsible for managing investments or debt obligations on behalf of the City, provided that (i) such meals are necessary to discuss City investments or financial transactions in order to cultivate and maintain working relationships between the City and the investment, financial, or banking community; (ii) management of the City's investments or debt is discussed during the meal; and (iii) the person providing the meal is not negotiating a contract with the department of the officer or employee. For the purpose of this subsection, "investment, financial, or banking community" includes investment managers; firms that market and sell municipal securities in the tax-exempt and taxable markets including entities that support financing transactions such as bond insurers, rating agencies, credit banks, bond and disclosure counsel, financial advisors, feasibility consultants and trust agents; the custodian bank; and consultants who contract to assist the business of the retirement trust. For the purposes of this subsection, "negotiating a contract" means communicating with the department of the officer or employee regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the department makes the proposal until the date of the approval of the contract or the date that the person or the department communicates to the other party that negotiations for the contract have terminated.

(e) Voluntary meals or vessel boardings or vessel trips that do not extend overnight from a member of the maritime industry provided to officers and employees who are responsible for managing the Port's maritime commerce portfolio, provided that (i) such meals or vessel boardings or trips are necessary to cultivate and maintain working relationships between the Port and the maritime industry; (ii) management of the Port's maritime commerce portfolio is discussed during the meal, vessel boarding or trip; and (iii) the person providing the meal, or vessel boarding or trip is not negotiating a contract with the Port at the time of the meal or vessel boarding or trip. For the purposes of this subsection, "maritime industry" means individuals and entities engaged in: cruise and

cargo shipping; ship repair; commercial and sport fishing; ferry and excursion operations; harbor services such as pilots, tugboats, barges, water-taxis, lay-berthing and other ship services; terminal management; stevedoring and longshore labor; facility and ship security. "Managing the Port's maritime commerce portfolio" includes: managing and marketing the Port to the maritime industry; promoting Port maritime facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the City's cruise and cargo terminals, ferry terminals, shipyards and dry-docks, Fisherman's Wharf and Hyde Street commercial fishing harbors, excursion terminals and harbor service facilities for pilots, tugboats, barges, water-taxis, lay-berthing and other ship services. For the purposes of this subsection, "negotiating a contract" means communicating with the Port regarding a proposal to adopt or change a material term of an existing or prospective contract. A person is "negotiating a contract" from the date that the person or the Port makes the proposal until the date of the approval of the contract or the date that the person or the Port communicates to the other party that negotiations for the contract have terminated.

(f) Voluntary meals from a member of the aviation industry provided to officers and employees who are responsible for managing and marketing the Airport to the aviation industry, provided that (i) such meals are necessary to cultivate and maintain working relationships between the Airport and aviation industry representatives; (ii) the aviation industry's business relationship with the Airport is discussed during the meal; and (iii) the person providing the meal is not, at the time of the meal, negotiating contract benefits on terms that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. For the purposes of this subsection, "aviation industry" means individuals and entities engaged in: air cargo shipping; general and business aviation and commercial airlines; air tourism; airline service related associations and agencies; joint marketing programs with non-competitive airports to enhance air service to the public; and facility and airline security. "Managing and marketing the Airport " includes: managing and marketing the Airport to the aviation industry; promoting Airport facilities to potential and existing customers; ensuring compliance with federal security mandates and providing environmental stewardship; and operating the Airport's airfield, facilities and terminals. For the purposes of this subsection, "negotiating contract benefits" means communicating with the Airport regarding a proposal to adopt or change a material term of an existing or prospective contract to include commercial benefits that the Airport does not otherwise offer to all similarly situated airlines currently under contract with the Airport. A person is "negotiating contract benefits" from the date that the Airport considers the proposal until the date of the approval of the contract or the date that the Airport communicates to the other party that negotiations for the contract benefits have terminated.

Example: A restricted source sends five pizzas to a department as a goodwill gesture. Because this is a gift to the office, staff may share the pizza.

Example: A restricted source sends two opening day Giants ballgame tickets to a staff person. The staff person may not accept the tickets because their value exceeds \$25.

Example: A restricted source sends a baseball cap to the department head. The department head may accept the baseball cap because its value is \$25 or less, provided that the department head has not already accepted gifts with a value of \$25 or less from the restricted source on four occasions during the calendar year.

