PERMIT AND RESOURCE MANAGEMENT DEPARTMENT
INCOMPATIBLE ACTIVITIES POLICY

PURPOSE

This policy has been developed pursuant to the requirements of Section 1126 of the California Government Code to govern outside employment and other activities and enterprises which may be incompatible, inconsistent or in conflict with the job duties and responsibilities of an employee of the Permit and Resource Management Department. It is not the intention of this policy to infringe unnecessarily upon an employee’s plans to advance his or her career goals, or to improve his or her financial situation. This policy is adopted in order to comply with applicable statutes, and to assure the public of the commitment and service it deserves from its officers and employees.

GENERAL

Section 1126 of the Government Code prohibits County employees from engaging in “any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.” Section 1126 further prohibits an employee from performing work for compensation outside his/her employment for the County where such efforts will be subject to approval by another employee or board of the County, unless approved according to the procedures adopted by the Board of Supervisors.

In addition to the activities prohibited by law, employees of the Permit and Resource Management Department are to avoid any activity which creates the appearance of a conflict of interest or favoritism, as described in this policy.

Outside employment may be prohibited and may be considered incompatible. The following criteria shall be used to assess the incompatibility of outside employment for Permit and Resource Management Department employees:

1. Employees shall not use County time and/or County owned or provided equipment, materials or property in connection with any outside employment or for other personal benefit or profit, or in any way that is not related to their duties as a County employee.

2. Employees shall not use their Departmental position for personal benefit or profit.

3. Outside employment shall not involve any work which is or may become subject to the control, review, approval, permitting, inspection, audit, or enforcement by the Permit and Resource Management Department or any employee thereof. Additionally, outside employment may be determined incompatible if it may be subject to the control, inspection, review, audit or enforcement of any other officer or employee of the County (outside of the Permit and Resource Management Department) and the employee’s appointing authority determines that there is a
likelihood of actual incompatibility, such as potential favoritism, selective enforcement, or misuse of county information.

**Note:** Real property owned by the employee will be exempt from this requirement when the Director has been notified and no incompatible activity exists.

4. Employees shall not directly or indirectly solicit or refer applicants or other County employees to an agency or company in which he or she has a monetary interest. Employees shall not solicit any outside work in the name of the Permit and Resource Management Department. Employees who engage in private work shall inform all employers, clients or other interested parties that they are engaged in such work as private individuals not as County employees and that they alone are responsible for all work resulting therefrom.

5. No employee shall act as an agent for any entity transacting business that involves the Permit and Resource Management Department.

6. Employees serving on a Board of Directors of an entity that transacts business with PRMD shall not participate in any funding or other decision of the County which affects that entity.

7. Outside employment shall not involve any work on a project under contract with the County of Sonoma.

8. Outside employment shall not be performed during the employee’s regular County work schedule unless the employee is on authorized leave, nor shall it involve work time demands or scheduling that would render the employee’s County job performance less effective or efficient.

9. Outside employment shall not involve receipt or acceptance by the employee or any entity owned in whole or in part by the employee of any money, gift or other consideration from anyone other than the County for the performance of an act which the employee would be required or expected to render in the regular course or hours of his or her County employment or as a part of his or her duties as a County employee.

**Note:** This provision is not intended to apply to activities which are similar to those performed by the employee in the course of County employment, but which are performed outside the jurisdiction of the County of Sonoma. For example, a PRMD Building Inspector could provide property inspections within one of the incorporated cities as long as this activity was consistent with all other provisions of this policy. Similarly, a PRMD clerical staff could prepare meeting minutes or perform other clerical work as outside employment as long as it did not involve matters under the jurisdiction of the County of Sonoma and was consistent with all other provisions of this policy. Employees engaged in such outside employment should always keep in mind that their conduct can reflect on the County and on PRMD, either positively or negatively.
10. Employees shall not accept gifts, rewards or favors of any kind, either directly or indirectly, from applicants, contractors, consultants, or any other such persons who have in the past sought, are currently seeking, or may be reasonably foreseen in the future to seek permits, approvals or other services from the Permit and Resource Management Department, either for themselves or on behalf of another.

