

March 10, 2014

SDEC Informal Advice Letter No. IA14-01

Advice Provided To:
Jeff Graham, Senior Vice President
Jones Lang LaSalle
4747 Executive Drive, Suite 400
San Diego, CA 92121

Re: Request for Advice Regarding the City's Post-Employment Lobbying Provisions

Dear Mr. Graham:

This advice letter has been prepared in response to your request to the City of San Diego Ethics Commission for guidance regarding the Ethics Ordinance's post-employment lobbying provisions that have been triggered by your resignation as President of Civic San Diego (the successor entity to Centre City Development Corporation [CCDC]), effective March 7, 2014. You have taken a new position with Jones Lang LaSalle [JLL]. Because you have not identified a specific contemplated action, we are treating your inquiry as a request for informal advice.

QUESTIONS

You have asked the following questions relating to your employment with JLL during the one-year period that the City's post-employment lobbying restrictions are in effect:

1. May the City of San Diego, Civic San Diego, or the San Diego Housing Commission retain JLL and your services in an advisory role to work on projects in which you were directly involved during your tenure at CCDC / Civic San Diego? What about projects in which you were not involved?
2. May you represent public agency clients of JLL in public or private communications with elected officials or staff of the City of San Diego, the Civic San Diego Board or its staff, the Convention Center Corporation Board or its staff, or the San Diego Housing Commission or its staff? May you assist other JLL employees with their communications on behalf of these clients?
3. May you represent private sector clients of JLL in public or private communications with elected officials or staff of the City of San Diego, the Civic San Diego Board or its staff, the Convention Center Corporation Board or its staff, or the San Diego Housing Commission or its staff? May you assist

- other JLL employees with their communications on behalf of these clients? May you work on these clients' projects as long as you're not communicating with representatives of the City or Civic San Diego?
4. May you provide services to, or communicate with, the staff of the San Diego Association of Governments [SANDAG], the Regional Airport Authority, the Unified Port District, or other entities that have City Officials serving on their boards?
 5. May you communicate with Civic San Diego or City of San Diego staff about the opportunities for JLL to provide them with consulting services?
 6. On what date do the City's post-employment lobbying restrictions cease to apply to you?

SHORT ANSWERS

1. The City of San Diego, Civic San Diego, and the San Diego Housing Commission may retain JLL to advise them on any project, and you may work on these projects regardless of any involvement you had with these projects as an employee of CCDC or Civic San Diego.
2. The Ethics Ordinance contains an exemption for post-employment lobbying on behalf of public agencies, and accordingly you may have public or private communications with any representative of the City of San Diego, Civic San Diego, the Convention Center Corporation, or the San Diego Housing Commission on behalf of public agency clients of JLL. You may also assist other JLL employees with their communications on behalf of these clients
3. You may not have private communications with any City Officials for the purpose of lobbying on behalf of JLL's private sector clients. The term "City Official" includes elected and unclassified employees of the City, members of the Civic San Diego Board and the Housing Commission, and employees of Civic San Diego and the Housing Commission who are required to file Statements of Economic interests [Forms 700]. This prohibition does not extend to public meetings (i.e., meetings with City Officials that are conducted under the Brown Act) and does not prevent you from assisting other JLL employees with their communications with City Officials on behalf of JLL's private sector clients (unless the project ban applies). Nothing in the Ethics Ordinance prohibits you from working on these clients' projects, including those located downtown, provided that your work does not involve direct or indirect communications with City Officials regarding pending municipal decisions.
4. You may provide services to, and communicate with, the staff of SANDAG, the Regional Airport Authority, the Unified Port District, and other non-City agencies, commissions, etc. that have City Officials serving on their boards. The

City's post-employment lobbying restrictions do not preclude you from communicating with a City Official who is acting in his or her capacity as a representative of a non-City agency regarding a non-City matter.

5. You may not communicate with any City Officials for the purpose of influencing any municipal decisions on behalf of JLL, including decisions regarding consulting opportunities for JLL.
6. Because March 7, 2014, was your last day of employment with Civic San Diego, the City's post-employment lobbying restrictions will cease to apply to you on March 7, 2015.

