

May 28, 2013

SDEC Informal Advice Letter No. IA13-01

Advice Provided To:  
Jerry Sanders  
President & CEO  
San Diego Regional Chamber of Commerce  
402 West Broadway, Suite 1000  
San Diego, CA 92101

Re: Request for Advice Regarding the City's Post-Employment Lobbying Provisions

Dear Mayor Sanders:

This advice letter has been prepared in response to your request to the City of San Diego Ethics Commission for a concise summary of the post-employment lobbying restrictions in the City's Ethics Ordinance as they apply to your current employment with the San Diego Regional Chamber of Commerce [Chamber]. Because you have not identified a specific contemplated action, we are treating your inquiry as a request for informal advice.

### **QUESTION**

To what extent do the City's post-employment lobbying prohibitions prevent you from communicating with current City Officials and employees?

### **ANSWER**

During your one-year post-employment period (which commences on the date you left office as Mayor), the City's post-employment lobbying provisions preclude you from engaging in any direct communications with a City Official on behalf of the Chamber for the purpose of influencing a municipal decision. SDMC § 27.3550(d). For purposes of this "cooling off" period, the following rules apply:

- A "direct communication" includes talking to or corresponding with a City Official (e.g., meetings, telephone calls, letters, e-mails, etc.).
- The term "City Official" includes elected officials and their staffs, as well as members of City boards and commissions, City employees (other than classified employees), City agency employees, and City consultants, to the extent that such individuals are required to file Statements of Economic Interests.
- Influencing a municipal decision includes any attempt to affect any action by a City Official on one or more municipal decisions by any method, and includes providing information, statistics, analysis or studies to a City Official.

- Municipal decisions include: any decision made by the City Council, a Council Committee, or a City board; ordinances and resolutions; contracts; quasi-judicial decisions (land use, permits, and licensing); and reports by a City Official to the City Council or a Council Committee.

In addition to the foregoing, the post-employment restrictions include a “project ban,” which prohibits you from engaging in any direct communications with any City employee (not just the high-level City Officials identified above) regarding a pending “project” you worked on while you were the Mayor. The “project ban” also prohibits you from providing assistance to other Chamber officers or employees concerning their communications with City employees regarding the project. SDMC § 27.3550(a) and (b). For purposes of the “project ban” the following guidelines apply:

- A “project” is defined as a lease, agreement, or contract, or application for discretionary funding. Other types of decisions are not subject to the “project ban.”
- The “project ban” will apply if you (not a member of your staff) personally and substantially took part in a project by rendering a decision, making a written recommendation, conducting an investigation, rendering significant advice, or using confidential information.
- The “project ban” continues for one year after you left office or until there are no longer any pending decisions concerning the project, whichever comes first.

Exceptions to the “cooling off” period and the “project ban” include: situations in which you are not representing the Chamber (or any other private employer); efforts to represent your personal interests and those of your immediate family members; and ministerial actions of City employees. Although most former City Officials are entitled to an exception for speaking at public meetings and submitting written statements that become part of the record of a public meeting, this exception does not apply to former elected officials. SDMC § 27.3550(e) and (g). Finally, the post-employment restrictions in the Ethics Ordinance do not prevent you from engaging in social contacts with City Officials or City employees, or communicating with them regarding any matter that does not constitute a “municipal decision” or a “project.”

As noted above, you specifically asked that we provide you with written advice in a succinct summary format. It should therefore be noted that most of the issues address above are more fully fleshed out in the Commission’s advice letter issued to Kris Michell on December 16, 2010 (Advice Letter IA 10-03).

In addition, please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency. If you have any additional questions, please do not hesitate to contact our office.

Sincerely,

[REDACTED]

Stacey Fulhorst  
Executive Director