**Discussion**: There are two general exceptions to this policy:

a. This policy excludes gifts or favors exchanged as part of a mutual social relationship between an employee and an individual who does business with PRMD.

**Example #1**: A PRMD employee has a long standing friendship with a civil engineer who frequently does business with the Department. The two regularly have lunch together; sometimes the employee pays the lunch tab, other times it's the engineer. This activity is not prohibited because the exchange is mutual. The employee must nonetheless scrupulously avoid any appearance of favoring the engineer, as described under Policy #11, below.

**Example #2**: An engineer who regularly does business with the Department meets an employee at a job site to discuss a project and offers to buy the employee's lunch after the site visit. The two have a friendly professional relationship, but do not have a social relationship outside the workplace. This activity would not be allowed since the employee is clearly the beneficiary of the gift or favor.

b. This policy does not apply to minor, incidental gifts given or made available to Department employees generally. The variety of circumstances that could occur under this rule make it difficult to write a black and white rule. While such gifts should never be encouraged, declining minor gifts can be perceived as rude. Staff must always avoid any circumstance that creates the appearance of a gratuity or favor for services rendered.

**Example #1**: During the holiday season, a local planning consultant delivers a box of chocolates to an employee who has handled numerous applications for the consultant throughout the year. The employee places the candy in the break room where it is available to all employees. This is consistent with the policy because the gift is minor in nature and is available to the Department as a whole. Had the employee taken the candy home or otherwise kept it for him or herself, that would not be consistent with the policy.

**Example #2**: Following approval of a major development permit for a new concert facility, the Director receives twenty season passes and is encouraged to distribute them to the staff who worked on the permit. The passes are worth $100 each. Acceptance of this gift would be inconsistent with the
policy. Although the passes would be available to a relatively large number of staff, they are clearly not "minor" and, following closely on the approval of the permit, creates the appearance of a gratuity or favor for services rendered.

Notwithstanding these exceptions, no employee shall participate in any County decision affecting a person or entity from whom the employee has received or been promised gifts with a total value of $390 or more within the 12 months prior to the time when the decision is made.

11. Employees shall not render any Departmental services in such a way as to favor or prefer any person, company, corporation, public entity or other entity, over others similarly situated. Employees shall conscientiously avoid any activity which creates the appearance of such favoritism or preferential treatment. This policy is not intended to apply to the normal prioritization of projects and application processing by Department management.

Discussion: Avoiding the appearance of favoritism or preferential treatment means that employees must be particularly conscientious when their work as a PRMD employee involves friends and acquaintances. The preferred course of action is for the employee to avoid performing any PRMD services for a friend or acquaintance, but this may not always be possible. Under no circumstances shall a PRMD employee perform Departmental services for a friend or acquaintance when those services are outside the employee's normal job duties. When performing PRMD services for a friend or acquaintance is unavoidable, staff should advise their supervisor.

Example #1: A manager in the Planning Division has a long standing social relationship with a local building contractor. The contractor comes in to PRMD seeking a building permit and sees the manager in the lobby. The manager walks the contractor over to the plan check cubicle and asks the plan checker to check the plans while she and the contractor wait. The manager then checks the septic permit file herself, sees that it has been approved, and gives the well and septic clearance. The manager then totals the fees and escorts the contractor to the cashier and waits while the fees are paid and the permit is issued. Although all appropriate clearances were given and the permit was issued in accordance with all applicable codes, this activity would violate the policy because it clearly creates the appearance of favoritism. Under established Department procedures, the manager would have had no involvement in this particular permit process. By avoiding the standard review process, the manager created the appearance that this applicant was receiving treatment not available to others in a similar situation.

Example #2: An Environmental Health Specialist (EHS) receives a call from a friend who has filed a building permit application. The friend is frustrated with the length of time the permit has been in the process and asks the EHS to “see what he can do about it.” The permit does not involve a well and septic clearance and the
EHS would not normally review the application. The EHS checks with the plan checker and finds out that the application has been delayed due to the volume of pending applications but is scheduled to be checked the following day. The EHS calls the friend with this information. This is consistent with the policy because the EHS made no effort to influence the permit process one way or another and did not involve himself substantively in the permit process. He merely provided information about the status of an application to the project applicant.

