

File No. 091013

Committee Item No. 14
Board Item No. 6

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 11-5-09

Board of Supervisors Meeting

Date 11.17.09

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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Completed by: Linda Wong
Completed by: Alisa Somera

Date November 2, 2009
Date November 10, 2009

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Application of City's conflict of interest laws to City officers.]

2
3 Ordinance amending the San Francisco Campaign and Governmental Conduct Code by
4 amending sections 3.222 and 3.224 to clarify the application of prohibitions to City
5 officers, and by adding sections 3.201 and 3.203 to name the Government Ethics
6 Ordinance, to permit waiver of contracting prohibition, and to define "officer."

7 NOTE: Additions are single-underline italics Times New Roman;
8 deletions are ~~strike-through italics Times New Roman~~;
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

11 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
12 amended by amending Sections 3.222 and 3.224, to read as follows:

13 SEC. 3.222. PROHIBITING ~~MEMBERS OF BOARDS AND COMMISSIONS~~ OFFICERS
14 FROM CONTRACTING WITH THE CITY AND COUNTY.

15 (a) Definitions. For purposes of this Section, the following definitions shall apply:

16 ~~(1) Board or Commission. The term "board or commission" means an appointed board or~~
17 ~~commission created by Charter or ordinance of the City and County, but does not include advisory~~
18 ~~boards or commissions.~~

19 (12) Business. The term "business" means any corporation, partnership, sole
20 proprietorship, firm, enterprise, franchise, association, organization, or other legal entity or
21 undertaking organized for economic gain.

22 (23) City and County. The term "City and County" includes any commission, board,
23 department, agency, committee, or other organizational unit of the City and County of San
24 Francisco.

1 (34) Contract. The term "contract" means any agreement ~~to which the City and County is~~
2 ~~a party~~, other than a grant ~~funded in whole or in part by the City and County~~ or an agreement for
3 employment ~~with the City and County~~ in exchange for salary and benefits.

4 (45) Subcontract. The term "subcontract" means a contract to perform any work that a
5 primary contractor has an agreement with the City and County, the San Francisco
6 Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified School
7 District, or the San Francisco Community College District to perform.

8 (b) Prohibition. ~~No member of a board or commission of the City and County shall, d~~ During
9 his or her term of office, no officer shall enter, submit a bid for, negotiate for, or otherwise attempt
10 to enter, any contract or subcontract with the City and County, the San Francisco
11 Redevelopment Agency, the San Francisco Housing Authority, the San Francisco Unified
12 School District, or the San Francisco Community College District, where the amount of the
13 contract or the subcontract exceeds \$10,000.

14 (c) Exceptions. This Section shall not apply to the following contracts or subcontracts:

15 (1) A contract or subcontract with a nonprofit organization;

16 (2) A contract or subcontract with a business with which an officer a member of a board
17 or commission is affiliated unless the officer member exercises management and control over
18 the business. A member exercises management and control if he or she is:

19 (A) An officer or director of a corporation;

20 (B) A majority shareholder of a closely held corporation;

21 (C) A shareholder with more than five percent beneficial interest in a publicly traded
22 corporation;

23 (D) A general partner or limited partner with more than 20 percent beneficial interest
24 in the partnership; or
25

1 (E) A general partner regardless of percentage of beneficial interest and who
2 occupies a position of, or exercises management or control of the business;

3 (3) A contract or subcontract ~~with the City and County~~ entered into before a member of
4 a board or commission commenced his or her service; ~~or~~

5 (4) An agreement to provide property, goods or services to the City and County at
6 substantially below fair market value; or

7 (5) A settlement agreement resolving a claim or other legal dispute.

8 (d) Waiver. The Ethics Commission may waive the prohibitions in this section for any officer
9 who, by law, must be appointed to represent any profession, trade, business, union or association.

10 ~~(de)~~ Limitation. Failure of ~~a member of a board or commission~~ an officer to comply with
11 this Section shall not be grounds for invalidating any contract with the City and County.

12 SEC. 3.224. PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE
13 OTHER CITY OFFICERS AND EMPLOYEES– COMPENSATED ADVOCACY.

14 (a) Prohibition. No officer of the City and County shall directly or indirectly receive any
15 form of compensation to communicate orally, in writing, or in any other manner on behalf of
16 any other person with any other officer or employee of the City and County with the intent to
17 influence a government decision.