Example: Staff of a department are invited to a morning training event that is sponsored by a restricted source. Staff who attend the session may accept food and beverages that are offered at the event such as coffee, tea, juice, pastry or bagels, because their value do not exceed \$25, provided that such staff has not already accepted such food and beverages from the restricted source on four occasions during the calendar year.

Example: Staff of a City department are invited to attend a forum on best practices in the industry that is sponsored by a restricted source. At this conference, staff may accept food, refreshments, entertainment or instructional material furnished to all attendees as an integral part of the event.

**Regulation 3.216(c)-1: Gifts from Subordinates**

(a) Prohibition on gifts.

- (1) For the purposes of section 3.216(c), a City officer or employee may not solicit or accept from a subordinate employee any gift, as defined in subsection (b) of this section.
- (2) Gifts permitted under this section remain subject to any other applicable laws and rules, including but not limited to state and local limits on gifts to designated employees (Cal. Gov't Code § 89503; C&GCC § 3.1-101), the City's prohibition on gifts given in exchange for appointments or promotions (C&GCC § 3.208), and the City's prohibition on bribery (C&GCC § 3.216); the City's limits on gifts from restricted sources (C&GCC § 3.216); the City's limits on gifts from lobbyists (C&GCC § 2.115), and any departmental rules on gifts.

(b) Definitions. For purposes of this section, the following definitions shall apply:

- (1) Applicant or candidate. An applicant or candidate for a position as a subordinate means any person who has communicated, orally or in writing, to a City officer or employee acting in an official capacity, that the person wants to be considered for the position.
- (2) Gift.
  - (A) Except as provided in (B), a gift is any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.
  - (B) The following, voluntarily given, are not gifts within the meaning of this section.
    - (i) Gifts, other than cash, with an aggregate value of \$25 or less per occasion, given on occasions on which gifts are traditionally given.
    - (ii) Gifts, such as food and drink, without regard to value, to be shared in the office among employees.

- (iii) Personal hospitality provided at a residence that is of a type and value customarily provided by the employee to personal friends.
  - (iv) Items given in connection with the receipt of personal hospitality if of a type and value customarily provided by the employee on such occasions.
  - (v) A gift of any value given in recognition of an occasion of special personal significance.
  - (vi) A gift of any value given in recognition of an occasion that terminates a subordinate relationship.
  - (vii) Informational material that serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties and may include books, reports, pamphlets, calendars, or periodicals.
  - (viii) Gifts from an individual's spouse, domestic partner, child, parent, grandparent grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse or domestic partner of any such person, provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.
  - (ix) Campaign contributions required to be reported under the Government Code, Title 9, Chapter 4 (commencing with Section 84100) and the Campaign and Governmental Conduct Code, Article I (commencing with Section 1.100).
  - (x) Any devise or inheritance.
  - (xi) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).
  - (xii) A gift that, within 30 days of receipt of the gift, the donor either pays for, returns unused, or donates unused to a government or a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.
  - (xiii) A ticket to a fundraiser for an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or for a political committee or candidate.
  - (xiv) A gift given directly to members of the immediate family of an officer or employee, provided that the gift is not used or disposed of by the officer or employee or given to the officer or employee by the recipient family member for the officer's or employee's disposition or use at the discretion of the officer or employee. A gift is given directly to a family member of the officer or employee if the family member's name or designation appears in the address or communication tendering or offering the gift and the gift is intended for the family member's use and enjoyment. A gift given to the family member of an officer or employee will be considered a gift to the officer or employee if the officer or employee exercises discretion and control over who will use the gift. If the officer or employee enjoys a direct benefit from a gift to the immediate family of the officer or employee, the full value of the gift will be attributable to the official.
- (3) Occasion on which gifts are traditionally given. An occasion on which gifts are traditionally given includes any holiday traditionally associated with gift giving,

such as Christmas and Chanukah, as well as birthdays or thanking a person for a kindness or good deed.

