Policy & Procedure Detail*

Policy & Procedure Title: Distinction between DPH Jobs and Personal Causes (EXF5)
Category: External Affairs
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DPH Unit of Origin: Office of Policy & Planning
Policy Contact: Colleen Chawla, Deputy Director of Health, Director of Policy & Planning
Contact Phone Number(s): 554-2769
Distribution: DPH-wide  Other Distribution:

*All sections in table required.

1. Purpose of Policy
Many Department of Public Health (DPH) employees give time and energy generously to the community, both within and outside of the work environment. At times, it may be difficult for employees deeply involved in community affairs to understand where their DPH professional role ends and their personal role begins. This policy guides DPH employees on the distinction between their personal interests and activities and their work roles and responsibilities.

2. Policy
During work hours and on work time, employees represent the Department in all of their activities and communications. In meetings and through correspondence, employees are required to follow and convey DPH policies. Employees may use their own time and personal stationary to voice opinions and advance personal causes, as long as they clearly frame these activities as non-work related and as long as they are in compliance with the Department’s Statement of Incompatible Activities.

3. Procedures
a. All employees must comply with DPH’s Statement of Incompatible Activities from March 2011 and the City Attorney Memorandum Regarding Political Activity by City Officers and Employees dated 9/3/13 (both attached).

b. While on duty, employees communicating at meetings, public forums, and in writing must make note of their affiliation with DPH. Employees are expected to understand and often explain DPH’s policies and priorities. This consistency allows the staff as a whole to be clear and consistent in their interactions with San Francisco’s communities, partner organizations, and governmental representatives.
c. Employees may not send letters on DPH letterhead or through DPH email to elected officials, other city, state or federal departments, or outside organizations without their supervisor’s approval. Legislative advocacy may only be done through the Office of Policy & Planning (see Government Relations policy, EXF3) and must follow DPH’s legislative plan.

d. When employees are on personal time, they must make it clear that their activities and statements are not on behalf of DPH. Employees must write any personal advocacy-related letters on their personal stationary, rather than DPH letterhead, and on their own time. While it is acceptable for DPH employees to reference their official DPH title verbally or in writing so that their expertise and experience is understood, the employee must explain that they are representing their own personal views on their own personal time and may not include his/her DPH title in the signature line of any written personal communication.

e. City Officers and employees have a First Amendment right to engage in political activities while off-duty and outside of City-owned or controlled property. However, the following activities are prohibited:

- No one may use City resources (including City work time, computers, email, bulletin boards or supplies) to advocate for or against candidates or ballot measures;
- City personnel’s time and attention may not be diverted from their City duties for political purposes;
- City employees may not participate in political activities while on City-owned or controlled property, other than property that the City makes available to the general public; and,
- City employees may not solicit campaign contributions from other City employees.

f. Any questions about this policy should be directed to the employee’s supervisor or this policy’s owner.

4. Attachments
   a. DPH Statement of Incompatible Activities
   b. City Attorney Memorandum Regarding Political Activity by City Officers and Employees
STATEMENT OF INCOMPATIBLE ACTIVITIES
Adopted 2008; Reissued March 2011

I. INTRODUCTION

This Statement of incompatible Activities is intended to guide officers and employees of the San Francisco Department of Public Health ("Department") and Health Commission about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, "officer" shall mean the executive director ("director") and a member of the Health Commission; and "employee" shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code ("C&GC Code") section 3.218. Engaging in the activities that are prohibited by this Statement may subject an officer or employee to discipline, up to and including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105) Before an officer or employee is subjected to discipline or penalties for violation of this Statement, the officer or employee will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218) Nothing in this document shall modify or reduce any due process rights provided pursuant to the officer's or employee's collective bargaining agreement.

In addition to this Statement, officers and employees are subject to Department policies and State and local laws and rules governing the conduct of public officers and employees, including but not limited to:

- Political Reform Act, California Government Code § 87100 et seq.;
- California Government Code § 1090;
- San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance;
- Applicable Civil Service Rules;
- Department Compliance Program; and
- Department Code of Conduct.

