



# City of Palo Alto

(ID # 6041)

## Policy and Services Committee Staff Report

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**Report Type: Agenda Items**

**Meeting Date: 8/25/2015**

**Summary Title: Updates to Municipal Code and Discussion of Referral Items**

**Title: Continued Discussion Regarding City Council Procedural Matters, Including Updates to Municipal Code Sections for Appeals, Post Government Employment Regulations, Date/Time of Policy and Services Committee and Other Referral Items from City Council Retreat (Continued from June 9, 2015)**

**From: City Manager**

**Lead Department: City Manager**

On January 31, 2015, the City Council discussed updates to the City Council's procedures and protocols and referred certain elements to the Policy & Services Committee. On February 17, 2015 the City Council held a *Committee of the Whole* meeting focused on procedures and protocols, meeting management, committees and staff relations. At this meeting certain ideas about procedures and protocols as well as meeting management were referred to the Policy & Services Committee. Ideas about committees and staff relations were deferred to the next Committee of the Whole meeting.

On April 8, 2015 the Policy & Services Committee discussed the referrals and ideas and directed staff to draft changes to the Procedures and Protocols Handbook. On May 21, 2015, the Committee continued discussion and completed the items related to the Handbook and meeting management. The Committee directed staff to bring revised Handbook language back to Committee after the Council break.

The Committee did not complete discussion about the items regarding the "Revolving Door Policy, Appeals Process or Day/Time of the Policy & Services Committee." Attached are Municipal Code Section 18.77.070, Section 18.77.075, Chapter 18.78, and Chapter 21.36 for Appeals; Chapter 2.07 for Post-Government Employment Regulations; Chapter 2.04 for Committee structure. Also attached is a summary prepared by the Fair Political Practices Commission (FPPC) describing state laws that regulate activity after leaving government service and influencing prospective employers. Additionally, included in the packet are the items the City Council referred to the next Committee of the Whole, which were not discussed at the April 8 or May 21 Policy & Services Committee meeting.

After the Committee finishes discussion about the procedural matters that were raised by City Council at the annual retreat, staff will return to the Committee – likely in August – with any language changes and a recap of recommendations for the Committee to refer to the Committee of the Whole in early fall.

**Attachments:**

- Notes from 2-17-15 for June 9 Meeting (DOCX)
- Municipal Code Appeal Sections (PDF)
- Municipal Code Post Employment Regulation Section (PDF)
- Municipal Code Committee Sections (PDF)
- FPPC Leaving Local Government Service August 2010 (PDF)

## Attachment A: Referral Items

### Municipal Code Items:

1. Revolving Door Policy
  - a. Revolving door policy: Current is one year. Consider two years for CC members, staff (and consultants). Rationale: employment negotiations can extend for months on end. Extending the timeframe lessens the likelihood of those activities taking place with still in the employment of the City.
2. Appeal Process
  - a. Updating appeal procedure for resident that pays money to have appeal heard - should get to speak for 10 minutes.
  - b. Consider changing back to 2 votes to remove from consent, especially for appeals where citizens have paid to be heard. Consider a reduced threshold of votes required if appellant can provide a list of a given number of supporters of his/her appeal (not co-appellants). This should help protect against frivolous appeals. Also, consider a reduced fee where support such as described above can be demonstrated. Having to get 4 CC members to hear an appeal of an IR project after also paying over \$400 seems to stretch the democratic process.
3. Day of Policy & Services Committee
  - a. Rationale: Even with earlier packet release, the back to back night meetings (following CC meetings on Monday nights) can put a strain on effectiveness, preparation, stamina. This is especially true for Finance Committee members during budget season. And it holds for many members of staff who have items on both regular CC meetings and Committee meetings. Even with the earlier release of packets, this does not remedy the stamina and effectiveness aspects of meeting management. This also understands there might be some few considerations for moving Board or Commission meetings that conflict with a Wednesday schedule. It is important to understand that currently, the Tuesday meetings conflict with, perhaps most significantly, the Parks & Recreation Commission meetings.