18 (b) Exceptions. This section shall not apply to any communication by: (1) an officer of
19 the City and County on behalf of the City and County; (2) an officer of the City and County on
20 behalf of a business, union, or organization of which the officer is a member or full-time
21 employee; (3) an associate, partner or employee of an officer of the City and County, unless it
22 is clear from the totality of the circumstances that the associate, partner or employee is merely
23 acting as an agent of the City and County officer; or (4) a City officer in his or her capacity as
24 a licensed attorney engaged in the practice of law, which includes representing clients in
25 communications with the City Attorney's Office, District Attorney's Office, Public Defender's

1 Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by
2 the City, representatives of the City who are named in a pending litigation matter or witnesses
3 or potential witnesses in a pending litigation matter.

4 (c) Waiver. The Ethics Commission may waive the prohibitions in this section for any
5 ~~member of a City board or commission officer~~ who, by law, must be appointed to represent any
6 profession, trade, business, union or association.

7 Section 2. The San Francisco Campaign and Governmental Conduct Code is hereby
8 amended by adding Sections 3.201 and 3.203, to read as follows:

9 SEC. 3.201. CITATION

10 This Chapter may be cited as the San Francisco Government Ethics Ordinance.

11 SEC. 3.203. DEFINITIONS.

12 Whenever in this Chapter the following words or phrases are used, they shall mean:

13 (a) "Officer" shall mean any person holding City elective office; any member of a board or
14 commission required by Article III, Chapter 1 of this Code to file statements of economic interests; any
15 person appointed as the chief executive officer under any such board or commission; the head of each
16 City department; the Controller; and the City Administrator.

17 (b) "City elective office" shall mean the offices of Mayor, Member of the Board of Supervisors,
18 City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:



23 JON GIVNER
24 Deputy City Attorney
25

LEGISLATIVE DIGEST

[Application of City's conflict of interest laws to City officers.]

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending sections 3.222 and 3.224 to clarify the application of prohibitions to City officers and to permit the Ethics Commission to waive the prohibition on officers contracting with the City, and by adding sections 3.201 and 3.203 to name the Government Ethics Ordinance and to define "officer."

Existing Law

Chapter Two of Article III of the City's Campaign and Governmental Conduct Code regulates conflicts of interest and other prohibited activities. Many of the rules set out in the Chapter apply explicitly to officers and employees. These include section 3.208 (prohibiting consideration for City appointments or nominations), section 3.210 (prohibiting voting on own character or conduct), section 3.212 (prohibiting decisions involving family members' employment), section 3.214 (requiring disclosure of personal, professional or business relationships), section 3.216 (gift restrictions), section 3.218 (incompatible activities), section 3.224 (prohibiting compensated advocacy), section 3.226 (prohibiting consideration for referrals), section 3.228 (prohibiting disclosure of confidential information), section 3.230 (prohibition on political activity with City resources), and section 3.234 (post-employment restrictions). Section 3.222 of the Chapter, which prohibits contracting with the City and other local entities, does not apply specifically to "officers." Instead, that section applies to members of City boards and commissions, excluding members of advisory bodies.

Some members of City boards and commissions who file Statements of Economic Interests under the City's Conflict of Interest Code are not "officers," as that term is defined in City law. The term "officer" is defined in Administrative Code section 1.50 to mean: elected City officeholders; members of the Board of Education; members of boards and commissions appointed by the Mayor and the Board of Supervisors; members of the Building Inspection Commission, Ethics Commission, Elections Commission, Retirement Board, Health Service Board, Sunshine Ordinance Task Force, Youth Commission, Small Business Commission and Board of Law Library Trustees; the Superintendent of Schools; the executive appointed as the chief executive officer under each board or commission; the Controller; the City Administrator; the head of each department under the Mayor; and any other person so designated by law.

Chapter Two of Article III does not have a title for citation, unlike Chapter One of Article III (the Conflict of Interest Code) or Chapter One of Article I (the Campaign Finance Reform Ordinance).

FILE NO.

Amendments to Current Law

This legislation would define "officer" for the purpose of the Chapter to mean any person holding City elective office; any member of a board or commission required to file statements of economic interests; any person appointed as the chief executive officer under a board or commission; the head of each City department; the Controller; and the City Administrator.

The legislation also would amend section 3.222, the contracting prohibition, so it would apply to all officers rather than only members of boards and commissions. The legislation also would add an exception to allow officers to enter settlement agreements regarding claims or other legal disputes, and would allow the Ethics Commission to waive the contracting prohibition for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. The legislation also would clarify that section 3.222 prohibits officers not only from entering contracts with the City and other local entities, but also from bidding on, negotiating for, or otherwise attempting to enter such contracts.