Nothing in this Statement shall exempt any officer or employee from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.
Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City's and/or public's attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer's or employee's City position; or abusing his or her City position to advance a private interest.

No amendment to any statement of incompatible activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the director. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the director, although the supervisor or director may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

II. MISSION OF THE DEPARTMENT OF PUBLIC HEALTH AND HEALTH COMMISSION

The mission of the Department of Public Health and Health Commission is to protect and promote the health of all San Franciscans. (San Francisco Charter Section 4.110; San Francisco Administrative Code, Chapter 15; and San Francisco Health Code, Article 3.)

III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an officer or employee may seek an advance written determination whether a proposed outside activity is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.
A. RESTRICTIONS THAT APPLY TO ALL OFFICERS AND EMPLOYEES

1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

[RESERVED.]

2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS

Neither the director nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the director or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the director’s or employee’s performance of his or her City duties.

Example. An employee who works at the Department’s front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee’s duties require the employee to be at the Department’s front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the director or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT

Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, no officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. Nothing in this subsection prohibits any employee or officer from working for or receiving income or compensation from a health care provider network subject to review of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one’s own department or commission on behalf of oneself; filing or otherwise pursuing claims against the City on one’s own behalf; running for City elective office; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. Except as expressly provided, nothing in this subsection prohibits any employee from engaging in volunteer activities on behalf of a non-profit charitable organization as long as the employee does not personally participate in decisions for the Department regarding that organization. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.
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Assistance in Responding to City Bids, RFQs and RFPs. No officer or employee may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities, including non-profit charitable organizations for whom an officer or employee volunteers, in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an officer or employee from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an officer or employee from speaking to or meeting with individual applicants regarding the individual’s application, provided that such assistance is provided on an impartial basis to all applicants who request it.

B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS

In addition to the restrictions that apply to all officers and employees of the Department, unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section for individual employees holding specific positions.

[RESERVED.]

C. ADVANCE WRITTEN DETERMINATION

As set forth below, an employee of the Department or the director or a member of the Health Commission may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III of this Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called “the requestor”; the individual or entity that provides an advance written determination shall be called “the decision-maker.”

1. PURPOSE

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor’s written submission. A written determination cannot exempt the requestor from any applicable law.

If an individual has not requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

Similarly, if an individual has requested an advance written determination under subsection C as to whether an activity is incompatible with this Statement, and the individual engages in that activity,
the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement if:

(a) the requestor is an employee who has not received a determination under subsection C from the decision-maker, and 20 working days have not yet elapsed since the request was made; or

(b) the requestor is an officer who has not received a determination under subsection C from the decision-maker; or

(c) the requestor has received a determination under subsection C that an activity is incompatible.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

2. THE DECISION-MAKER

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the director or his or her designee. The director or his or her designee will be deemed the decision-maker for the employee’s request.

Decision-maker for request by the director: The director may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the director’s request.

Decision-maker for request by a member of the Health Commission: A member of the Health Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Health Commission or Ethics Commission will be deemed the decision-maker for the member’s request.

3. THE PROCESS

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor’s ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit
and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

The decision-maker shall respond to the request by providing a written determination to the requester by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee’s request, the proposed activity will be determined not to violate this Statement.

The decision-maker may revoke the determination at any time based on changed facts or circumstances or other good cause by providing advance written notice to the requestor. The written notice shall specify the changed facts or circumstances or other good cause that warrants revocation of the advance written determination.

4. Determinations are Public Records

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

IV. Restrictions on Use of City Resources, City Work-Product and Prestige

A. Use of City Resources

No officer or employee may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No officer or employee may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

Example. An officer or employee may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.
Nothing in this Statement shall exempt any officer or employee from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department’s e-mail policy.

B. USE OF CITY WORK-PRODUCT

No officer or employee may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any non-public materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer’s or employee’s appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

C. USE OF PRESTIGE OF THE OFFICE

No officer or employee may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

1. USING CITY BUSINESS CARDS

No officer or employee may use his or her City business cards for any purpose that may lead the recipient of the card to think that the officer or employee is acting in an official capacity when the officer or employee is not.

