

FACT SHEET ON POST-EMPLOYMENT LOBBYING RESTRICTIONS FOR ELECTED OFFICIALS

The City’s Ethics Ordinance contains provisions that restrict the activities of former elected officials who have left the City to work for a new employer.¹ 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 an elected official leaves City service, the Ethics Ordinance restricts their ability to influence City decisions on behalf of a new employer for a period of two years.
- ❖ For purposes of this fact sheet, an “elected official” means:
 - ✓ the Mayor;
 - ✓ the City Attorney; and,
 - ✓ members of the City Council.
- ❖ The City’s laws do not prevent former elected officials from going to work for anyone. Instead, these laws simply restrict their contacts with the City during the post-employment period.
- ❖ For purposes of these restrictions:
 - ✓ “lobbying” means appearances and communications (e.g., attending meetings; making telephone calls; and sending faxes, e-mails, and texts) with a City officer or employee for the purpose of influencing a municipal decision.
 - ✓ “influencing a municipal decision” means attempting to affect any action by a City officer or employee 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 officer or employee.
 - ✓ 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 two-year “cooling off period” and the two-year “project ban.” Details concerning each category are set forth below.

Post-Employment Lobbying: Two Year Cooling-Off Period

- ❖ The City’s “cooling off” restriction prevents former elected officials from directly influencing current City officers and employees with regard to any municipal decision on behalf of a new employer during their two-year post-employment period. City officers and employees include current elected officials, the City’s classified and unclassified staff, volunteer members of City boards and commissions, City consultants, and employees of City agencies (Civic San Diego, Convention Center Corporation, and Housing Commission).

¹ The restrictions discussed in this fact sheet also apply to a former Chief Operating Officer, except that the applicable post-employment time period is one year rather than two years.

- ❖ Unlike the “project ban” discussed below, the “cooling off” period applies to all municipal decisions; whether or not the former 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.
- ❖ During the post-employment period, former elected officials may not speak at City Council meetings (or other City meetings noticed under the Brown Act) or provide written statements that become part of the official record of the meeting.
- ❖ The prohibition also precludes a former elected official from communicating with City officers and employees in the capacity of representing a party to pending or actual litigation brought by or against the City.

Post-Employment Lobbying: Two Year Project Ban

- ❖ There is also a “project ban,” which prohibits former elected officials from directly and indirectly influencing current City officers and employees for two years 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 two years after the 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 Councilmember votes to approve a Development Agreement between ABC Builders and the City. Thereafter, the Councilmember leaves the City and goes to work for ABC Builders. In this scenario, the “project” is still pending because of associated permitting requirements; the former Councilmember is prohibited from assisting ABC Builders employees who are lobbying for permits related to the Development Agreement (and is also prohibited from lobbying personally).
 - ✓ Example #2: The City Attorney issues a formal written opinion regarding a lease extension with a hotel chain. The agreement is eventually finalized and executed by all parties. The City Attorney leaves office and goes to work for the hotel chain as its General Counsel. In this scenario, because the “project” is no longer pending, the project ban no longer applies. The former City Attorney may provide behind-the-scenes assistance on lobbying efforts related to other municipal decisions (but may not lobby personally).

- ❖ 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 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.
- ❖ Keep in mind that even if a project is no longer pending, former elected officials are still subject to the cooling-off restrictions during their two-year post-employment period.

Post-Employment Lobbying: Exceptions

- ❖ The post-employment lobbying restrictions do not apply to former elected officials who are:
 - ✓ not being compensated for their post-employment lobbying;
 - ✓ communicating regarding a ministerial action (i.e., an action that does not require a City officer or employee to exercise discretion);
 - ✓ representing other public agencies as employees of those agencies.
- ❖ Note that a former elected official may not lobby City officers or employees if he or she is acting on behalf of another public agency as an independent contractor for that agency. Only officers and employees of the public agency are entitled to the above exception.
- ❖ The City’s post-employment lobbying restrictions do not apply to communications with public agencies other than the City of San Diego (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 employed by the City. In other words, the City’s post-employment laws do not restrict a former official’s ability to lobby non-City agencies on behalf of his or her new employer.
 - ✓ Former elected officials who served as a member of another public agency as a City appointee (e.g., appointee to a SANDAG committee or the San Diego MTS board) should consult that agency with regard to restrictions the agency may have concerning communications with its officers and employees.

Post-Employment Lobbying Scenarios

- ❖ The following scenarios illustrate the kinds of activities that a former elected official may, and may not, engage in on behalf of a client or employer during their post-employment period:
 - ✓ They may not meet with, speak with, email, text, or send a letter to a City officer or employee for the purpose of influencing a pending municipal decision.
 - ✓ They may attend a “meet and greet” with a client and a City officer or employee provided that the meeting does not involve any effort to influence a pending municipal decision.
 - ✓ They may communicate with a City officer or employee for the purpose of obtaining information generally available to the public about City business.
 - ✓ They may not communicate with a City officer or employee for the purpose of obtaining information that is not equally available to the public.

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