The legislation would amend section 3.234, the compensated advocacy ban, which currently allows the Ethics Commission to grant waivers to board or commission members, to allow such waivers for "officers" instead.

The legislation also would rename the Chapter as the Government Ethics Ordinance.

Background Information

The proposal amends Article III, Chapter Two of the Campaign and Governmental Conduct Code, which was originally approved by the voters. Section 3.204 of the Campaign and Governmental Conduct code expressly authorizes amendment of Article III, Chapter Two only if:

- 1) the amendment furthers the purposes of the Chapter;
- 2) the amendment is submitted to the Ethics Commission and recommended by its members by a four-fifths vote;
- 3) the legislation is made available for public review for 30 days; and
- 4) the Board of Supervisors adopts the legislation by a two-thirds vote.

BOARD of SUPERVISORS



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Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

RECEIVED
COUNCIL OF SUPERVISORS
2009 OCT -5 AM 8:56

MEMORANDUM

TO: Ethics Commission
FROM: Angela Calvillo, Clerk of the Board
DATE: August 17, 2009
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Rules Committee

BY _____
2009 AUG 17 PM 3:48
SAN FRANCISCO
ETHICS COMMISSION
FILED

The Board of Supervisors Rules Committee has received the following proposed ordinance, which is being referred to the Ethics Commission for comment and recommendation.

File: 091013

Ordinance amending the San Francisco Campaign and Governmental Conduct Code by amending sections 3.222 and 3.224 to clarify the application of prohibitions to City officers, and by adding sections 3.201 and 3.203 to name the Government Ethics Ordinance, to permit waiver of contracting prohibition, and to define "officer."

Please return this cover sheet with the Commission's response to **Linda Wong, Clerk, Rules Committee.**

RESPONSE FROM ETHICS COMMISSION - Date: _____

No Comment
 Recommendation Attached

Chairperson, Ethics Commission



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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STC

JAMIENNE S. STUDLEY
CHAIRPERSON

SUSAN J. HARRIMAN
VICE-CHAIRPERSON

EMI GUSUKUMA
COMMISSIONER

EILEEN HANSEN
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 17, 2009
To: Members, Board of Supervisors
From: John St. Croix, Executive Director
Re: Legislation to Amend Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code

At its meeting on July 12, 2009, the Ethics Commission, by a vote of 5-0, approved amendments to the conflict of interest provisions that appear in Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code. The proposed amendments would define "officer" for the purposes of Chapter 2, apply the conflict of interest laws in that Chapter to "officers," make several modifications to the City's contracting ban for members of boards and commissions, and rename Chapter 2 as the Government Ethics Ordinance ("GEO").

I am attaching a staff memo that the Commission considered in approving the amendments, and will be pleased to work with you in ensuring their passage.

Please let me know if you have questions.

S:\Conflicts of Interest\2009\Govt Ethics Ord\ref to BoS 7.09.doc



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

JAMIENNÉ S. STUDLEY
CHAIRPERSON

SUSAN J. HARRIMAN
VICE-CHAIRPERSON

EMI GUSUKUMA
COMMISSIONER

EILEEN HANSEN
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: July 8, 2009

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Legislation to clarify application of conflict of interest provisions under Chapter 2, Article III of San Francisco Campaign and Governmental Conduct Code

At its April 13, 2009 meeting, the Commission approved a formal advice letter to Patrick Buscovich, a structural engineer who had been appointed to the Board of Examiners. The Commission advised that Mr. Buscovich was not subject to the compensated advocacy ban in Campaign and Governmental Conduct Code section 3.224 because members of the Board of Examiners are not "officers" of the City, as defined in local law. In a letter dated June 12, 2009, the District Attorney declined to concur in the Commission's advice. Although staff disagrees with the legal analysis and conclusions in that letter, staff agrees with the District Attorney's policy concern that appointed members of local decision-making should comply with the City's conflict of interest laws.

For that reason, staff proposes that the Commission approve amendments to the conflict of interest provisions that appear in Chapter 2, Article III of the San Francisco Campaign and Governmental Conduct Code. The proposed amendments would define "officer" for the purposes of Chapter 2, apply the conflict of interest laws in that Chapter to "officers," make several modifications to the City's contracting ban for members of boards and commissions, and rename Chapter 2 as the Government Ethics Ordinance ("GEO").

Section 3.201 (page 4 of draft amendments)

The amendment adds new section 3.201 to provide a title for Chapter 2 of Article III of the San Francisco Campaign and Government Conduct Code, which will be the "Government Ethics Ordinance," or "GEO." Because Chapter 2 sets forth most of the conflict of interest rules that govern City officers and employees, staff believes that giving it an easier name to remember would be appropriate.

Section 3.203 (page 4 of draft amendments)

The amendment adds new section 3.203 to define “officer” and “City elective office” for the purposes of Chapter 2. “Officer” would mean any person holding City elective office, any member of a board or commission who is required to file a Statement of Economic Interests (“SEI” or Form 700), any person appointed as the chief executive officer of a board or commission, a department head, the Controller, and the City Administrator. An “officer” would not include a member of a separate non-City legal entity such as the Board of Education and the Superintendent of Schools, who are currently not subject to the City’s conflict of interest laws. Under this new definition, members of the Board of Examiners would be City officers subject to local conflict of interest laws.

“City elective officer” means an incumbent in the offices of the Mayor, the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor and Public Defender. It does not include a member of the Board of Education of the San Francisco Unified School District or a member of the Governing Board of the San Francisco Community College District. Candidates for such offices are subject to local campaign finance rules and must file their campaign disclosure statements with the Ethics Commission, but incumbents in those offices are not subject to the conflict of interest laws in Chapter 2.

Section 3.222 (pages 1-3 of draft amendments)

Under current law, members of appointed boards or commissions are barred from entering contracts or subcontracts with the City, the San Francisco Redevelopment Agency, Housing Authority, Unified School District, or Community College District where the amount of the contract or subcontract exceeds \$10,000. The proposed legislation would change section 3.222 in four ways:

First, the legislation would apply section 3.222 to “City officers” instead of members of appointed boards or commissions. Currently, some officers – such as department heads – are not subject to section 3.222. Current law also specifically exempts members of advisory boards or commissions from the contracting ban. In the past, for example, the Ethics Commission advised that a member of the Landmarks Preservation Advisory Board¹ was not subject to the contracting ban, even though members of that board were decision-making public officials required to file SEIs. *See Kelley Advice Letter, July 12, 2001.*

Amending section 3.222 to apply to officers (defined under new section 3.203 to include members of boards or commissions who are required to file SEIs) would simplify the law and ensure that all appointed decision-makers are subject to the same ethical restrictions. The change also would ensure that the various restrictions in Chapter 2 apply consistently. Currently, some restrictions, such as the compensated advocacy ban in section 3.224, apply to City “officers,” while the contracting ban in section 3.222 applies to “members of boards and commissions” – an overlapping but separate group of City officials. This amendment would apply section 3.222 to “officers” as well.

¹ The Landmarks Preservation Advisory Board has dissolved and has been replaced by the Historic Preservation Commission, whose members are required to file SEIs.

Second, the legislation would authorize the Commission to waive the contracting ban for any officer who by law must be appointed to represent a profession, trade, business, union or association. This addition duplicates the waiver provision in section 3.224(c), which authorizes the Commission to consider a waiver from the compensated advocacy ban for the same category of board or commission members. Staff believes a waiver provision is appropriate to allow certain officers to contract with the City in extraordinary situations, based on case-specific findings by the Commission.

Third, the legislation would clarify that section 3.222 prohibits officers not only from entering contracts with the City and other local entities, but also from bidding on, negotiating for, or otherwise attempting to enter such contracts. Currently, the ordinance prohibits “contracting” with the City and other local agencies, but it does not explicitly prohibit officers from bidding on City contracts. So technically, a board or commission member could submit a bid and negotiate for a contract, and section 3.222 would not apply until the member actually enters the final contract. Staff believes this is an unintended loophole in the law. The purpose of section 3.222 is to ensure that contracts are, and appear to be, awarded on a fair and impartial basis. By prohibiting officers from contracting with the City, the ordinance eliminates “both actual and perceived favoritism or preferential treatment without creating unnecessary barriers to public service.” C&GC Code § 3.200(a)(1) and (3). To achieve this goal, section 3.222 should apply throughout the contracting process, not just at the moment the contract becomes final.

Fourth, the legislation would add an exception to allow officers to enter settlement agreements with the City and other local agencies regarding claims or other legal disputes. If an officer is engaged in litigation or any other legal dispute with the City or another local agency, local law should not prohibit the officer from settling that dispute. For that reason, staff recommends adding this exception to section 3.222.

Section 3.224 (pages 3-4)

Staff recommends that the Commission change the term “member of a City board or commission” to “officer,” in the waiver section of the compensated advocacy ban, section 3.224(c). This change will make section 3.224 consistent with the rest of the Chapter.