Example of inappropriate use. An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

Example of acceptable use. An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.
2. Using City Letterhead, City Title, or E-Mail

No officer or employee may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the officer or employee is acting in an official capacity when the officer or employee is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

Example. An officer or employee is contesting a parking ticket. The officer or employee should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

3. Holding Oneself Out, Without Authorization, as a Representative of the Department

No officer or employee may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

Example. An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee’s neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

V. Prohibition on Gifts for Assistance with City Services

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216) This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer’s or employee’s City job.

No officer or employee may receive or accept gifts from anyone other than the City for the performance of a specific service or act the officer or employee would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the officer’s or employee’s duties and responsibilities, or the processes of the entity they serve.

Example. A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee’s work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

Example. A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the
public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this Statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the officer or employee to a 501(c)(3) organization or federal, state or local government without the officer or employee taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

i. Gifts, other than cash, with an aggregate value of $25 or less per occasion; and
ii. Gifts such as food and drink, without regard to value, to be shared in the office among officer or employees.

Example. A member of the public who regularly works with and receives assistance from the Department sends a $15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed $50.)

Example. A member of the public who regularly works with and receives assistance from the Department sends a $150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among officers and employees.

VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. (C&GC Code § 3.218(b).) In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No Statement of Incompatible Activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.
MEMORANDUM

TO: ALL ELECTED CITY OFFICIALS
   ALL CITY BOARD AND COMMISSION MEMBERS
   ALL CITY DEPARTMENT HEADS
FROM: DENNIS J. HERRERA, City Attorney
DATE: September 3, 2013
RE: Political Activity By City Officers and Employees

As we typically do every year in advance of the November election, the City Attorney’s Office is providing this memorandum to outline the basic legal rules restricting political activities by City commissions, departments, officers, and employees. Please note that this memorandum updates and replaces previous memoranda that we have issued on this topic. A further overview of political activity restrictions and other laws governing the conduct of City officers and employees is available in the Good Government Guide posted on the Resources page of our website at www.sfcityattorney.org.

This memorandum is a general guide to the rules regarding political activity and is not a substitute for legal advice. Please contact the City Attorney’s Office in advance with any questions related to participation in political activities.

SUMMARY

In this memorandum we address the most common legal issues that usually arise before elections. In this summary, we answer frequently asked questions in five areas:

1. **Use of City Resources:** No one—including City officers and employees and City volunteers and contractors—may use City resources to advocate for or against candidates or ballot measures. City resources include, without limitation, City employees’ work time, City computers, City e-mail systems and City-owned or controlled property. Also, City commissions, departments, and City advisory committees may not endorse or take a position on measures or candidates. But they may use City resources to analyze the effects of proposed ballot measures on City operations, as long as the analysis is objective and avoids campaign slogans and other suggestive language typically associated with campaign literature.

2. **Off Duty Political Activity:** As a general rule, City officers and employees may support or oppose candidates and ballot measures in their personal capacities, while off duty and outside of City-owned or controlled property. City officers and employees may reference their City titles in campaign materials as long as it is clear that they are using the titles only for identification purposes. For example, the City Attorney’s Office recommends that City officers and employees include in printed campaign materials an explicit notation stating that any reference to their City titles are “for identification purposes only.” But City officers and employees may not solicit political contributions from other City officers and employees, even while off duty.
3. Mass Mailings Using City Funds: With limited exceptions, the City may not prepare or send more than 200 pieces of similar mail featuring the name or image of a City elected official.

4. Campaign Contributions To Elected Officials From City Contractors: City elected officials may not solicit or accept campaign contributions from any person or entity seeking to enter a contract or grant worth $50,000 or more with the City, if the contract or grant is subject to the elected officials' approval or the approval of one of their appointees to the board of a state agency. This restriction applies during contract negotiations and for six months after the date of contract or grant approval. The restriction also extends to contributions from the party seeking the contract or grant and that party's directors, executives and owners, as well as any subcontractors listed in the contract or bid.