## Attachment A: Referral Items

### Items going to Committee as a Whole

1. Committees Discussion
  - a. Discuss formation of Comprehensive Plan Committee and Health City, Health Community Committee
  - b. Increasing authority of existing City-School Committee
2. Discussion of Core Values
3. Staff Relations
  - a. **Holman** - Council to set policy by prioritizing projects/directives for the staff based on a work plan provided by the various CAO's. Prioritization to be based on timeliness, urgency, desire, nearing completion, staffing, etc.
    - i. Reason: It should not be a pressure on staff to decide/guess what they should be working on among a long list of projects especially as prioritization is a policy decision.
  - b. **Holman** - Direct staff to bring to Council those issues/trends emerging and otherwise that present policy questions that are best discussed and decided after public vetting of the issue. Issues should be brought forward in a timely manner and as soon as is practicable, individually or collectively whichever is the more timely. There might also be issues that staff wants to/should make Council aware of such as the lot combinations that currently appear to be taking place on California Avenue. Examples include:
    - i. loss of retail/services uses converting to general office
    - ii. basement space converting from traditional retail support use to general office (leads to changed office population, parking/traffic concerns, etc)
    - iii. increased office occupancy density beyond what is considered in code (4 per thousand)
    - iv. parking considerations that may need reconsideration from a policy perspective (mixed use)
    - v. demolition of historic homes whereby the owner has circumvented Individual Review (CEQA) by proposing a single story home and then sells to another owner who then proposed a two story home.
  - c. **Burt** - Proactive senior staff level participation in identification of community trends that may need CC policy reconsideration prior to accumulated severe impacts and consequent crisis management.

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## Palo Alto Municipal Code

### **18.77.070 Architectural Review Process.**

#### (a) Applications Subject to Architectural Review Process

The following applications are subject to the review processes set forth in this section:

- (1) Any major or minor project requiring architectural review approval, as set forth in Section 18.76.020 (Architectural Review);
- (2) Any project requiring a design enhancement exception; and
- (3) Other permits and approvals for which such review process is required by the provisions of Title 2, Title 12 or Title 18.

#### (b) Tentative Director's Decision and Hearing Upon Request for Minor Projects

For a minor project, as defined in Section 18.76.020(b)(3), once the application is deemed complete:

- (1) The director shall prepare a proposed written decision to approve, approve with conditions, or deny the application.
- (2) Notice of the proposed director's decision shall be given by publication. The notice shall include the address of the property, a brief description of the proposed project, a brief description of the proposed director's decision, the date the decision will be final if no hearing is requested, and a description of how to request a hearing.
- (3) The proposed director's decision shall become final 14 days after the date notice is mailed or published, whichever is later, unless a request for a hearing is filed. The director may, for good cause, specify in writing a longer period for requesting a hearing at the time he or she issues the proposed decision.
- (4) Any party, including the applicant, may request a hearing by the architectural review board on the proposed director's decision by filing a written request with the planning division. There shall be no fee required for requesting such a hearing.
- (5) The right to a hearing set forth in Section 18.77.070(b)(4) will not be made available to any party, including the applicant, with respect to the minor project referred to in Section 18.76.020(b)(3)(D).

#### (c) Hearing and Recommendation for Major Projects, and for Minor Projects Upon Request

- (1) Upon receipt of a completed application for a major project (as defined in Section 18.76.020(b)(2)), or upon receipt of a timely request for a hearing for a minor project (as defined in Section 18.76.020(b)(3)), the architectural review board shall set a hearing date to review the application.
- (2) Notice of the hearing shall be given at least 10 days prior to the hearing by publication in a local newspaper, by posting in a public place, and by mailing to the applicant, the hearing requestor, if applicable, and all residents and owners of property within 600 feet of the project. Notice shall

include the address of the property, a brief description of the proposed project, and the date and time of the hearing.