- (4) Occasion of special personal significance. An occasion of special personal significance is any occasion that does not typically occur on a regular basis and that is of personal significance to the recipient of the gift, as opposed to a general holiday or recurring event such as a birthday. Examples of such an event include marriage, birth or adoption of a child, graduation or illness.
- (5) Occasion that terminates a subordinate relationship. An occasion that terminates a subordinate relationship is any event severing the relationship, including but not limited to retirement, transfer, or promotion.
- (6) Receipt of gift. A gift is received when a person exercises control over the gift.
- (7) Subordinate employee. An employee is a subordinate employee of any person whose official City responsibilities include directing or evaluating the performance of the employee or any of the employee's supervisors.
- (8) Value. The value of a gift is determined by the actual value or where the actual value is unknown, making a reasonable good faith estimate of the fair market value of the item or service, comparing where possible similar items or services.
- (9) Voluntarily. A gift is given voluntarily if it is given freely, without pressure or coercion. A contribution to a gift from multiple persons is given voluntarily if it is made in an amount determined by the employee or subordinate. A contribution to a gift from multiple persons will be presumed to have been given voluntarily if the request for the donation includes a statement that an employee may choose to contribute less or not at all.

**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 by August 1, 2004 for departments, boards, and commissions in existence on March 1, 2004. For departments created after March 1, 2004, 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 departmental statement 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.
- (c) **Referral to the Civil Service Commission.** Within two business days of receiving a submission required by subsection (a) of this regulation, the Executive Director shall forward a paper and electronic copy of the submission to the Civil Service Commission for its review and comment.
- (d) **Hearing before the Ethics Commission.** The Ethics Commission shall hold a hearing to consider each statement or amendment no sooner than 45 calendar days after the Commission receives a submission required by subsection (a) of this regulation. 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 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.
- (e) **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 approval of any statement or amendment by the Ethics Commission, representatives of the City, on behalf of the Ethics Commission, will meet and confer with unions that represent affected officers or employees.
- (f) **Final Approval.** The Ethics Commission shall, at a public meeting, finally approve a statement of incompatible activities or any amendment thereto. 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 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 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.

(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 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.

**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 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 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.

**Regulation 3.220-1. Prohibition on Dual Officeholding – Dual Offices held under the City and County**

When section 3.220 prohibits the holding of two offices under the City and County, the first office held shall be deemed to have been vacated.

**Regulation 3.224-1. Compensated Advocacy – Definition – Intent to Influence**

Whenever used in section 3.224, the phrase "intent to influence" shall mean any communication made for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision. Notwithstanding the foregoing, the following shall not be deemed to be an intent to influence a government decision for the purposes of section 3.224: communications that: (a) involve only routine requests for information such as a request for publicly available documents; (b) are made as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding; (c) are made while attending a general informational meeting, seminar, or

similar event; (d) are made to the press; or (e) involve an action that is solely ministerial, secretarial, manual or clerical.

**Regulation 3.224-2. Compensated Advocacy – Waivers for Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations**

- (a) Waivers. The Ethics Commission may waive the prohibition in section 3.224(a) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the request of the member; the request of the member's appointing authority; or on the Commission's own initiative.
- (b) Process for Granting Waivers. All waivers granted pursuant to subsection 3.224(c) must be made at a public meeting. Requests for waivers made by a City officer or by the officer's appointing authority must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the waiver is not granted; the ability of the member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.
- (c) Notice. The Commission shall maintain a list of waivers granted under subsection 3.224(c) and post the list on the Commission's web page.

**Regulation 3.226-1. Referrals – Waivers**

- (a) Waivers. The restriction imposed by section 3.226(b) on conditioning a governmental action on a member of the public hiring, employing, or contracting with any specific person or entity shall not apply:
  - (1) To a City department, board, commission or agency that requires as part of an award of a contract that the primary contractor use subcontractors listed in the primary contractor's proposal or bid.
  - (2) If the Commission has granted a waiver pursuant to subsection (b) of this regulation. The Commission shall maintain a list of such waivers and post the list on the Commission's web page
- (b) Request for Waivers.
  - (1) Requests. Any City officer or employee may request that the Ethics Commission waive the prohibition against conditioning a governmental action on a member of the public hiring, employing, or contracting with any specific person or entity.
  - (2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.226 must be made at a public meeting. Requests for waivers must be in writing and state the reasons why the waiver should be granted. The Commission may grant a waiver only if it determines that the waiver is necessary for the proper administration of a governmental program or action.
  - (3) Delegation to Executive Director. The Executive Director may consider and grant or deny a waiver request when: (A) the Commission has delegated such duty to