5. Campaign Contributions Solicited Or Accepted By Appointed Officials: Appointed City officials, including department heads and members of boards and commissions, may not solicit political contributions over $250 from anyone appearing before them in pending proceedings. Such proceedings include conditional use permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel maps, building and development permits, and some contract approvals. Also, appointed officials who are running for office are disqualified from participating in proceedings where the parties or participants have directly contributed over $250 to the officials within the 12 months before the proceeding.

DISCUSSION

I. Misuse of City Resources

State law prohibits City officers, employees and anyone else from using City resources to support or oppose a ballot measure or the election or defeat of a candidate at the federal, state, or local level. Local law also prohibits City officers and employees from engaging in political activity during work time or on City-owned or controlled premises.

• What is a misuse of City resources?

Any use of City resources or City personnel for political activity is prohibited. This ban prohibits any use of City e-mail, telephones, copiers, fax machines, computers, office supplies or any other City resources for political purposes. City personnel's time and attention may not be diverted from their City duties for political purposes. Activities that would fall within the scope of this ban include addressing envelopes for campaign mailers; circulating ballot petitions; making campaign telephone calls; attending campaign events; or engaging in similar types of campaign activity on City time or on City-owned or controlled property that the City does not makes available to the general public to use for political purposes (such as a public plaza or sidewalk).

Example: On his lunch hour, a City employee uses his City computer to send invitations to a fundraiser for a candidate. The employee has misused City resources by using his City computer for political activity. The fact that he was on his lunch hour or used his personal e-mail account does not excuse this improper use of City resources.
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TO: ALL ELECTED CITY OFFICIALS
    ALL CITY BOARD AND COMMISSION MEMBERS
    ALL CITY DEPARTMENT HEADS

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- May a City board, commission or advisory committee take a position on a ballot measure?

The prohibition on use of City resources for political activity also means members of City boards, commissions, and advisory committees may not use their meetings to influence elections. As a result, appointed boards, commissions, and advisory committees may not vote to endorse a measure or a candidate. The courts have allowed an exception to this rule for legislative bodies like the Board of Supervisors (“Board”). The Board, acting as a body, may take a position on behalf of the City on a ballot measure, and the Mayor may take a public position on a measure. But no City officials, including the Mayor and members of the Board, may distribute campaign literature at City events or include campaign literature in official mailings to employees or members of the public.

Example: Members of a City commission feel strongly about the merits of a measure appearing on the ballot that relates to matters within their jurisdiction. The commission may not vote on a resolution to support or oppose the ballot measure. The commission may ask staff for information about the impact of the ballot measure on the City, and individual commissioners may support or oppose the measure on their own time using their own resources.

- May City officers and employees analyze a ballot measure’s effects?

City officers and employees may lawfully use City resources (where budgeted for such a purpose and otherwise authorized) to investigate and evaluate objectively the potential impact of a ballot measure on City operations. The analysis must be made available to the public.

Example: A City department wants to inform its commission about the potential impacts on the department if a ballot measure passes. If the department has money budgeted for the purpose, the department may research the potential impact of the measure and present objective information to the commission. The analysis must also be made available to the public.

Example: As required by the City’s Municipal Elections Code, the Department of Elections asks a City department to analyze a measure for the City’s Ballot Simplification Committee, the body responsible for preparing the digests that appear in each election’s Voter Information Pamphlet. The department’s written analysis must present objective information and must be made available to the public. Employees of the department may also appear at the Committee’s meetings to explain the effect of the measure or to answer the Committee’s questions, but their presentation must remain objective and impartial.

- May City officers and employees respond to inquiries about a measure?

City officers and employees may respond to public requests for information, including requests to participate in public discussions about ballot measures, if the officers' or employees'
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ALL CITY BOARD AND COMMISSION MEMBERS
ALL CITY DEPARTMENT HEADS

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statements are limited to an **objective and impartial** presentation of relevant facts to aid the voters in reaching an informed judgment regarding the effects of the measure on the City. All statements must be accurate and fair. But City officers and employees should not participate in any campaign event on City time, even to provide an impartial informational presentation, if the purpose of the event is to support or oppose ballot measures or candidates.

*Example:* A community organization asks a department head to attend the organization's meeting to provide information about a pending ballot measure. As long as the department head provides impartial and objective information, she can attend the meeting on City time. But if a candidate asks the department head to provide the same information at a campaign fundraiser, the department head cannot attend on City time.