(3) Following the hearing, the architectural review board shall make a recommendation on the application, which shall be forwarded to the director.

(d) Decision by the Director

Upon receipt of a recommendation of the architectural review board:

(1) Within 3 days, the director shall prepare a written decision to approve the application, approve it with conditions, or deny it.

(2) Notice of the director's decision shall be given by mailing to owners and residents of property within 600 feet of the property, by publication once in a local newspaper, and by posting in a public place. Notice shall include the address of the property, a brief description of the proposed project, a brief description of the action to be taken, the date the decision will be final, and a description of how to request a hearing.

(3) The director's decision shall become final 14 days after the date notice is mailed or published, whichever is later, unless an appeal is filed. The director may, for good cause, specify in writing a longer period for requesting a hearing at the time he or she issues the proposed decision.

(4) If the architectural review board continues a minor project more than once, or a major project more than twice, the director may make a decision on the application prior to receiving the final recommendation of the board.

(e) Appeal of the Director's Decision - Filing

Any party, including the applicant, may file an appeal of the director's decision with the planning division. The appeal shall be filed in written form in a manner prescribed by the director.

(f) Decision by the City Council

The appeal of the director's decision shall be placed on the consent calendar of the city council within 30 days. The city council may:

(1) Adopt the findings and decision of the director; or

(2) Remove the appeal from the consent calendar, which shall require three votes, and:

(A) Discuss the appeal and adopt findings and take action on the appeal based upon the evidence presented at the hearing of the architectural review board; or

(B) Direct that the appeal be set for a new hearing before the city council, following which the city council shall adopt findings and take action on the application.

(g) Final Decision by the Council

The decision of the council on the appeal is final.

(Ord. 4959 § 4, 2007; Ord. 4826 § 118 (Exh. 3 (part)), 2004)

### **18.77.075 Low-density Residential Review Process**

(a) Applications Subject to Low-density Residential Review Process

The following applications are subject to the review process set forth in this section:

(1) Individual review applications, home improvement exception applications; and

(2) Other permits and approvals for which such review process is required by the provisions of this title (Zoning).

(b) Notice of Application Submittal

Within three days of submittal of an application, notice that the application has been submitted shall be given by mail to owners and residents of property adjacent to the subject property, and shall be posted at the subject property until approval, denial or withdrawal of the application. The notice shall include the name of the applicant; the address of the proposed project; and information on when and how comments will be accepted by the city. The mailed notice shall also include a description of the project.

(c) Comment Period

The comment period shall be twenty-one days beginning on the third business day after an application is submitted. If notice is mailed or posted on a later date, the comment period shall begin on the later date. Written comments received by the city during this period shall be considered as part of the staff review. Only one comment period is required. If plans are revised during or following the comment period, a statement that the plans have been revised shall be included in the notice of the proposed director's decision set forth in subsection (e).

(d) Decision by the Director

Following completion of the comment period and any staff review:

(1) The director shall prepare a proposed written decision to approve, approve with conditions, or deny the application.

(2) Notice of the proposed director's decision shall be mailed to owners and residents of property adjacent to the subject property, and any person who has made a written request for notice of the decision. The notice shall include the address of the property, a brief description of the proposed project, a brief description of the proposed director's decision, the date the decision will be final if no hearing is requested, and a description of how to request a hearing.

(3) The proposed director's decision shall become final fourteen days after the date notice is mailed unless a request for a hearing is filed.

(4) The applicant or the owner or occupier of an adjacent property may request a director's hearing on the proposed director's decision by filing a written request with the planning division before the date the proposed director's decision becomes final. There shall be no fee required for requesting such a hearing.

(5) The time limits set forth in this subsection (d) may be extended upon the written request of the applicant.

(e) Director's Hearing (Upon Request)

(1) Following the filing of a timely hearing request of a proposed director's decision the director shall hold a hearing on the application. A hearing request received after the expiration of the time limits set forth in subsection (d)(3) shall not be considered.