the Executive Director; or (B) the requestor demonstrates good cause for the necessity for a decision before the next regularly scheduled Commission meeting. The Executive Director shall not approve or deny a waiver request without first convening a public meeting to discuss the request with interested parties. The Executive Director must provide at least 72 hours notice of such meetings and conduct such meetings in accordance with the principles of the Sunshine Ordinance and Brown Act. The Executive Director may grant a waiver only if he or she determines that the waiver is necessary for the proper administration of a governmental program or action. The Executive Director shall report to the Commission his or her determination regarding whether the request should be granted within 24 hours of making his or her decision. The Commission may reconsider the Executive Director's decision at either of its next two regularly scheduled meetings, provided that two or more commissioners request that the Executive Director's decision be calendared for consideration and such requests are received by the Executive Director at least 120 hours in advance of the meeting.

**Regulation 3.230-1. Prohibition on Political Activities – Definitions**

Whenever the following words or phrases are used in section 3.230, they shall mean:

- (a) "in uniform" shall mean any time a City officer or employee is wearing all or any part of a uniform required or authorized to be worn when the officer or employee is engaged in official duties.

Example 1. A MUNI bus operator placed his personal coat over his uniform after work but did not otherwise change. Even though the coat hides part of his uniform, the employee is still wearing all of the uniform that he is required to wear while on duty, and is therefore prohibited from engaging in political activities.

Example 2. A Deputy Sheriff removes her star and nameplate from her uniform after work. Although if on duty the Deputy would be considered out of uniform, the Deputy is prohibited from engaging in political activities because she is still wearing part of the uniform she is required to wear when she is engaged in official duties.

- (b) "political activities" shall mean all activities that have as a purpose to influence voters to support or oppose a ballot measure, or to vote for or against a candidate, but shall not include any activities of a City officer or employee that are protected from regulation by the Federal or State Constitution.

Example 1. A City Department Head has contacted each member of the Board of Supervisors and the Mayor to urge them to approve legislation that her department proposed. Although lobbying members of the Board of Supervisors and the Mayor is "political" in nature, it is not a "political activity" prohibited by section 3.230 because such activity does not have as a purpose to influence voters to support or oppose a ballot measure or candidate.

Example 2. A member of the Planning Commission is running for a seat on the school board. The Commissioner may not distribute campaign literature at the next Commission meeting. Such activity would be "political activity" prohibited by section 3.230 because the distribution of campaign literature has as a purpose to influence voters to vote for the Commissioner.

(c) "working hours" shall mean any time during which a City officer or employee is engaged in official activities, whether compensated or not, but shall not include any time during which an officer or employee is on an authorized break from official duties.

Example 1. A city employee who is running for a position on one of San Francisco's County Central Committees may leave her office during her authorized lunch break to make fundraising phone calls from the private offices of a friend without violating section 3.230, because her authorized lunch break is excluded from the definition of "working hours."

Example 2. A member of the Commission on the Environment is appearing as an official representative of the Commission before a local senior citizens organization to help promote a new recycling program the Commission is sponsoring. During the Commissioner's presentation, members of the audience ask the Commissioner which candidate for President of the United States they should vote for in the upcoming election if their primary concerns are environmental issues. Because the Commissioner is engaged in official activities while attending the presentation, the presentation is during "working hours" and he cannot engage in activities that have as a purpose to influence voters to vote for a candidate. Accordingly, he should not provide an answer to the question asked by the audience.

Example 3. Because of the nature of her work, a City employee does not have a set time during which she is scheduled to take lunch. Instead, the City employee is authorized to take an hour lunch whenever her schedule permits. The employee may engage in political activities any time during which she takes her lunch break even though that break occurs at different times on different days. On each occasion the lunch break is an authorized break and is therefore excluded from the definition of "working hours."

**Regulation 3.234-1. Permanent Restrictions on Representing and Assisting Others in Particular Matters**

(a) Scope of Restriction; Only Activities, Not Employment Prohibited.

Subsections 3.234(a)(1)(A) and (a)(1)(B) restrict only specific activities. Nothing in these subsections requires a former officer or employee to decline employment with any person or entity. The restrictions apply solely to activities, not employment.