**• May a City department publicize its analysis of a ballot measure?**

If a City department analyzes a ballot measure, the department should make its analysis public and distribute or publicize it consistent with the department's regular practice. But the department should not use special methods—such as methods associated with political campaigns—to distribute its analysis.

City officers and employees who are considering providing the public with an informational presentation regarding a ballot measure should consult in advance with the City Attorney's Office.

*Example:* If a City department regularly issues a newsletter to interested City residents, it may include an objective and impartial analysis of a pending ballot measure, but the department should not create a special, one-time-only newsletter to distribute its analysis.

**• What is an objective and impartial presentation?**

Courts evaluate materials prepared or distributed by a public entity in terms of whether they make a balanced presentation of facts designed to enhance the ability of the voters intelligently to exercise their right to vote, or whether the communications resemble campaign materials for or against a ballot measure. In its analysis of the effect of a proposed measure, a City department should present factual information, avoid one-sided rhetoric or campaign slogans, and not urge a vote in one way or another.

*Example:* A City department wants to prepare a PowerPoint presentation about a ballot measure explaining the department's view that the measure could have a significant negative impact on the department's operations. Any such presentation must be limited to an accurate, fair, and objective presentation of the relevant facts. It should not urge a Yes or No vote, and it should not use campaign slogans or rhetoric.
• When do these rules apply?

These rules prohibit using City resources when a matter is pending before the voters, but not when the matter is pending before the Board. City measures may be placed on the ballot in three different ways: (1) by the Board acting as a body through majority vote of all of its members at a public meeting, (2) by the Mayor or four or more individual Board members submitting the measure directly, or (3) by the voters submitting an initiative petition with the sufficient number of valid signatures.

➢ When the Board, as a body, is considering placing a measure on the ballot, City officers and employees may use City resources to influence the Board’s decision on whether to place the measure before the voters. After the Board has taken its final vote to place the measure on the ballot, no additional City resources may be used to advocate for or against the measure.

➢ When the Mayor or four or more individual members of the Board have submitted a measure, the Charter requires the Board to hold a public hearing on the measure. City officers and employees may use City resources at this hearing to explain the effects, advantages or disadvantages of the measure, and to urge the Mayor or individual Board members to withdraw the measure from the ballot, but not to urge voters to vote for or against the measure. Other than at this hearing, no City resources may be used to advocate for or against the measure once the Mayor or four Supervisors have proposed it.

➢ A voter may begin circulating a proposed ballot measure for signatures after having obtained a title and summary from the Department of Elections and City Attorney’s Office. Once the initiative petition is circulating for signatures, no City resources may be used to advocate for or against it.

II. Off-Duty Political Activities By City Officers and Employees

City officers and employees have a First Amendment right to engage in political activities while off-duty and outside of City-owned or controlled property. As a general rule, City officers and employees may take public positions, as private citizens, on candidates or ballot measures. Federal law restricts the political activities of local employees whose principal employment involves a federally-funded activity. The City also restricts the off-duty political activities of certain officers and employees, including the Ethics and Election Commissions and their employees, and the City Attorney. Finally, local law imposes some off-duty restrictions on all City officers and employees.

• May City officers and employees use their official titles in campaign communications?

As long as they are not otherwise using City resources to do so, City officers and employees may use their official titles in campaign communications. But it must be clear that the City officers or employees are making the communication in their personal capacity and are using their titles for identification purposes only. For example, the City Attorney’s Office recommends that City officers and employees include in printed campaign materials an explicit notation stating that any reference to their City titles are “for identification purposes only.”
Memorandum

TO: ALL ELECTED CITY OFFICIALS
    ALL CITY BOARD AND COMMISSION MEMBERS
    ALL CITY DEPARTMENT HEADS

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RE: Political Activity By City Officers and Employees

- May City officers and employees solicit campaign contributions from other City officers and employees?