(2) Notice of the director's hearing shall be mailed ten days prior to the hearing to the project applicant, to owners and residents of property adjacent to the subject property, and to any person who has made a written request for such notice. Notice shall include the address of the property, a brief description of the proposed project, and the date, time and location of the hearing.

(3) At the time and place set for hearing the director shall hear evidence for and against the application or its modification. The hearing shall be open to the public.

(f) Final Director's Decision

(1) The director shall issue a written decision approving, approving with conditions, or denying the project application within fourteen days of the hearing.

(2) Notice of the director's decision shall be mailed to the project applicant, the owners and occupants of all adjacent properties, and any person requesting notice of the decision. The notice shall include the address of the property, a brief description of the proposed project, a brief description of the proposed director's decision, the date the decision will be final if no appeal is filed, and a description of how to file an appeal.

(3) The director's decision shall become final fourteen days after the date notice is mailed unless an appeal is filed. The director may, for good cause, specify in writing a longer period for filing an appeal at the time he or she issues the proposed decision.

(4) The applicant or the owner or occupier of an adjacent property may file an appeal of the director's decision by filing a written request with the City Clerk before the date the director's decision becomes final. The written request shall be accompanied by a fee, as set forth in the municipal fee schedule.

(g) Decision by the City Council

If a timely appeal is received by the City, the director's decision on the application shall be placed on the consent calendar of the city council within 30 days. The city council may:

(1) Adopt the findings and recommendation of the director; or

(2) Remove the recommendation from the consent calendar, which shall require four votes, and set the application for a new hearing before the city council, following which the city council shall adopt findings and take action on the application.

(h) Decision by the City Council Final

The decision of the city council is final.

(Ord. 4869 § 39, 2005)



## Palo Alto Municipal Code

## Chapter 18.78 APPEALS

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## Sections:

18.78.010 Purpose and scope.

18.78.020 Filing.

18.78.030 Planning and transportation commission review and recommendation.

18.78.040 Action by the city council.

### **18.78.010 Purpose and scope.**

The purpose of this chapter is to establish a single procedure for the filing, review, and action on appeals of the following determinations of the director:

(a) Appeals of decisions on tree removal permits, as set forth in Chapter 8.10, parking adjustments, as set forth in Sections 18.54.120 and 18.54.130, and determinations of incomplete applications, as set forth in Section 18.77.030; and

(b) Other permits and approvals for which such appeals process is authorized by the provisions of this title (Zoning), or other titles of this municipal code.

Where the provisions of this title permit an appeal from a determination of the director, it shall be processed as provided in this chapter, unless otherwise provided.

(Ord. 4826 § 119 (Exh. 4 (part)), 2004)

### **18.78.020 Filing.**

An appeal shall be filed with the planning division in written form in a manner prescribed by the director.

(Ord. 4826 § 119 (Exh. 4 (part)), 2004)

### **18.78.030 Planning and transportation commission review and recommendation.**

Within thirty days of the filing of a timely appeal from a director's determination, the planning and transportation commission shall review the appeal at a public meeting and issue a recommendation to the city council to uphold, overturn, or modify the action or determination of the director.

(Ord. 4826 § 119 (Exh. 4 (part)), 2004)

**18.78.040 Action by the city council.**

(a) Action by the City Council. The recommendation of the planning and transportation commission on the application shall be placed on the consent calendar of the city council within thirty days. The city council may:

(1) Adopt the recommendation of the planning and transportation commission; or

(2) Remove the appeal from the consent calendar, which shall require three votes, and take action to uphold, overturn, or modify the action or determination of the director.

(b) Decision by the City Council Final. The decision of the city council is final.

