

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**MEMORANDUM**

**DATE:** May 16, 2006

**TO:** The Committee on Rules, Open Government and Intergovernmental Relations

**FROM:** Stacey Fulhorst, Executive Director

**SUBJECT:** Proposed Revisions to Ethics Ordinance Regarding Post-Employment Restrictions

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As you know, Councilmember Donna Frye recently sent a memo to Council President Scott Peters asking him to docket before the Rules Committee the issue of whether certain exemptions in the Ethics Ordinance related to post-employment lobbying restrictions should be eliminated. In particular, Councilmember Frye expressed her desire to remove the exemption for communications related to collective bargaining agreements and memorandums of understanding between the City and its employee organizations, as well as management decisions related to the working conditions of represented employees. Council President Peters subsequently forwarded the issue to the Ethics Commission and asked the Commission to consider the proposal before it is studied by the Rules Committee.

This issue was docketed for discussion at the Commission meetings in April and May. The Commission considered the fact that when the Ethics Ordinance was originally drafted by Commission staff and approved by the City Council, definitions used in the City's Municipal Lobbying Ordinance were intentionally incorporated into the Ethics Ordinance in order to maintain internal consistency within the Municipal Code. In other words, the Commission made a conscious decision that the defined terms used to regulate lobbying under the Lobbying Ordinance should also be used to regulate post-employment lobbying by former City Officials. At that time, however, the Commission did not specifically consider whether the exemptions to the definition of "municipal decision" as set forth in the City's Lobbying Ordinance should apply to the post-employment provisions in the Ethics Ordinance.

Research recently conducted by the Commission staff indicates that other jurisdictions typically exempt collective bargaining agreements from their lobbying regulations. In other words, other jurisdictions do not require the officials of labor unions to register as lobbyists and report their

lobbying activities if their actions are limited to the negotiation or interpretation of a collective bargaining agreement. These other jurisdictions do not, however, incorporate the same exemptions into their post-employment restrictions. Therefore, although union officials may not be required to register as lobbyists if their activities are strictly limited to the “meet and confer” process, former government officials are not permitted to leave their government employment and participate in this process as an employee of an employee union during the post-employment period.

The Commission considered the foregoing and unanimously decided to recommend to the Rules Committee that the Ethics Ordinance be amended to delete the exemption for collective bargaining agreements in the post-employment provisions. For your consideration, the Commission staff has prepared the attached strike-out language, which sets forth the proposed change. You will note that the proposed change includes a grandfather clause applicable to City Officials who leave City service before the effective date of the amendment.

You will also note that the proposed strike-out ordinance includes additional changes unrelated to the collective bargaining issue. These changes are designed to comply with the recent passage of Senate Bill 8, which will go into effect as California Government Code section 87406.3 on July 1, 2006. The new state law, which will be part of the Political Reform Act, imposes post-employment restrictions on certain types of local officials, including elected officials and city managers. The majority of the new state law is very similar to the provisions that currently exist in the Ethics Ordinance. Both sets of laws generally prohibit, for a period of one year after leaving office, certain former officials from engaging in paid communications with current officials for the purpose of influencing governmental decisions. The state law, however, does not include several exemptions that currently exist in our local ordinance. In particular, section 87406.3 does not include exemptions for: (1) speaking at a public hearing or providing written statements which become part of the public record, (2) attorneys involved in litigation, or (3) statements made as a witness. In other words, under the state law that will take effect on July 1, 2006, former elected officials and city managers will not be permitted to engage in these three types of activities if they receive compensation for doing so from a private entity during the one year post-employment period.

Local jurisdictions may not adopt governmental ethics laws that are less restrictive than those contained in the Political Reform Act. Because the Ethics Ordinance currently includes exemptions available to former elected officials and former City Managers that do not exist in the new state law, local law will be less restrictive than state law once Senate Bill 8 goes into effect. As a result, the Ethics Ordinance must be amended to delete these exemptions for elected officials and City Managers. Note that these exemptions do not have to be deleted for other types of former City Officials (e.g., Department Directors, Council Representatives, and Deputy City Attorneys) because Senate Bill 8 does not apply to them. The Rules Committee and City Council, however, may want to consider an amendment that provides a uniform set of exemptions that apply to all City Officials. Accordingly, the attached draft strike-out language includes two different options for your consideration: Option A would obtain compliance with Senate Bill 8 by deleting the relevant exemptions for all former City

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Officials (including those not subject to Senate Bill 8), while Option B would obtain compliance by subjecting former elected officials and former City Managers to more stringent post-employment lobbying restrictions than those applicable to other types of City Officials.

We look forward to discussing these proposed changes with you at the Rules Committee meeting on May 24, 2006. If you have any questions, please contact me at your convenience.

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Stacey Fulhorst  
Executive Director

Enclosure

cc: Catherine Bradley, Chief Deputy City Attorney