AUTHORITY

California Government Code Section 1126
Regulations of the Fair Political Practices Commission, Section 18703.4

PROCEDURE

1. All current employees and, upon appointment, all new and reinstated employees, will receive a copy of this Incompatible Activities Policy. The employee shall sign a receipt to show that they have been provided a copy of the policy, and return the receipt to the department. The signed acknowledgment will be filed in the employee’s personnel file.

2. Employees are encouraged to notify their supervisor in writing of any outside employment which may be in conflict with this policy. The request should include sufficient description of the proposed duties and work schedule at the desired outside employment to permit the supervisor to reach an informed decision. The supervisor shall evaluate the outside employment for consistency with this policy and shall notify the employee in writing within 15 days of any apparent conflict with the policy.

3. If an employee has any question about the appropriateness of any outside employment or other activity as it relates to this policy, he or she should consult his or her supervisor or division manager. Employees have the right to request a written interpretation regarding the application of these rules.

4. New and reinstated employees shall have the right to request an exemption from items 3, 9, and 10 under the General provisions of this policy as it pertains to outside employment in which they are engaged at the time of appointment with the County of Sonoma. Such exemption, if granted, shall be for the sole purpose of allowing the employee to complete work on specific projects already underway at the time of hiring with the County and shall be of limited duration. Requests for exemption under this provision shall be made in writing at the time of appointment and are subject to review and approval by the Director. The Director may impose conditions on any exemption granted under this provision where such conditions are deemed necessary to ensure compliance with the intent of this policy.
5. An employee may appeal a written determination made pursuant to this policy. The following appeal procedures shall apply:

a. The appeal shall be filed in writing with the Director within fifteen (15) days of the written determination that is being appealed. If not appealed within 15 days, the written determination is final unless a longer period is mutually agreed upon.

b. The Director shall issue a written decision on the appeal within fifteen (15) days of receipt of the appeal. Unless a longer period is mutually agreed upon, if the written decision on the appeal is not made within 15 days, the employee may appeal directly to the County Human Resources Director.

c. Determinations of the Director may be appealed to the County Human Resources Director. Such appeals must be filed in writing within fifteen (15) calendar days of the date of the Director’s written determination. If not appealed within 15 calendar days, the written determination is final unless a longer time period is mutually agreed upon.

d. The Human Resources Director shall issue a written decision on the appeal within fifteen (15) calendar days of receiving the appeal. The Human Resources Director’s decision shall be mailed to the employee via first class mail and shall be conclusive, final and binding on both the employee and the appointing authority.

e. The employee will be allowed to continue the activity in question during the appeal process, provided no other law, regulation or policy is being violated.

6. Employees are encouraged to seek a determination from their appointing authority before accepting outside employment in order to avoid inadvertent violation of this policy. Violations of this policy may result in discipline up to and including termination.
APPROVAL

This policy was approved by Resolution No. 07-0781 adopted on September 18th, 2007.

ATTACHMENTS

None

Approved by:

Pete Parkinson, Director

09/11/00,
10/01/03
03/05/07

☒ Intranet  ☐ Internet  and
INCOMPATIBLE ACTIVITIES POLICY RECEIPT
(To be placed in Employee’s Personnel File)

I received a copy of the Permit and Resource Management Department’s Incompatible Activities Policy. I certify that I have read and understand the Policy. I acknowledge that if I fail to follow the terms of this policy I may be subject to discipline up to and including termination.

DATE: ____________________________

PRINTED NAME: ____________________________

SIGNATURE: ____________________________
WEST'S ANNOTATED CALIFORNIA CODES
GOVERNMENT CODE
TITLE 1. GENERAL
DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 1. GENERAL
ARTICLE 4.7. INCOMPATIBLE ACTIVITIES

§ 1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.
(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.