(Ord. 4826 § 119 (Exh. 4 (part)), 2004)

## **Chapter 21.36 APPEALS**

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Sections:

21.36.010 Notice.

21.36.020 Hearing before planning commission.

21.36.030 Action by city council.

21.36.040 Extension of time.

**21.36.010 Notice.**

Any aggrieved person may appeal from the decision of the director of planning in approving, conditionally approving or denying a preliminary parcel map or from any portion or condition thereof. Such appeal shall be taken to the city council; provided, that prior to consideration of the appeal by the city council, the planning commission, acting as an advisory appeal board, shall review the appeal and make its recommendations to the city council. An appeal shall be commenced by filing a notice of appeal with the director of planning. Such notice shall be filed within fifteen days of the decision of the director of planning which is the subject of the appeal. An appeal notice filed after such fifteen-day period shall not be processed. Any decision not appealed within said time shall become final. The notice of appeal shall set forth in detail the decision, or portion thereof, appealed and the grounds for the appeal. The notice of appeal shall be accompanied by eighteen copies of the tentative parcel map.

(Ord. 3157 § 1 (part), 1979)

**21.36.020 Hearing before planning commission.**

Within thirty days after the filing of the notice of appeal, the planning commission shall hold a hearing and consider the appeal. The director of planning shall submit a written report to the planning commission. Within ten days after the conclusion of the hearing, the planning commission shall make its recommendation. The planning commission may recommend that the city council sustain, modify, or overrule the decision of the director of planning. Said recommendation shall be forwarded to the city clerk for presentation to the city council.

(Ord. 3157 § 1 (part), 1979)

#### **21.36.030 Action by city council.**

The appeal shall be set for a hearing before the city council within thirty days after receipt of the planning commission's recommendation by the city clerk. Within seven days after the conclusion of the hearing, the city council shall render its decision and findings based upon the testimony and documents produced before it or before the planning commission. The city council may sustain, modify, or overrule the decision of the director of planning based upon the provisions of this title and the Subdivision Map Act.

(Ord. 3157 § 1 (part), 1979)

#### **21.36.040 Extension of time.**

Any of the time limits contained in this section, except the fifteen-day period for filing a notice of appeal, may be extended by the mutual consent of the appellant, the subdivider, and the agency before which the appeal is pending.

(Ord. 3157 § 1 (part), 1979)

## Palo Alto Municipal Code

## **Chapter 2.07**

### **POST-GOVERNMENT EMPLOYMENT REGULATIONS**

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## Sections:

2.07.010 No representation for compensation.

2.07.020 Exception for government service.

#### **2.07.010 No representation for compensation.**

No city officer, or city employee whose appointment requires confirmation by the city council under Title 2 of this code, shall, for compensation, act as agent or attorney for, or otherwise represent any other person or entity, by making any formal or informal appearance, or by making any oral or written communication, before the city council, any city board or commission, or any officer or employee of the city, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property. Administrative action does not include any action that is solely ministerial. This limitation shall expire one year after the officer or employee has left employment with the city.

(Ord. 4935 § 2 (part), 2007)

#### **2.07.020 Exception for government service.**

Nothing in this chapter shall apply to any individual who appears or communicates with the city on behalf of another government agency as a board member, officer, or employee of that government agency. Nor shall it apply to any former employee who is compensated by the city to provide transitional or other services. This chapter shall not apply if the application is made by the employee for themselves or their own business.

(Ord. 4935 § 2 (part), 2007)

## Palo Alto Municipal Code

**2.04.190 Standing committees - Special committees.**

(a) Not later than the second regular council meeting in January, the mayor shall appoint two standing committees, consisting of four members each from the members of the council. The mayor shall appoint each council member to only one standing committee and shall appoint the chairperson of each committee. The mayor, or the vice-mayor at the request of the mayor, may act as an ex officio, voting member of each committee when one or more regular committee members are absent.

(b) The standing committees shall be designated, respectively, committee on finance and committee on policy and services, and shall meet at 7:00 p.m. in the city hall on the day established by Section 2.04.200.

(c) Council members may attend meetings of committees of which they are not members, without participating in any manner, but only committee members or ex officio committee members shall vote in committee in accordance with subsection (a) of this section.

(d) Council members who submit matters to the council which are referred to a standing committee may appear before the standing committee to which the referral has been made in order to speak as proponents of the matter. Standing committee meetings during which such referrals may be considered shall be noticed as council meetings for the purpose of enabling the standing committee to discuss and consider the matter with a quorum of the council present.

(e) In addition to standing committees the mayor may, subject to approval of the council, appoint such other special committees of council members, private citizens or both as deemed desirable and necessary to assist and advise the council in its work.

(Ord. 4692 § 1 (part), 2001)

**2.04.200 Standing committee meetings.**

(a) Regular Meetings. Each standing committee shall meet on its designated meeting night(s) at 7:00 p.m. at the City Hall. The policy and services committee shall meet on the second Tuesday of each month and the finance committee shall meet on the first and third Tuesday of each month. When additional meetings are necessary, the chairperson of each committee may call a special meeting as provided in subsection (b) of this section.

(b) Special Meetings. Special meetings of standing committees may be called by the chairperson with the consent of a majority of the committee's members, but a special meeting so called shall be held at City Hall, or other locations if appropriate, and forty-eight hours' notice must be given to every council member.

(Ord. 4692 § 1 (part), 2001)

**2.04.210 Committee on finance.**

It shall be the duty of the committee on finance to consider and make recommendations on matters referred to it by the council relating to finance, budget, audits, capital planning and debt.

(Ord. 4692 § 1 (part), 2001)

**2.04.220 Committee on policy and services.**

It shall be the duty of the committee on policy and services to consider and make recommendations on matters referred to it by the council relating to parliamentary and administrative procedures and policy matters pertaining to intergovernmental relations, personnel policies, planning and zoning, traffic and parking, public works, and community and human services.

(Ord. 4692 § 1 (part), 2001)

## **Leaving Local Governmental Office or Employment: Revolving Door and other Post-Employment Issues for Local Officials**

The Political Reform Act places two restrictions on the post-governmental activity of officials who leave local governmental service. These restrictions are a one-year ban applicable to high-level local officials (Section 87406.3) and a one-year ban applicable to officials and employees of air pollution control and air quality management districts (Section 87406.1). A third restriction, the ban on influencing prospective employment, prohibits current local officials from taking part in decisions that directly relate to a prospective employer. (Section 87407.)

### **Section 87406.3: The Local One-Year Ban**

The **local one-year ban** prohibits specified officials, for one year after leaving local government office or employment, from representing any other person, for compensation, by appearing before or communicating with their former agency in an attempt to influence the agency's decisions in an administrative or legislative action, whether quasi-legislative or quasi-judicial, or any action involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406.3; Regulations 18746.2 and 18746.3.)

Note that Section 87406.3(c) does not preclude a local governmental agency from adopting its own ordinance or policy restricting the activities of former agency officials so long as the ordinance or policy is more restrictive than Section 87406.3. Former local agency officials should consult their former agency regarding any locally imposed restrictions.

#### ***Are you covered by the one-year ban?***

The following officials are subject to the one-year ban of Section 87406.3:

- Local elected officials.
- Chief administrative officers of counties.
- City managers or chief administrative officers of cities.
- General managers or chief administrators of special districts, including general managers or chief administrators of air pollution control districts or air quality management districts. (Section 87406.3; Regulation 18746.3(a).)

Local government agencies include any county, city, or district of any kind including a school district, or any other local or regional subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Section 82041.)

#### ***Have you permanently left?***

The local one-year ban applies when an official permanently leaves any particular office or employment subject to the ban. (Regulation 18746.3(b)(1).) An official has permanently left an office or employment on the date on which the official is no longer authorized to perform the duties the office or employment and stops performing those duties, even if the official is still receiving compensation for accrued leave credits. (Regulation 18146.4(b).)