BACKGROUND

Until recently, you were the President of Civic San Diego. Your last day of employment was March 7, 2013. On March 17, 2014, you will begin employment with JLL, a global real estate brokerage, support services, investment management, and consulting firm, as the Senior Vice President, Public Institutions Group, Western Division. A majority of the clients you will be advising are public sector agencies, including school districts, ports, cities, counties, housing authorities, states, and universities. Some of your clients, however, may be private sector developers or real estate investors. Services you will provide to clients include public-private partnership consulting, feasibility and highest-and-best use analysis, fiscal and economic impact studies, entitlement coordination, and navigating the decision-making process through public agency staff and elected officials. Because these responsibilities will involve the City of San Diego and its agencies, you have asked for guidance regarding the impact that the City's post-employment lobbying restrictions will have on your employment with JLL.

ANALYSIS

A. General Prohibitions

The City's Ethics Ordinance prohibits former officials from engaging in certain types of communications on behalf of a new employer for one year following their separation from the City. Your one-year post-employment period commenced on March 7, 2014, your last day of employment with Civic San Diego, and will continue until March 7, 2015.

There are two prongs to the City's post-employment prohibitions: the project ban and the cooling off period. The "project ban" prohibits former City Officials from communicating (or helping others communicate) with current City officers and employees on behalf of a new employer with regard to projects they worked on while with the City. The "cooling off" period prohibits former City Officials from lobbying current City Officials for the purpose of influencing all types of municipal decisions on behalf of a new employer. Both types of prohibitions apply for the one-year period that commences when the official leaves the City. Although the two types of prohibitions are similar, each has distinctive features. The two types are discussed separately below.

Keep in mind that the prohibitions discussed in this letter apply solely to your direct and indirect communications with City Officials and City staff. The fact that these prohibitions apply to you does not prevent JLL from seeking or obtaining a contract with the City, including any City agency. In other words, the City of San Diego, Civic San Diego, and the San Diego Housing Commission may each retain JLL for projects regardless of your status as a former employee of CCDC and Civic San Diego, and regardless of the nature of the work you performed for these agencies. In the context of JLL obtaining a consulting or similar contract with the City or a City agency, the post-employment prohibitions serve only to restrict your involvement in JLL's efforts to obtain such contracts.

B. Project Ban

The City's project ban pertains to pending projects, and is intended to prevent City Officials from working on a particular project on behalf of the City and then "switching sides" to work on the same pending project for the other side. According to San Diego Municipal Code [SDMC] section 27.3550(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.

The project ban does not apply to all municipal decisions, just those that involve "projects" you worked on previously. For purposes of the project ban, to "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." SDMC § 27.3550(a)(1). A "project" is defined to mean "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." SDMC § 27.3550(a)(2).

You have, in your past capacity as the President of Civic San Diego (and in the positions you occupied while working for CCDC), presumably worked on many "projects" by making decisions, providing advice, and offering recommendations. To the extent that you did so with regard to any project that is still pending, the project ban will apply to you during your one-year post-employment period. During this period, you may not communicate with the City or any of its agencies on behalf of JLL or its private sector clients regarding any pending "project" that you worked on while with Civic San Diego or CCDC. This prohibition applies to projects that JLL has initiated as well as to projects initiated by other parties. Even if JLL is merely monitoring a project on behalf of a client, the ban will apply.

This prohibition applies to communications with all City Officials and all City employees, including officials and employees at any City agency such as Civic San Diego and the Housing

Commission. It is broader than the restrictions applicable to the cooling off period (discussed below), which applies only to communications with officers and employees required to file a Statement of Economic Interest [Form 700].

The “project ban” also includes a “behind-the-scenes” component. According to SDMC section 27.3550(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.

Accordingly, you may not assist other JLL employees or clients (or their representatives) with their communications with City or City agency staff if the communications concern a pending project you worked on while with Civic San Diego or CCDC. In other words, to the extent that the project ban prohibits you from directly communicating with the City, you are equally prohibited from indirectly communicating with the City by helping someone else make that communication. As indicated above, the project ban does not apply to municipal decisions you worked on while with Civic San Diego or CCDC unless those decisions fall within the definition of a “project” (e.g., a lease, agreement, contract, or application for discretionary funds). In other words, to the extent that you worked on general policy issues and other types of decisions outside the scope of a “project,” you will not be precluded from providing “behind the scenes” assistance to other JLL employees or clients concerning these issues.

Note that the project ban does not prohibit you from working on a project for one of JLL’s private sector clients provided that the work does not involve direct or indirect communications with City Officials regarding pending municipal decisions. Also note that large, long-term projects often change in character and scope over time, such that a “project” a City Official worked on while with the City may not be the same “project” he or she is involved with in the private sector. In addition, some large projects may have discrete components or phases such that you may be able to assist your new employer behind the scenes on the subsequent phase of a project you worked on while with the City. As provided for in the Ethics Ordinance, you may obtain a written determination from the Ethics Commission as to whether a particular prospective communication would violate the project ban. SDMC § 27.3550(c).

