



FACT SHEET ON POST-EMPLOYMENT LOBBYING RESTRICTIONS

The City's Ethics Ordinance contains provisions that restrict the activities of former City Officials who have left the City to work for a private employer. This fact sheet is designed to offer general guidance regarding these laws. It should not, however, be considered a substitute for the actual language contained in the Ethics Ordinance.

- ❖ When compensated City Officials leave City employment, the Ethics Ordinance restricts their ability to influence City decisions on behalf of a private employer for a period of one year.
- ❖ For purposes of these restrictions, a "City Official" includes:
 - ✓ all elected officials and their staffs;
 - ✓ all unclassified employees who file a Form 700;
 - ✓ all City consultants who file a Form 700; and,
 - ✓ all staff at City agencies (Civic San Diego, SDCCC, SDDPC, and the Housing Commission) who file a Form 700.
- ❖ Volunteer members of the City's boards and commissions are not subject to post-employment restrictions.
- ❖ The City's laws do not prevent former City Officials from going to work for anyone. Instead, these laws simply restrict their contacts with the City during the one year post-employment period.
- ❖ The one-year post-employment period begins as soon as the City Official ceases providing compensable service to the City, even if he or she is still receiving terminal leave pay.
- ❖ For purposes of these restrictions:
 - ✓ "lobbying" means direct communication (meetings, telephone calls, faxes, e-mails) with a City Official for the purpose of influencing a municipal decision.
 - ✓ "influencing a municipal decision" means attempting to affect any action by a City Official on a municipal decision by any method, including promoting, opposing, or seeking to modify an action. It includes providing information, statistics, analysis, or studies to a City Official.
- ❖ The post-employment lobbying restrictions are divided into two categories: the one year "cooling off period" and the "project ban." Details concerning each category are set forth below.

Post-Employment Lobbying: One Year Cooling-Off Period

- ❖ The City's "cooling off" restriction prevents former City Officials from directly lobbying current City Officials with regard to any "municipal decision" on behalf of a private employer during their one-year post-employment period.
- ❖ Unlike the "project ban" discussed below, the "cooling off" period applies to all municipal decisions; whether or not the former City Official worked on the decision during his or her employment with the City is irrelevant.

- ❖ A “municipal decision” includes ordinances and resolutions; reports to the City Council or Council Committee; contracts; quasi-judicial decisions such as land development permits under Process 2 through 5; and any other decision by the City Council or a City board, commission, or committee.
- ❖ This prohibition applies to a former City Official’s communications with anyone who is currently a “City Official” (see above list) as well as with any volunteer member of a City board or commission who is required to file a Form 700.

Post-Employment Lobbying: Project Ban

- ❖ There is also a one-year “project ban” that prohibits City Officials from directly and indirectly contacting the City for one year with regard to any pending projects that they worked on while with the City. An “indirect” contact includes assisting a new employer behind the scenes with an effort to communicate with the City regarding a project.
- ❖ A “project” is a matter pending before the City concerning an application for discretionary funding or entitlements, or the award of a lease, agreement, or contract. In other words, the “project ban” applies only to certain types of municipal decisions, not the broad range of decisions associated with the cooling-off period.
- ❖ To “work on a particular project” means to take part personally and substantially in the project by rendering a decision, approval, or disapproval; making a formal written recommendation; conducting an investigation; rendering advice on a significant basis; or using confidential information.
- ❖ The project ban applies to communications with all City officers and employees. In other words, in addition to not contacting elected officials, unclassified employees, volunteer board members, etc., a former City Official subject to the project ban is also precluded from contacting classified staff regarding that project.
- ❖ The “project ban” continues for one year after the City Official leaves the City, or until the project is no longer pending. In general, a project is no longer pending when the City has made a final decision to approve or deny the project and there are no pending applications related to the project.
 - ✓ Example #1: A City Official has substantial involvement in the drafting of a Development Agreement between ABC Builders and the City. After the Development Agreement is approved by the City Council, the City Official leaves the City and goes to work for ABC Builders. In this scenario, the former City Official is prohibited from having any contacts with City staff on behalf of ABC Builders for one year with regard to ABC’s applications for permits related to the Development Agreement.
 - ✓ Example #2: A City Official makes a formal written recommendation regarding the renewal of the City’s contract with XYZ Office Supply. After the contract is finalized and executed by the parties, the City Official leaves the City and goes to work for XYZ Office Supply as the account manager for various clients, including the City of San Diego. In this scenario, the former City Official is not prohibited from having contact with City staff regarding the ordering and provision of office supplies.
- ❖ A long term -term project may change in character and scope over time, or have discrete components or phases. In such a situation, the project ban might not apply. Former City Officials

should contact the Ethics Commission for assistance determining whether the project ban applies to a matter they worked on while they were employed by the City.

- ❖ Even if a project is no longer pending, a former City Official may still be in the cooling-off period during the one-year post-employment period. In other words, a former City Official may communicate with classified City employees regarding new decisions stemming from a “project” that is no longer pending, but must still avoid direct communications with “City Officials” for the purpose of influencing any municipal decisions during the one-year period.

Post-Employment Lobbying: Exceptions

- ❖ The post-employment lobbying restrictions do not apply to the following:
 - ✓ ministerial actions (an action that does not require a City Official to exercise discretion);
 - ✓ communications made by a former City Official who was not compensated for his or her City service, e.g., a volunteer member of a board or commission;
 - ✓ former City Officials who are representing themselves or their immediate family members; or,
 - ✓ former City Officials who are employed by or representing another public agency.
- ❖ The post-employment lobbying restrictions also do not apply to communications with public agencies other than the City of San Diego. “City Officials” do not include the officers or staff of other non-City agencies (e.g., the Port Authority, the County Water Authority, SANDAG, the Coastal Commission, etc.) even if a member of one of these non-City agencies is also a City Official. Put another way, the City’s post-employment laws do not restrict a former City Official’s ability to lobby non-City agencies on behalf of his or her new employer.
- ❖ The following exceptions also apply to former City Officials who were not elected City Officials:
 - ✓ “expert” statements made by former City Officials based on specialized knowledge, provided that no compensation is received other than customary witness fees;
 - ✓ appearing as a speaker at a public meeting (noticed under the Brown Act, e.g., City Council meeting) or providing written statements that become part of the official public record of the public meeting; and
 - ✓ communications among attorneys representing a party to pending or actual litigation brought by or against the City.

If you have any questions regarding these issues, please contact the Ethics Commission at (619) 533-3476.

Rev. 1/2/13