(b) Basic Rule; Guide to Determining Whether Permanent Ban Applies.

To determine whether either subsection 3.234(a)(1)(A) or (a)(1)(B) prohibits a former City officer or employee from making or assisting or aiding another in making any formal or informal appearance or any oral, written or other communication, proceed with the following analysis:

- (1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibitions do not apply.
- (2) Determine whether the former officer or employee is representing a person or entity other than himself, herself or the City and County. If the former officer or employee is not representing a person or entity other than himself, herself or the City and County, the prohibitions do not apply.
- (3) Determine whether the representation is before any court, or before any state, federal, or local agency, or any employee or officer thereof. If the representation is not before any of these entities or officials, the prohibitions do not apply.
- (4) Determine whether the representation is made with an intent to influence. If the representation is not made with an intent to influence, the prohibitions do not apply.
- (5) Determine whether the representation is in connection with a particular matter:
  - (A) in which the City and County is a party or has a direct and substantial interest;
  - (B) in which the former officer or employee participated personally and substantially as a City officer or employee;
  - (C) which involved a specific party or parties at the time of such participation; and
  - (D) which is the same matter in which the officer or employee participated as a City officer or employee.
 If the representation is not in connection with a particular matter as noted above, the prohibitions do not apply.
- (6) Determine whether the duties being performed by the former officer or employee consist of activities that fall within the exception for serving as a witness based on the former officer's or employee's personal knowledge, without compensation other than fees regularly provided for by law or regulation of witnesses. If the duties of the former officer or employee fall within the exception for witness testimony, the prohibitions do not apply.

**Regulation 3.234-2. One Year Restriction on Communicating with Former Department**

(a) Scope of Restriction.

Subsection 3.234(a)(1)(D) applies to attempts to influence any government decisions made by the department, board, commission, office or unit of government for which a former officer or employee served, including decisions in which the former officer or employee had no prior involvement as well as decisions related to matters that first arise after the officer or employee has left City service.

(b) Basic Rule; Guide to Determining Whether the One-Year Restriction Applies.

To determine whether subsection 3.234(a)(1)(D) prohibits a former City officer or employee from communicating orally, in writing or in any other manner with the department, board, commission, office or unit of government for which the officer or employee served, proceed with the following analysis:

- (1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibition does not apply.

- (2) Determine whether more than one year has elapsed since the officer or employee qualified as a former officer or employee. If more than one year has elapsed since the officer or employee qualified as a former officer or employee, the prohibition does not apply.
- (3) Determine whether the former officer or employee is representing a person or entity other than himself, herself or the City and County. If the former officer or employee is representing himself, herself or the City and County, the prohibition does not apply.
- (4) Determine whether the communication from the former officer or employee is being made with an intent to influence a government decision. If the communication is not being made with an intent to influence a government decision, the prohibition does not apply.

**Regulation 3.234-3. Restrictions on Future Employment with Parties that Contract with the City**

(a) Scope of Restriction.

Subsection 3.234(a)(2)(A) applies to any and all employment arrangements, including but not limited to employment as a full or part-time employee, consultant or independent contractor and any and all forms of compensation. A person or entity enters into a contract with the City when either the contract or a modification to the contract is executed.

(b) Basic Rule; Guide to Determining Whether the Restriction on Future Employment Applies.

To determine whether subsection 3.234(a)(2)(A) prohibits a former officer or employee from accepting employment or compensation from a particular person or entity, proceed with the following analysis:

- (1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibition does not apply.
- (2) Determine whether more than one year has elapsed since the officer or employee terminated his or her service to the City. If more than one year has elapsed since the officer or employee qualified as a former officer or employee, the prohibition does not apply.
- (3) Determine whether the person or entity offering employment or compensation to the former officer or employee entered into any contracts with the City during the 12 months preceding the date upon which the officer or employee terminated his or her service with the City. If the person or entity did not enter into any such contracts with the City, the prohibition does not apply.
- (4) Determine whether the former officer or employee participated personally and substantially in the award of any such contracts. If the former officer or employee did not participate personally and substantially in the award of any such contracts, the prohibition does not apply.

**Regulation 3.234-4. Waivers**

(a) Requests for Waivers from Post-Employment Restrictions.

