



# STATEMENT OF INCOMPATIBLE ACTIVITIES

## Successor Agency to the Redevelopment Agency of the City and County of San Francisco

### I. INTRODUCTION

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure, (“Agency” or “OCII”) is a state agency for the performance of local functions created under the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 et. seq. OCII’s mission is to complete the enforceable obligations of the former Redevelopment Agency of the City and County of San Francisco (“Former Agency”) and to wind down redevelopment affairs, consistent with the Redevelopment Dissolution Law. OCII--a public entity separate from the City and County of San Francisco--“succeed[ed] to the organizational status of the [F]ormer [A]gency, but without any legal authority to participate in redevelopment activities, except to complete any work related to an approved enforceable obligation.” Cal. Health & Safety Code § 34173 (g).

The Agency provides this Statement of Incompatible Activities (“Statement”) under Government Code section 1126, which establishes, among other things, that an agency officer or employee shall not engage in any compensated activity that is “inconsistent, incompatible, in conflict with, or inimical to” the employee’s duties or with the duties, functions, or responsibilities of the Agency. (“Incompatible Activities”). This Statement is a compilation of existing laws and Agency policies that define Incompatible Activities. This Statement restates and updates the Former Agency’s Statement of Incompatible Activities, but does not change its substantive provisions, which remained in effect after redevelopment dissolution.

This Statement does not specify every possible limitation on incompatible activities. It is intended to provide guidance to Agency commissioners, officials, and employees about what activities are incompatible with their duties to the Agency. Engaging in Incompatible Activities identified in this Statement may subject an Agency officer or employee to discipline, as well as to monetary fines and penalties pursuant to state law. No discipline or penalties may be imposed for engaging in Incompatible Activities until the Agency officer or employee has an opportunity to explain why the activity should not be deemed incompatible.

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Agency officers and employees are subject to Agency policies and state 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;
- Brown Act, California Government Code §§ 54950 et seq.;
- California Redevelopment Law (“CRL”), California Health and Safety Code §§ 33000 et seq., as amended by the Redevelopment Dissolution Law, California Health & Safety Code §§ 34170 et seq.;
- Agency Personnel Policy;
- Agency Public Records Policy;
- Agency Purchasing Policy;
- Agency Employee Computer Policy Manual.

Nothing in this Statement shall exempt any person from applicable provisions of other laws. Notably, local law governing the ethics of City employees does not apply to Agency employees because the Successor Agency is a state-authorized local entity separate from the City and carries out the state objective of winding down redevelopment affairs. Agency employees are not City employees. Nonetheless, the San Francisco Campaign and Government Conduct Code provides useful information that may assist Agency employees in avoiding conduct that is inconsistent, incompatible, in conflict with, or inimical to Agency duties. See generally City Attorney, Good Government Guide: An Overview of the Laws Governing the Conduct of Public Officials (February 2019), available at <https://www.sfcityattorney.org/good-government/good-government-guide/>.

Any questions about the interpretation of this Statement should be directed to the employee's immediate supervisor and to the Agency's Human Resources or Legal department.

**II. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES**

**A. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES**

The Agency Personnel Policy contains the following standards of conduct and Agency officers or employees may not engage in any activity that is incompatible with these standards:

- Section IX (H) – Duty of Loyalty. Unless approved in advance in writing by the Agency, no present or former employee, Commissioner or consultant of the Agency shall knowingly act for anyone other than the Agency in connection with any particular matter in which the Agency is a party, or has a direct and substantial interest, and in which he or she participated personally and

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substantially as an Agency employee, Commissioner or consultant whether through decisions, recommendations, advice, investigation or otherwise.