The project ban applies as long as the project is pending during the one-year post-employment period. Once the project is no longer pending (e.g., contract is awarded, permit granted), the project ban no longer applies to communications related to that project. Keep in mind, however, that you will still be subject to the cooling off period for the one-year period following your separation from the City, i.e., until March 7, 2015.

C. Cooling Off Period

In addition to the “project ban,” the Ethics Ordinance contains a separate prohibition that precludes former City Officials from lobbying the City on any municipal decision for a one-year period

following their separation from City service. This one-year period is often referred to as the “cooling off” or “revolving door” period, and is intended to prevent former high level City Officials from using the influence of their prior positions to communicate with current City Officials (often former colleagues or subordinates) for the benefit a private sector employer.

The term “lobbying” is defined as a “direct communication with a City Official for the purpose of influencing a municipal decision on behalf of any other person.” SDMC § 27.3503. The Municipal Code defines “direct communication” to include talking to other persons by telephone or in person, and corresponding with other persons in writing, electronically, or by fax. *Id.* “Influencing a decision” means “affecting or attempting to affect an action by a City Official on one or more municipal decisions by any method, including promoting, supporting, opposing, participating in, or seeking to modify or delay such action.” *Id.* It also includes “providing information, statistics, analysis, or studies to a City Official.” *Id.*

The term “City Official” is defined to include all elected officials, unclassified employees, commission and board members, consultants, and agency employees, to the extent that they file a Form 700. With respect to your specific inquiries, the term City Official includes every Form 700 filer employed by Civic San Diego and the Housing Commission.

Unlike the project ban, the cooling off period does not apply to communications with City staffers or City agency staffers who are not required to file a Form 700. On the other hand, the cooling off period applies to more than just “projects” and thus extends to many more types of decisions than the project ban. It precludes you from lobbying City Officials on any pending “municipal decision,” which is defined to include all City resolutions and ordinances; reports by City Officials to the City Council or a City Council committee; contracts; quasi-judicial decisions (e.g., issuing licenses, permits, and variances); and any other decision by the City Council or a City commission, board, or committee. SDMC § 27.3503. As discussed above, “City” includes Civic San Diego and the Housing Commission.

In accordance with the foregoing, you may not lobby City Officials with regard to any municipal decisions on behalf of JLL or its private sector clients during the one-year post-employment period. It is important to remember that this prohibition applies to any effort to affect the decision-making process, including the provision of information, statistics, analysis or studies. If a JLL client has an interest in, for example, a City ordinance addressing homeless issues in the downtown area, you may not provide information or statistics to City Officials regarding such homeless issues. Similarly, if JLL has an interest in obtaining a consulting contract with the City or one of its agencies, you may not communicate with any City Officials for the purpose of influencing any decisions concerning the contract.

Although you are not permitted to lobby City Officials concerning the award of a contract to JLL, you are permitted to provide services to the City and its agencies pursuant to a contract that has been awarded to JLL. Once a contract is awarded, the municipal decision is no longer pending (unless there are proposed changes to the contract). Additionally, as discussed in greater detail below, the Ethics Ordinance contains an exemption for work performed on behalf of public agencies. For example, if the Housing Commission awards a contract to JLL for real estate

development consulting, you may speak with Housing Commission board members, officers, and staff on any matters relating to the performance of that contract.

Unlike the project ban, the cooling off provisions do not include a “behind the scenes” component. If the project ban does not apply, you may assist other JLL employees and clients with regard to their communications with City Officials. In other words, although you will be precluded from directly contacting City Officials regarding a particular municipal decision, you may still work on that decision internally for JLL and its clients. You may, for example, provide background information and personal observations to a JLL employee or client in order to help them communicate with City Officials.¹

Note that once a municipal decision is no longer pending, the prohibition regarding communications with City Officials will end as to that particular decision. For example, after the City Council has adopted an ordinance, you are permitted to communicate with City Officials regarding the implementation of that ordinance (unless it became subject to a referendary action, which would trigger a new pending municipal decision).