- (1) Requests for waivers from permanent and one-year bans. Any former City officer or employee may submit a request to the Commission for a waiver from the permanent bans on working or advising on particular matters and the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(1)(A), (a)(1)(B) and (a)(1)(D). Such a request must be in writing and include information describing the former position held by the officer or employee; the particular matter for which the waiver is sought; the former City officer's or employee's prior involvement in such matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. The former City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her former department, board, commission, office, or unit of government.
- (2) Requests for waivers of ban on compensation from City contractors. Any former City officer or employee may submit a request to the Commission for a waiver from the ban on receiving compensation from certain City contractors imposed by subsection 3.234(a)(2)(A). Such a request must be in writing and include information describing the name and business activity of the potential new employer of the former officer or employee; the contracts that the former officer or employee personally and substantially participated in awarding to his or her potential new employer during the 12 months prior to the officer's or employee's leaving City service; and reasons why imposing the restriction in subsection 3.234(a)(2)(A) would cause extreme hardship for the former City officer or employee. The former City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her former department, board, commission, office, or unit of government.
- (3) Consideration of waiver requests. The Ethics Commission shall consider, at its next regularly scheduled meeting, any request that meets the criteria set forth in subsections (a)(1) or (a)(2) of this Regulation, provided that such request is received at least two calendar weeks in advance of the meeting. The Commission shall not consider at its next meeting any waiver request that does not comply with this deadline. The former City officer or employee who has requested the waiver, or his or her representative, and a designated representative from the department, board, commission, office or unit of government of the former officer or employee, may make a presentation to the Commission supporting or opposing the waiver request. The Commission may set reasonable time limits on such presentations in accordance with the Sunshine Ordinance and the Brown Act.
- (4) Approval of waiver requests from permanent and one-year bans. The Commission shall not approve any request for a waiver from the permanent and one-year bans made under subsection 3.234(a)(1)(E)(i) unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage. In making this determination, the Commission may consider: the nature and scope of the communications the former officer or employee will have with his or her former department, board, commission, office, or unit of government; the subject matter of such

- communications; the former position held by the officer or employee; the type of inside knowledge that the former officer or employee may possess; and any other factors the Commission deems relevant.
- (5) Approval of waiver requests from ban on compensation from City contractors. The Commission shall not approve any request for a waiver from the ban on receiving compensation from certain City contractors made under subsection 3.234(a)(2)(B) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(2)(A) would cause extreme hardship for the former officer or employee. In making this determination, the Commission may consider: the vocation of the former officer or employee; the range of employers for whom the former officer or employee could work; the steps the former officer or employee has taken to find new employment; and any other factors the Commission deems relevant.
- (b) Waivers for Former Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations.
- (1) Waivers from the permanent and one-year bans. The Ethics Commission may waive the permanent bans on working or advising on particular matters and the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(1)(A), (a)(1)(B) and (a)(1)(D) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the Commission's own initiative; at the request of the appointing authority of a member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association; or at the request of a former City official or employee who was appointed to a board or commission to represent a profession, trade, business, union or association.
- (2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.234(a)(1)(E)(ii) must be made at a public meeting. Requests for waivers made by an appointing authority or a former City officer or employee must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the restrictions are not waived; the ability of the commissioner or board member to engage in his or her particular vocation if the restrictions are not waived; and any other factors the Commission deems relevant.
- (3) Notice. The Commission shall maintain a list of waivers granted under subsection 3.234(a)(1)(E)(ii) and post the list on the Commission's web page.

**Regulation 3.234-5. Definitions**

For the purposes of Section 3.234, the terms listed below shall mean:

- (a) Department, board, commission, office or other unit of government for which a former City officer or employee served.
  - (1) The department, board, commission, office or other unit of government for which a former City officer or employee served shall be:
    - (A) the unit of City government that the officer or employee directly served at the time he or she left City service, including any government unit to which the officer or employee was loaned; and
    - (B) any other unit of City government subject to the direction and control of the body of City government described in subsection (a)(1)(A) of this regulation.
  - (2) The following factors shall be used to determine the unit of government for which a former officer or employee directly served at the time the officer or employee left City service:
    - (A) the unit of government that controlled the budget, personnel and other operations related to the former officer's or employee's position;
    - (B) the department or agency on which the former officer's 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);
    - (C) whether the law creating a unit of government suggests that it is a separate entity; and
    - (D) any other factors the Ethics Commission deems relevant.

Example 1. The Board of Directors of the Municipal Transportation Agency oversees both the Department of Parking and Traffic and the Municipal Railway. A former employee of the Department of Parking and Traffic would be considered a former employee of the Department of Parking and Traffic and not of the Municipal Transportation Agency or the Municipal Railway. Although both the Department of Parking and Traffic and the Municipal Railway are under the direction and control of the Municipal Transportation Agency's Board of Directors, the Charter sets up an organizational structure within the Municipal Transportation Agency so that both the Department of Parking and Traffic and the Municipal Railway function as separate departments. In contrast, a member of the Board of Directors of the Municipal Transportation Agency would be considered to have served both the Department of Parking and Traffic and the Municipal Railway because both the Department of Parking and Traffic and the Municipal Railway are under the direction and control of the Municipal Transportation Agency's Board of Directors.

Example 2. A former employee of the Bureau of Street Use and Mapping at the Department of Public Works would be considered a former employee of the Department of Public Works. Although the Department of Public Works is divided into several different bureaus, the Director of Public Works is responsible for the budget, personnel and operations of each bureau; positions within the Bureau of Street Use and Mapping are listed in the City's conflict of interest code under the Department of Public Works; and the laws creating the Department of Public Works do not suggest that each bureau is a separate department.

- (b) Direct and Substantial Interest in a Particular Matter.

The City has a direct and substantial interest in a particular matter if the City is the subject of the proceeding or transaction or would be significantly affected by the result of the proceeding or transaction. If it is unclear whether the City has a direct and substantial interest in a particular matter, the Commission shall consider the importance of the City's interest in the matter; the potential impact the outcome of a matter will have on these interests; as well as any other factors the Commission deems relevant.

Example. An investigator in the City Attorney's Office participated personally and substantially in preparing the City's case against a landlord who was in violation of several of the City's building code regulations. After leaving the City, a private attorney representing the tenants of the landlord being sued by the City wishes to hire the former investigator to help with a lawsuit brought against the landlord by the tenants. The former investigator may not assist the private attorney in the lawsuit. Although the City is not a subject of the lawsuit, the City has an important interest in the outcome of a case that involves the same party and facts. Results in the tenants' lawsuit could affect the City's lawsuit. But if the City's case against the landlord has ended, the City no longer has a direct and substantial interest in the tenants' lawsuit, and the investigator may assist the private attorney, provided that this does not violate other restrictions such as the prohibition on the use of confidential information.

(c) Intent to influence.

- (1) A former City officer or employee acts with an intent to influence when he or she communicates for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.
- (2) A former City officer or employee does not act with an intent to influence for the purposes of section 3.234 when:
  - (A) his or her communications involve only routine requests for information such as a request for publicly available documents;
  - (B) he or she participates as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
  - (C) he or she attends a general informational meeting, seminar, or similar event;
  - (D) he or she communicates with the press; or
  - (E) he or she seeks to influence an action that is solely ministerial, secretarial, manual or clerical.

Example 1. While with the City, an employee of the Department on the Environment drafted a report on one of the City's energy conservation programs. Two months after leaving the City, the former employee's new employer decides it would like to participate in the program and would like a copy of the report and information related to what documents it needs to file in order to be eligible to participate in the program. The former employee may contact the Department on the Environment to request a copy of the report and may ask general questions related to what documents must be filed to participate in the program because such communications involve only routine requests for information and are not made with an intent to influence.

Example 2. A former member of the Port Commission is hired by a shipping company three months after leaving City service. The shipping company is interested in bidding on the rights to develop one of the City's piers but will be unable to meet the City's deadline for submitting development proposals. The former member of the Port Commission may not contact employees at the Port to seek an extension on the deadline for submitting proposals. Such communications would be made with an intent to influence because they would be made for the purpose of delaying a government decision.

(d) Particular Matter.

A particular matter involves a specific proceeding affecting the legal rights of parties or an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, applications, requests for rulings, litigation, or investigations. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other actions of general application are not particular matters.