No. City officers and employees may not directly or indirectly solicit campaign contributions from other City officers or employees or from persons on City employment lists. A City officer or employee can request campaign contributions from other City officers or employees only if the request is part of a solicitation made to a significant segment of the public that may include officers or employees of the City. If the City officer or employee is aware that a distribution list includes other City officers or employees, the officer or employee should make reasonable efforts to remove those individuals from that distribution list. In no event can the requestor use City resources in making any solicitation.

Example: After work, a City employee sends an e-mail to her coworkers—from her personal e-mail account to the coworkers’ personal e-mail accounts—soliciting contributions to a candidate for local office. Even though the employee used no City resources, the solicitation is not lawful because she solicited political contributions from other City employees.

Example: The same City employee sends an invitation to a fundraiser to a list of all graduates from the local college she attended. A number of City employees, who also happened to attend that college, receive invitations. Although the officer sent the solicitation to some City employees, the solicitation is lawful because it was made to a significant segment of the public that included some City employees.

- May City officers and employees engage in political activities on City premises?

City officers and employees may not participate in political activities of any kind while on City-owned or controlled property, other than property that the City makes available to the general public to use for political purposes (such as a public plaza or sidewalk).

Example: A City employee seeks endorsements for the employee's candidacy for a political party's central committee in the hallway of her City department's office. This activity violates the ban on political activity on City premises because it is being done inside City property that is not available to the general public for political purposes.

- May City officers and employees engage in political activities while in uniform?

No. City officers and employees may not participate in political activities of any kind while in uniform. City officers or employees are in uniform any time they are wearing all or any part of a uniform that they are required or authorized to wear when engaged in official duties.

III. Mass Mailings at Public Expense

In addition to the general prohibition against using public resources or personnel to engage in political activity, the City cannot use public money to print or send non-political newsletters or mass mailings that feature or make reference to an elected official. A non-
political newsletter or mass mailing is prohibited if all of the following four requirements are met:

- **Sent or delivered.** The item is sent or delivered by any means to the recipient at a residence, place of employment or business, or post office box.

- **Features an elected official.** The item either features a City elected official, or includes the name, office, photograph, or other reference to a City elected official.

- **Paid for with public funds.** Any public money is used to pay for distribution, or more than $50 of public money is used to pay for design, production and printing.

- **More than 200 items in a single month.** More than 200 substantially similar items are sent in a single calendar month.

Certain types of mailings are exempt from the mass mailing prohibition. For example, the prohibition does not apply to e-mails, text messages or postings on websites. It also does not apply to press releases, meeting agendas and intra-office communications. Please check with the City Attorney’s Office in advance if you have any questions about the mass mailing rule.

**IV. Campaign Contributions to Elected Officials and Candidates**

Local law prohibits City elected officials from soliciting or accepting contributions from any person or entity seeking to enter into a contract or grant with the City, if the contract or grant requires their approval or the approval of their appointees to the board of a state agency. This restriction applies to the party seeking the contract or grant, the party’s board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than twenty percent, and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the contract or bid. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

- **May a City contractor make a campaign contribution to a City elected official who approves the contract?**

  A person or entity that contracts with the City may not make a campaign contribution to an elected official if the contract would require approval by that official, a board on which the official serves, or a board of a state agency on which an appointee of the official sits. The people and entities listed in the preceding paragraph may not make a campaign contribution to the elected official at any time from the commencement of negotiations for the contract until either: (1) negotiations are terminated and no contract is awarded; or (2) six months have elapsed since the award of the contract.

- **May a City elected official solicit or accept a campaign contribution from a City contractor?**

  A City elected official may not solicit or accept a campaign contribution from a business or entity seeking a contract with the City, including all of the associated people and entities listed above in the first paragraph of this Section IV, if that elected official, a board on which the official serves, or a board of a state agency on which an appointee of the official sits must approve the contract. This prohibition applies to the official at any time from the formal
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submission of the contract to that official until either: (1) negotiations are terminated and no contract is awarded; or (2) six months have elapsed since the award of the contract.

V. **Campaign Contributions Solicited or Accepted By Appointed Officials**

Section 84308 of the California Government Code prohibits appointed officials from soliciting contributions of more than $250—for any candidate or campaign—from any party or participant in a proceeding pending before the appointed official or from anyone with a pending contract subject to the appointed official's approval. It also disqualifies appointed officials from participating in decisions that involve persons who have contributed $250 or more directly to them within the past 12 months.