D. Public Agency Exemption

As set forth above, the City’s post-employment lobbying restrictions apply to communications on behalf of private sector entities. Some of your questions relate to representing the interests of public agencies, including school districts, ports, cities, counties, housing authorities, states, and universities. Communications on behalf of public agencies are not subject to the “project ban” or “cooling off” period; Municipal Code section 27.3550 expressly excludes public agencies from both prongs of the City’s post-employment lobbying provisions. Although JLL is a private sector business, the public agency exemption will apply to JLL’s public agency clients when you are communicating with City Officials on their behalf. You may, therefore, during your one-year post-employment period, communicate with any employee or representative of the City or any of its agencies for the purpose of influencing a municipal decision on behalf of a public agency client of JLL.

E. Other Permissible Communications

There are other types of communications that do not fall within the prohibitions of the “project ban” or “cooling off” period. You may, of course, continue to have social contacts with former colleagues and communicate with them regarding any matter that is outside the scope of a “project” or other type of municipal decision. As discussed above, you may also speak with City Officials and City staff on projects and municipal decisions that are no longer pending. For example, if the City awarded a contract to JLL, you could work on that contract and provide advisory services to City Officials and City staff.

¹ Note that all former City Officials are prohibited from using or disclosing any “confidential” information obtained during their City service. SDMC § 27.3564(e). Please contact the Ethics Commission for additional assistance if you have questions regarding this prohibition.

Moreover, the Ethics Ordinance provides that you may appear as a speaker at a public hearing or otherwise provide written statements that become part of the record of a public hearing. Communications made in this regard are expressly excluded from both the project ban and the cooling off provisions. SDMC § 27.3550(e)(5). A “public hearing” is any meeting subject to the Ralph M. Brown Act where a public record is kept. Thus, you may make an appearance on behalf of a JLL client at, for example, a City Council meeting to discuss any type of municipal decision, including one involving a “project” that you worked on while with the City.²

In addition, you may discuss “projects” and other types of municipal decisions with current City Officials and staff members when doing so is not at the behest of, or in the interest of, JLL or its clients. Because the project ban and cooling off provisions apply only to communications for which you are compensated, you may communicate with the City on matters for which you receive no compensation. If neither JLL nor its clients are paying you to represent their interests on, for example, a proposed Municipal Code amendment concerning retirement benefits, you would be free to share your thoughts regarding that issue with any City Official without violating the City’s post-employment prohibitions. It is relevant to note that the post-employment prohibitions apply to former City Officials on a “24/7” basis; they do not allow former City Officials to temporarily step out of their private employment (e.g., on their lunch hour or while on vacation) to discuss a matter on behalf of an employer or client.

Finally, nothing in the Ethics Ordinance precludes you from communicating with members of other public agencies, including SANDAG, the Regional Airport Authority, and the Unified Port District, even if City of San Diego elected officials or staff are members of their Boards of Directors. Decisions of these public agencies are not “municipal decisions” or City “projects” and therefore fall outside the scope of the City’s post-employment provisions. Although, in general, you may not communicate with City Officials regarding City matters, this prohibition does not extend to communicating with these same individuals regarding non-City business.

CONCLUSION

The Ethics Ordinance precludes you from engaging in particular types of communications with the City for a one-year period. To the extent that you worked on a particular project while with Civic San Diego or CCDC, you may not, during your one-year post-employment period, have any communications (outside of a public hearing) with the City on behalf of JLL or its private clients regarding that project, nor may you, on behalf of JLL or its private clients, provide assistance to someone else who is making such communications. Moreover, you may not lobby (outside of a public hearing) any City Officials during the one-year post-employment period on behalf of JLL or its private clients with regard to other types of municipal decisions. These prohibitions do not, however, preclude you from communicating with current City Officials and City staff on matters unrelated to City business or unrelated to the interests of JLL and its private clients, nor do they preclude you from communicating with City Officials and City staff on any matter where you are representing the interests of a public agency.

² SDMC section 27.3550(e) contains other exceptions to the post-employment prohibitions, including providing witness testimony, representing personal interests, and engaging in litigation-related communications. Because these exceptions appear to be irrelevant to your employment with JLL, they are not discussed in this letter.

Jeff Graham
March 10, 2014
Page 9

Please note that this advice letter is being issued by the Ethics Commission solely as technical assistance from a regulatory agency as provided by SDMC section 26.0414(b). It is not to be construed as legal advice to a client. Moreover, the advice contained in this letter is not binding on any other governmental or law enforcement agency.

If you have any additional questions, please do not hesitate to contact our office.

Sincerely,

[REDACTED]

Stephen Ross
Program Manager-Technical Assistance