Example 1. A Civil Service Commission employee participated in drafting a rule related to outside employment. Two years after she terminated her employment with the City, one of the City's unions asked the former employee to represent one of its members before the Civil Service Commission on a matter that involved applying the outside employment rule. Because the original rulemaking process did not involve a particular matter, the permanent post-employment restrictions would not prohibit the former employee from representing the union member in this matter.

Example 2. While with the City, an employee in the Assessor's office participated personally and substantially in the assessment of a new office building. After the employee retired, the owner of the office building asked the former employee to represent the owner in an appeal to the Assessment Appeals Board challenging the previous assessment. The former employee may not represent the owner of the office building before the Assessment Appeals Board because she has already participated personally and substantially in the assessment, which is a particular matter because it involved an isolated transaction between identifiable parties.

(e) Participate personally and substantially.

Participate personally means to participate directly, and includes the participation of a subordinate when the subordinate is under the direction and supervision of an officer or employee. Participate substantially means that the officer's or employee's involvement is, or reasonably appears to be, significant to the matter. Significant to the matter requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participate substantially relates not only to the effort devoted to a matter, but also to the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial.

Example 1. An employee of the Department of Building Inspection did not perform the actual investigation of possible code violations at the remodeling of an apartment complex but was responsible for reviewing and approving the investigation report that her subordinates drafted and presented to the Building Inspection Commission. Although she did not do the actual investigation, the employee would be deemed to have participated personally and substantially. The employee participated personally in the investigation because she directed and supervised the work of her subordinates. The employee participated substantially in the investigation because her approval of the investigation report was a critical step in the matter.

Example 2. An employee of the Art Commission is responsible for serving as the contact person for grant applicants for a particular City grant program. The employee's responsibilities include providing basic information to the grant applicants related to deadlines and required application documents as well as gathering all application packets and providing copies of such packets to the grant program's selection committee. The employee would not be deemed to have personally and substantially participated in awarding the grants to the eventual recipients. The employee's participation in awarding the grants was not personal because his actions did not directly relate to the award of the grant. His participation was not substantial because his actions merely related to administrative and peripheral issues.

(f) Same Matter.

Two matters are the same matter if they involve the same facts or related issues, involve the same or related parties, and relate to the same confidential information or legal issues. Two matters are not the same merely because the second matter is related to or arises out of the first matter, if they involve different parties, different subject matters or different factual and legal issues.

Example 1. While with the City, an employee in the Department of Parking and Traffic personally and substantially participated in reviewing proposals for a contract to perform maintenance work on the City's parking meters. Two years after the employee terminated his service with the City, the company that received the maintenance contract offered the former employee a job overseeing a team of workers that performs maintenance work under the contract. The former employee may perform work related to the implementation of the contract because implementation of the contract is not the same matter as making the contract. Although the work involves the same contract and the same parties, implementation involves different factual and legal issues than the making of the contract.

Example 2. A month after the employee in Example 1 started with his new company, a dispute arose over the monthly payment the City owed under the contract. The dispute involved the interpretation of some of the terms in the company's initial proposal to the City. Because the dispute involves the same parties, facts, legal issues and confidential information about a matter in which the former employee participated personally and substantially while with the City, the award of the contract and subsequent dispute of the

meaning of the contract are considered the same matter. The employee may not perform work or provide assistance to his new company related to the contract dispute.

(g) Termination of City Service.

An officer or employee terminates his or her service with the City when he or she has permanently separated from the City.

Example 1. A city employee does not permanently separate from the City until she has signed her separation forms. Accordingly, a City employee at the Department of Health who takes vacation time during her final two weeks with the City has not terminated her service with the City. Even though this employee is no longer performing any work at the Department of Health, she has not terminated her service with the City until the two-week vacation is over, and she has signed her separation forms.

Example 2. An employee in the Mayor's office takes a six-month leave of absence to finalize a screenplay she has been writing in her spare time. During her leave, this employee has not terminated her service to the City because she is on only a temporary leave of absence and has not permanently separated from the City.

Example 3. A member of the Fire Commission submits a letter of resignation to the Mayor with a future effective date. The officer terminates his service with the City on the date the resignation is effective, not on the date the letter is provided to the Mayor, because the date on which the resignation is effective is when the officer permanently separated from the City.