

**SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S
Ethics Ordinance**

PROPOSED AMENDMENTS

November 27, 2018

**Chapter 2: Government
Article 7: Elections, Campaign Finance and Lobbying
Division 35: City of San Diego Ethics Ordinance**

§27.3550 Lobbying Activities of Former City Officials

- (a) It is unlawful for any former *City Official* who received *compensation* from the *City* to work on a particular project during his or her *City* service to engage in *direct communication* with the *City*, for *compensation*, with regard to any pending application for discretionary funding or discretionary entitlements before the *City* relating to that particular project on behalf of any *person* ~~other than a *Public Agency*~~ for a one year period immediately following termination of service with the *City*, or for a two year period if he or she is a former elected *City Official*.
- (1) For purposes of this section, “work on a particular project” means to take part personally and substantially in the project by rendering a decision, approval, or disapproval; by making a formal written recommendation; by conducting an investigation; by rendering advice on a significant basis; or by using *confidential information*.
- (2) For purposes of this section, “project” means any matter where a *private business* has made an application to the *City* for discretionary funding or discretionary entitlements, or where the *City* exercises discretion to enter into a lease, agreement, or contract with a *private business*.
- (b) It is unlawful for any former *City Official*, for *compensation*, to knowingly counsel or assist any *person* ~~other than a *Public Agency*~~ in connection with an appearance or communication in which the former *City Official* is prohibited from engaging pursuant to subsection (a) for a one year period immediately following termination of service with the *City*, or for a two year period if he or she is a former elected *City Official*.
- (c) As a means of facilitating compliance with subsections (a) and (b) in instances where long-term projects may change in character and scope over time and where large projects have discrete components or phases, any former *City Official* may seek a written determination from the *Ethics Commission* regarding whether prospective *direct communication* on a particular project would constitute a violation of this section.

- (d) It is unlawful for any former *City Official* to engage in *direct communication* for the purpose of *lobbying* the *City* if all of the following circumstances apply:
- (1) the former *City Official* served as a *City Official* within the previous ~~twelve months~~ year, or within the previous two years if he or she is a former elected *City Official*; and
 - (2) the former *City Official* received *compensation* from the *City* for his or her service as a *City Official*; and
 - (3) the former *City Official* is receiving *compensation* ~~from a private business~~ to engage in the *direct communication* with the *City*.
- (e) ~~The~~ Except as set forth in subsection (f), the prohibitions contained in subsections (a), (b), and (d) shall not apply:
- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;
 - (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
 - (3) to the activities of any former *City Official* who is an ~~elected or appointed~~ officer, or employee, or independent contractor of any *Public Agency*, ~~or a consultant of any Public Agency~~, when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or ~~consultant~~ independent contractor of the agency;
 - (4) to any *ministerial act*;
 - (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or
 - (6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.
- (f) ~~The exceptions in subsections (e)(1), (5), and (6) do not apply to any former City Official who, within one year of terminating City employment, was an elected City Official or served as the City's City Manager (Chief Operating Officer).~~ In addition to the prohibitions imposed by subsections (a), (b), and (d), former elected City Officials and former Chief Operating Officers are subject to the provisions of California Government Code section 87406.3, which is hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein. In accordance with this incorporation:

- (1) the exceptions in subsections (e)(1), (e)(5), and (e)(6) shall not apply to a former elected *City Official* or to a former Chief Operating Officer; and,
- (2) the exception in subsection (e)(3) shall not apply to a former elected *City Official* within 24 months of leaving *City* service, or to a former Chief Operating Officer within 12 months of leaving *City* service, when such individuals are communicating on behalf of a *Public Agency* as an independent contractor.