

ORDINANCE NUMBER O- 19538 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 19 2006

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.3503 AND 27.3550, ALL RELATING TO THE CITY OF SAN DIEGO ETHICS ORDINANCE

WHEREAS, the San Diego Ethics Ordinance, codified at Chapter 2, Article 7, Division 35 of the San Diego Municipal Code, was first adopted on April 29, 2002, by Ordinance No. O-19055 N.S.; and

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San Diego Ethics Commission has the responsibility of regularly reviewing the Ethics Ordinance and proposing updates to the City Council for its approval; and

WHEREAS, on October 7, 2005, the Governor of the State of California signed into law the provisions of Senate Bill 8, which added to the California Government Code a new section 87406.3; and

WHEREAS, Government Code section 87406.3 imposes on all local elected officials and city managers in the State of California certain post-employment lobbying restrictions; and

WHEREAS, Government Code section 87406.3 allows local jurisdictions to enact an ordinance containing post-employment lobbying restrictions so long as such ordinance is more restrictive than Government Code section 87406.3; and

WHEREAS, the City's Ethics Ordinance already contains post-employment lobbying restrictions, but also contains some language less restrictive than that contained in Government Code section 87406.3; and

WHEREAS, the Ethics Commission has recommended amending the Ethics Ordinance by removing certain exemptions currently available to former elected officials and former city managers to ensure that the City's post-employment lobbying laws are more restrictive than the provisions of Government Code section 87406.3; and

WHEREAS, the Ethics Commission also has recommended amending the Ethics Ordinance to eliminate exemptions to the City's post-employment lobbying laws that relate to the establishment of collective bargaining agreements and to decisions involving the working conditions of represented employees on the basis that such exemptions do not truly advance the intended purpose of the City's post-employment lobbying laws, which is to prevent former City Officials from exercising undue influence over their former City colleagues; and

WHEREAS, the City Council concurs with the proposals recommended by the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is hereby amended by amending sections 27.3503 and 27.3550, to read as follows:

§27.3503 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. Except as otherwise provided herein, the terms and provisions of this Division shall have the meanings and shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (California Government Code sections 81000 through 91014) and the regulations of the California Fair Political Practices Commission, as amended. For purposes of this Division, the following definitions shall apply:

Benefit to Confidential information [no change in text]

Direct Communication means:

- (a) talking to a *person*, either by telephone or in person; or
- (b) corresponding with a *person*, either in writing, by electronic transmission, or by facsimile machine.

Direct Communication does not include:

- (a) solely responding to questions from any *City Official*; or
- (b) a direct response to an enforcement proceeding with the *City*.

Doing business with the City to Local Code Filer [no change in text]

Municipal Decision includes:

- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and
- (b) the amendment of any ordinance or resolution; and
- (c) a report by a *City Official* to the *City Council* or a *City Council* Committee; and
- (d) contracts; and
- (e) quasi-judicial decisions, including:
 - (1) any decision on a land development permit, map or other matter decided pursuant to Process 2 through 5 as described in Chapter 11 of this Municipal Code; or
 - (2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code; or

(3) any declaration of debarment as described in Chapter 2, Article 2, Division 8, of this Municipal Code.

(f) any other decision of the *City Council* or a *City Board*.

Municipal Decision does not include any of the following:

- (a) any request for advice regarding or for an interpretation of laws, regulations, *City* approvals, or policies; or
- (b) any ministerial action such as decisions on private land development made pursuant to Process 1 as described in Chapter 11 of this Municipal Code.

Party to Travel expenses [no change in text]

§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*.
 - (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*.
- (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; 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*.

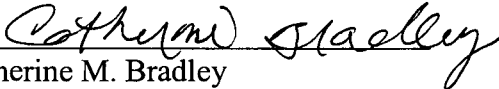
- (e) The prohibitions contained in subsections (a), (b), and (d) shall not apply:
- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *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 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 of the agency;
 - (4) to any ministerial action. A ministerial action is one that does not require a *City Official* to exercise discretion concerning any outcome or course of action;
 - (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*;
 - (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 prohibitions contained in subsection (d) shall not apply to any individual who terminated status as a *City Official* prior to October 1, 2006, and whose *lobbying* activities are limited to (1) the establishment, amendment, administration, implementation, or interpretation of a collective bargaining agreement or memorandum of understanding between the *City* and a recognized employee organization, or a proceeding before the Civil Service Commission, or (2) any management decisions regarding the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of understanding.
- (g) The exceptions in subsections (e)(1), (5), and (6) and in subsection (f) 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.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

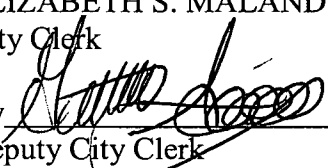
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Catherine M. Bradley
Chief Deputy City Attorney

CMB:jab
07/20/2006
Or.Dept:Ethics Comm.
O-2007-3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 12 2006

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 9.19.06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor