



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: April 6, 2011

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director

Re: Legislation to amend one-year post-employment restriction

The City's Campaign and Governmental Conduct Code prohibits the Mayor and members of the Board of Supervisors (the "Board") from obtaining any City employment within 12 months after leaving elective office. This rule is designed to restrict these elected officials from using their influence to create golden parachutes as they leave office. In January 2011, seven members of the Board introduced legislation to create an exception to the no-City-employment rule, permitting a former Mayor to seek City employment if (1) the Mayor was appointed to that office to fill a vacancy, and (2) the Mayor did not subsequently run for election to keep the office. Staff recommends that in considering the legislation, the Commission also consider whether the same exception should apply to a former member of the Board of Supervisors in similar circumstances. A representative of Supervisor David Chiu's office will attend the Commission's April 11, 2011 meeting to respond to questions.

Section 3.234(b)(2) is a part of the Governmental Ethics Ordinance (GEO), which may be modified without voter approval if the amendment furthers the purposes of the GEO, the Ethics Commission approves the amendment by at least a 4/5 vote of all its members, the amendment is available for public review at least 30 days before it is considered by the Board, and the Board approves the amendment by at least a 2/3 vote of all its members. *See* S.F Campaign & Governmental Conduct Code (C&GC Code) § 3.206.

Discussion

All City officers and employees, including the Mayor and members of the Board, are subject to a number of post-employment restrictions, including a one-year ban on lobbying their former departments and a one-year ban on working for certain City contractors. (The Commission considered waivers regarding both of these post-employment rules at last month's meeting.) The GEO includes two special post-employment rules that apply to the Mayor and members of the Board. For one year after leaving City service, these officials (and their senior staff) are prohibited from lobbying *any* City department, board or commission on anyone's behalf. *See* C&GC Code § 3.234(b)(1). And, most relevant here, the Mayor and members of the Board are

not, for a period of one year after their last day of service, eligible for appointment to any full-time, compensated employment with the City. *See* C&GC Code § 3.234(b)(2). There is no waiver available from this prohibition on employment.

The proposed legislation was introduced on January 11, the same day that the Board appointed Mayor Ed Lee to serve out the last year of Mayor Newsom's four-year term. Prior to assuming office, Mayor Lee was the City Administrator, the department head of the General Services Administration, which consists of 20 departments, divisions, offices and programs, and 656 full-time employees. The City Administrator is a full-time, compensated position appointed by the Mayor, subject to confirmation by the Board. *See* Charter § 3.104. Under current law, Mayor Lee would be precluded from returning to the City Administrator post – or any other City employment – for one year after he steps down as Mayor.

Under the proposal, the one-year restriction on City service under section 3.234(b)(2) would not apply to a former Mayor who (1) was appointed to the office of the Mayor to fill a vacancy and (2) did not subsequently file a declaration of candidacy to seek election to that same office. The proposal would allow Mayor Lee to return to City employment after his tenure as Mayor and would apply to future appointed Mayors in the same circumstances.

Staff recommends that the Commission approve the legislation. Because of the frequency of local elections, individuals who are appointed to fill vacancies in the office of Mayor or Supervisor usually serve less than a year in office and never more than a year and a half. The proposed exception to the ban on employment would apply only if the individual does not take out papers to run for that office. These two factors tend to show that such individuals are occupying only caretaker positions. As demonstrated in the recent search for an interim Mayor, the pool of qualified candidates who are willing to accept a one-year appointment could consist largely of current City employees. And those candidates would be less likely to accept the appointment without some assurance that they could return to their former jobs (or some public employment) after the end of the caretaker term. For example, press reports suggest that Mayor Lee was recruited for the appointment and accepted it reluctantly. One of the concerns he apparently expressed about taking the position was that he might not be able to return to his long-term City employment at the end of the year.

If the Commission approves this legislation, staff recommends that the Commission also extend the exception to a member of the Board of Supervisors in the same circumstances – that is, an individual who (1) was appointed to the Board to fill a vacancy and (2) did not subsequently file a declaration of candidacy to seek election to that same office. Staff makes this recommendation because the same arguments supporting an exception for appointed Mayors like Mayor Lee apply equally to appointed members of the Board. Two members of the current Board (Supervisors Elsbernd and Chu) were members of City staff when the Mayor appointed them to fill vacancies on the Board (in 2004 and 2007, respectively). Both of them later ran to keep the office, bringing them outside the scope of the proposed exception. But had they chosen not to run, and to return to City service after their appointed service, they would have been precluded from doing so, just as Mayor Lee would be today. A proposed draft of the legislation incorporating staff's proposals is attached behind the draft legislation currently at the Board.

1 [Campaign and Governmental Conduct Code - Allowing former appointed Mayor to obtain City
2 employment]

3 **Ordinance amending San Francisco Campaign and Governmental Conduct Code**
4 **Section 3.234 to allow an appointed former Mayor to obtain full-time City employment**
5 **within one year after leaving office.**

6 NOTE: Additions are *single-underline italics Times New Roman*;
7 deletions are ~~*strike-through italics Times New Roman*~~.
8 Board amendment additions are double-underlined;
9 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. The San Francisco Campaign and Governmental Conduct Code is hereby
11 amended by amending Section 3.234, to read as follows:

12 SEC. 3.234. POST-EMPLOYMENT RESTRICTIONS.

13 (a) All Officers and Employees.

14 (1) Permanent Restriction on Representation in Particular Matters.

15 (A) Prohibition. No former officer or employee of the City and County, after the
16 termination of his or her service or employment with the City, shall, with the intent to influence,
17 act as agent or attorney, or otherwise represent, any other person (except the City and
18 County) before any court, or before any state, federal, or local agency, or any officer or
19 employee thereof, by making any formal or informal appearance or by making any oral,
20 written, or other communication in connection with a particular matter:

21 (i) in which the City and County is a party or has a direct and substantial interest;

22 (ii) in which the former officer or employee participated personally and substantially as
23 a City officer or employee; and

24 (iii) which involved a specific party or parties at the time of such participation.
25

1 (B) Restriction on assisting others. No former officer or employee of the City and
2 County, after the termination of his or her service or employment with the City, shall aid,
3 advise, counsel, consult or assist another person (except the City and County) in any
4 proceeding in which the officer or employee would be precluded under Subsection (A) from
5 personally appearing.

6 (C) Exception for testimony. The prohibitions in Subsections A and B do not prohibit a
7 former officer or employee of the City and County from testifying as a witness, based on the
8 former officer's or employee's personal knowledge, provided that no compensation is received
9 other than the fees regularly provided for by law or regulation of witnesses.

10 (2) One-Year Restriction on Communicating with Former Department. No current or
11 former officer or employee of the City and County, for one year after termination of his or her
12 service or employment with any department, board, commission, office or other unit of the
13 City, shall, with the intent to influence a government decision, communicate orally, in writing,
14 or in any other manner on behalf of any other person (except the City and County) with any
15 officer or employee of the department, board, commission, office or other unit of government,
16 for which the officer or employee served.

17 (3) Employment with Parties that Contract with the City. No current or former officer or
18 employee of the City shall be employed by or otherwise receive compensation from a person
19 or entity that entered into a contract with the City within the preceding 12 months where the
20 officer or employee personally and substantially participated in the award of the contract.

21 (b) Mayor, Members of the Board of Supervisors, and their Senior Staff Members.

22 (1) One year restriction on communicating with City departments. For purposes of the
23 one-year restriction under Subsection (a)(2), the "department" for which a former Mayor, a
24 former member of the Board of Supervisors, or a former senior staff member to either the
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1 Mayor or a member of the Board of Supervisors served shall be the City and County and the
2 prohibition in Subsection (a)(2) shall extend to communications with:

3 (A) a board, department, commission or agency of the City and County;

4 (B) an officer or employee of the City and County;

5 (C) an appointee of a board, department, commission, agency, officer, or employee of
6 the City and County; or

7 (D) a representative of the City and County.

8 For the purposes of this subsection, "a former senior staff member to either the Mayor
9 or a member of the Board of Supervisors" means an individual employed in any of the
10 following positions at the time the individual terminated his or her employment with the City:
11 the Mayor's Chief of Staff, the Mayor's Deputy Chief of Staff, a Legislative Aide to a member
12 of the Board of Supervisors or a position that the Ethics Commission determines by regulation
13 is an equivalent position based on an analyses of the functions and duties of the position.

14 (2) City service.

15 (A) Except as provided in Subsection (B), no ~~No~~ former Mayor or member of the Board of
16 Supervisors shall be eligible for a period of one year after the last day of service as Mayor or
17 member of the Board of Supervisors, for appointment to any full time, compensated
18 employment with the City and County. This restriction shall not apply to a former Mayor or
19 Supervisor elected to an office of the City and County, appointed to fill a vacancy in an
20 elective office of the City and County, or appointed to a board or commission in the executive
21 branch.

22 (B) The one-year restriction in Subsection (A) shall not apply to a former Mayor who was
23 appointed to office of Mayor under Charter Section 13.101.5 to fill a vacancy and who did not
24 subsequently file a declaration of candidacy for election to that office.

25 (c) Waiver.

1 (1) At the request of a current or former City employee or officer, the Ethics
2 Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) if the
3 Commission determines that granting a waiver would not create the potential for undue
4 influence or unfair advantage.

5 (2) At the request of a current or former City employee or officer, the Ethics
6 Commission may waive any of the restrictions in Subsections (a)(1) and (a)(2) for members of
7 City boards and commissions who, by law, must be appointed to represent any profession,
8 trade, business, union or association.

9 (3) At the request of a former City officer or employee, the Ethics Commission may
10 waive the prohibition in Subsection (a)(3) if the Commission determines that imposing the
11 restriction would cause extreme hardship for the City officer or employee.

12 (4) The Ethics Commission may adopt regulations implementing these waiver
13 provisions.

14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 JON GIVNER
18 Deputy City Attorney

1 [Campaign and Governmental Conduct Code - Allowing former appointed Mayor or Member
2 of Board of Supervisors to obtain City employment.]

3 **Ordinance amending Campaign and Governmental Conduct Code section 3.234 to**
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