

## FACT SHEET ON POST-EMPLOYMENT LOBBYING RESTRICTIONS

The City's Ethics Ordinance contains provisions that restrict the activities of former compensated City Officials who have left the City to work for a new employer. This fact sheet applies to all former compensated city officials except former elected officials (and former Chief Operating Officers), who are subject to different post-employment restrictions; please refer to the fact sheet on post-employment lobbying restrictions (elected officials) for more information. 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 new employer for a period of one year. (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 post-employment period.
- ❖ The one-year post-employment period begins as soon as the city official ceases providing compensable service to the City.
- ❖ For purposes of these restrictions:
  - ✓ "lobbying" means direct communication (for example, meetings, telephone calls, e-mails, texts) 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, supporting, opposing, or seeking to modify or delay such action. It includes providing information, statistics, analysis, or studies to a city official.
  - ✓ working for a new employer includes creating a business entity for the purpose of representing clients.
- ❖ The post-employment lobbying restrictions are divided into two categories: the one-year "cooling off period" and the one-year "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 influencing current city officials regarding any municipal decision on behalf of a new 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” means any decision made by a City officer or employee (other than a ministerial act as discussed below), including decisions by the City Council or a City commission, board, or committee.
- ❖ This prohibition applies to a former city official’s communications with anyone who is currently a “city official,” which includes:
  - ✓ elected officials and their staff;
  - ✓ all unclassified employees who file a Form 700;
  - ✓ all members of City boards and commissions who file a Form 700; and,
  - ✓ all staff at City agencies (Convention Center Corporation and Housing Commission) who 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 a city official 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” 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 former city officials who are:
  - ✓ not receiving compensation for their post-employment lobbying;
  - ✓ appearing as a speaker at a public meeting (noticed under the Brown Act, for example, City Council meeting) or providing written statements that become part of the official public record of the public meeting;
  - ✓ representing other public agencies as officers, employees, or independent contractors of those agencies;
  - ✓ communicating with regard to a ministerial action (an action that does not require a City Official to exercise discretion);
  - ✓ communicating as an attorney representing a party to pending or actual litigation brought by or against the City; or,
  - ✓ providing “expert” testimony based on specialized knowledge, provided that no compensation is received other than customary witness fees.
- ❖ 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 (for example, the Port Authority, the County Water Authority, SANDAG, the Coastal Commission) even if a member of one of these non-City agencies is also a City Official. In other words, 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.

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

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