- Section IX (F) – “Outside Paid Employment” prohibits an employee from accepting outside employment unless the employee obtains the Executive Director’s prior approval and furthermore prohibits all outside paid employment that impairs “efficiency or in any way interferes with . . . regular Agency employment,” that is “inconsistent, incompatible or in conflict with assigned Agency duties,” or that is “contrary to the interests of the Agency generally and [could] lead to situations which would reflect discredit on the Agency service.”
- Section IX (D) – “Expenditure of Agency Funds” requires Agency employees to observe written procedures with respect to the purchase of materials and supplies and the expenditure or encumbrance of Agency funds. See also Agency Purchasing Policy.
- Section IX (G) – “Personal Conduct” requires employee conduct to reflect credit to the Agency and requires that conduct “whether occurring during working hours or otherwise” must not adversely affect the Agency or the employee’s ability to perform Agency duties. In addition, “an employee shall so conduct his or her personal financial affairs as to keep the Agency free of involvement.”

State law prohibits the following activities:

- The CRL prohibits, subject to certain statutory exceptions, an Agency officer or employee whose official duties require participation in the formulation and approval of redevelopment plans or policies, from renting, leasing or otherwise acquiring any interest in any real property located within a redevelopment project area. (California Health and Safety Code § 33130.) This prohibition applies to successor agency officers and employees. 97 Ops. Cal. Atty. Gen. 75 (2014). A statutory exception exists for personal residences under specific circumstances. California Health and Safety Code § 33130.5.
- The Political Reform Act prohibits an Agency official from making, or participating in making a governmental decision in which such official has a financial interest and also prohibits use of the individual’s official position to influence a governmental decision in which such official has a financial interest. (California Government Code §§ 87100 et seq.)
- California Government Code Section 1090 prohibits Agency officers and employees from participating in the making of contracts in which they have personal financial interests. Exceptions to this prohibition exist for “remote interests” and “noninterests.” California Government Code §§ 1091-1091.5.

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- The Political Reform Act prohibits the receipt of a gift from a single source by Commissioners and other Agency officers and employees who are “designated employees” pursuant to Agency’s Conflict of Interest Code if the value of the gift exceeds applicable limitations (\$500 during calendar year 2020). (California Government Code § 89503.)
- The Brown Act prohibits disclosure of confidential information obtained in a closed session by the Agency Commission, unless such disclosure is authorized by the Commission. (California Government Code § 54963.)
- California Penal Code §§ 67 - 70 prohibits offers, solicitation or acceptance of payments by or to a public official or any administrative or ministerial officers for the performance of any official act. In addition, Penal Code § 165 specifically prohibits bribes to influence an official vote. Nothing in this section shall preclude the receipt of a bona fide award provided to recognize exceptional service by an Agency employee, and which is not provided in return for the rendering of specific services.
- Officers and employees may not engage in outside activities that are subject to the control, inspection, review, audit or enforcement of the Agency. (California Government Code § 1126)

#### **B. ACTIVITIES THAT CONFLICT WITH APPROPRIATE USE OF AGENCY RESOURCES**

Agency resources, including vehicles, telephone, computer, fax machine, or supplies, may not be used for non-Agency purposes, except as follows:

- Occasional use of the telephone to communicate about personal or family matters such as doctor appointments, child care, transportation arrangements, or meeting times and similar *de minimis* uses are permitted.
- The use of Agency vehicles requires Agency employees to observe Agency procedures and memoranda regarding use of Agency vehicles. Personnel Policy Section IX (E).
- Incidental or occasional use of email for personal reasons is permitted, however the Agency Computer Operating and Security Policies expressly prohibit the following e-mail activities:
  - Unauthorized access, or attempts to access, another user’s e-mail account;
  - Obtaining, or distributing, another user’s e-mail account;
  - Using e-mail to harass, discriminate, or make defamatory comments;

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- Using e-mail to make off-color jokes, or send inappropriate e-mail to third parties;
  - Transmitting sensitive or confidential records within or outside the Agency without authorization;
  - Transmitting junk mail, chain letters or soliciting for commercial, religious, charitable or political causes;
- No Agency officer or employee may use Agency resources for political activity. (See, e.g., *Stanson v. Mott*, 17 Cal.3d 206 (1976).)