- **May appointed officials solicit contributions from persons in a proceeding pending before them?**

  Appointed officials may not solicit, accept or direct campaign contributions of more than $250 from any party to or participant in certain proceedings pending before the official. This prohibition applies during the proceeding and for three months after the final decision is rendered in the proceeding.

  This rule applies whether the contributions are sought for the official or for someone else, and whether the contributions come directly from the party or participant, or are made by an agent acting on behalf of the party or participant. The prohibition applies to contributions for candidates or ballot measures in federal, state, or local elections.

  An official does not violate this rule if the official makes a request for contributions in a mass mailing sent to members of the public, to a public gathering, in a newspaper, on radio or television, or in any other mass medium, provided the solicitation is not targeted to persons who appear before the board or commission. An official does not engage in a solicitation solely because the official's name is printed with other names on stationery or letterhead used to ask for contributions.

- **Who is an "appointed official" prohibited from soliciting or accepting contributions?**

  An appointed official is an appointed member of board or commission, or an appointed department head. Although the Board is an elected body, the prohibitions of Section 84308 apply to members of the Board when they sit as members of an appointed body.

- **What proceedings are covered by this prohibition?**

  Section 84308 applies to "use entitlement proceedings," which are actions to grant, deny, revoke, restrict or modify certain contracts or business, professional, trade or land use licenses, permits, or other entitlements to use property or engage in business. Examples of the types of decisions covered by the law include decisions on professional license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative subdivision and parcel maps, cable television franchises, building and development permits and private development plans. It also includes all contracts other than labor or personal employment contracts and competitively bid contracts where the City is required to select the highest or lowest qualified bidder.
The law does not cover proceedings where general policy decisions or rules are made or where the interests affected are many and diverse, such as general building or development standards and other rules of general application.

- **Who is a "party," "participant," or "agent"?**

  A "party" is a person, including a business entity, who files an application for, or is the subject of a use entitlement proceeding. A "participant" is any person who is not a party to a proceeding but who: (1) actively supports or opposes a particular decision (e.g., lobbies the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence the decision of the officers of the agency); and (2) has a financial interest in the decision. An "agent" is an individual or entity that represents a party or participant in a proceeding.

- **When is an appointed official disqualified from proceedings involving a contributor?**

  An appointed official may not participate in any use entitlement proceeding involving a party or participant (or the party's or participant's agent) from whom the official received contributions totaling more than $250 in the 12 months before the proceeding. Disqualification is required only if the official received a contribution to the official's own campaign. Soliciting contributions before a proceeding begins does not, by itself, require disqualification, if the official has not directly received contributions as a result of the solicitation.

  An appointed official may avoid disqualification if the official returns the contribution (or the portion exceeding $250) within 30 days of learning of the contribution and the proceeding involving the contributor.

  Whether the appointed official is disqualified as a result of the contribution, the official always must disclose on the record all campaign contributions totaling more than $250 received in the preceding 12 months from parties to or participants in the proceeding.

### VI. Penalties

State and local enforcement agencies and the courts may impose considerable penalties for violating the laws discussed in this memorandum. Individuals who violate these rules could face criminal fines or imprisonment, orders to repay the City for the misused funds, or civil and administrative penalties of up to $5,000 per violation. Misappropriation of City funds for political activities also may be official misconduct under the City's Charter that justifies removing a public officer (other than the Mayor) and restricting that person's ability to hold public office in the future, and it may also be cause to discipline or fire a public employee.

The conduct of City officers and employees also could result in fines or liability for the City. For example, the California Fair Political Practices Commission has fined local government agencies as much as $10,000 for failing to report the use of public funds to prepare and distribute pamphlets on pending ballot measures.
Memorandum

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ADDITIONAL INFORMATION

Again, for more information about these rules, see the City Attorney's Good Government Guide, which you may find on the Resources page of the City Attorney's website (www.sfcityattorney.org). If you have any questions, please contact the City Attorney's Office.