Under the local one-year ban, an official has not permanently left an office or employment if the official takes a leave of absence or serves as an intermittent employee. However, an official taking a leave of absence or serving as an intermittent employee is subject to the Act's conflict-of-interest provisions. (Regulation 18746.4(b); also see Commission Fact Sheet, "Can I Vote? Overview of the Conflict of Interest Laws.")

*Tom, a city council member, also holds a position on the county's Vector Control Board. At the conclusion of his term on the city council, Tom retains his position on the Vector Control Board. Six months later a developer asks Tom to represent him before the city council. May Tom represent the developer? No, Tom has permanently left the local office, which is covered by the ban, and may not appear before the city council on the developer's behalf.*

***Are you making an appearance or communication within 12 months of leaving local governmental office or employment?***

The one-year ban applies to appearances and communications made within 12 months of permanently leaving local office or employment. An appearance or communication includes all of the following:

- Conversing by telephone or in person.
- Corresponding with in writing or by electronic communication.
- Attending a meeting.
- Delivering or sending any communication. (Regulation 18746.2.)

*Betty resigns from her city council member position and accepts a job with Acme Real Estate. Within the year, the city council proposes new flood protection requirements, which Acme does not believe are necessary. On behalf of Acme, Betty calls her friend, Council Member Jones, and informs Council Member Jones that Acme staunchly opposes the new flood protection requirements. Betty has made an appearance or communication prohibited under the one-year ban.*

The local one-year ban does not apply to assisting or advising clients or employers who might appear before or communicate with the official's former agency so long as the former official is not identified in connection with the appearance or communication.

***Are you being compensated?***

An appearance or communication is prohibited only if the former official is compensated, or promised compensation. (Regulation 18746.3(b)(3).) "Compensation" is broadly defined to include "remuneration or payment of any kind." (Souza Advice Letter, No. A-06-114.) "Payment" is defined to mean a "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) Note, however, that a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.

*Jackson, a former county supervisor, is currently working as a volunteer for the Spotted Owl Foundation. Hoping to prevent a controversial development project, the Foundation has asked Jackson to appear before the board of supervisors. May Jackson appear before the board if the Foundation pays for his airfare to the meeting? The one-year ban does not bar Jackson from appearing because payments for necessary travel in connection with voluntary services are not considered compensation.*

***Are you representing another person?***

The local one-year ban applies if the former official makes an appearance or communication in representation of another person. Appearances or communications in representation of any of the following are not prohibited:

- Another local government agency or any other public agency. (Regulation 18746.3(c).)
- The former official's personal interests as defined in Regulation 18702.4(b)(1), unless the appearance or communication is made in a quasi-judicial proceeding in which the official participated while serving as a local government employee or officer. (Regulation 18746.3(b)(4).)

*Kevin leaves his council member position on January 1 and accepts an engineering position with the county water district on January 15. On February 1, the city council proposes new flood protection requirements, and Kevin appears at the council's meeting on behalf of the water district to argue that the requirements are not adequate. Has Kevin violated the one-year ban? No, Kevin has not made a prohibited appearance or communication because Kevin is representing another public agency.*



### ***Are you making an appearance or communication for the purpose of influencing?***

An appearance or communication is for the purpose of influencing if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.

The local one-year ban prohibits an appearance or communication if it is made for the purpose of influencing any of the following:

- An administrative action, including any action relating to any rule, regulation, or regulatory proceeding including a ratemaking proceeding, whether quasi-legislative or quasi-judicial. (Section 87406.3(d)(1); Regulation 18746.3(b)(5)(A).)
  - Quasi-legislative proceedings include those proceedings involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises. (Regulation 18746.3(b)(5)(B).)
  - Quasi-judicial proceedings include those proceedings that determine the rights of specific parties, or apply existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. (Regulation 18746.3(b)(5)(C).)
- A legislative action, including any action relating to the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity. (Section 87406.3(d)(2); Regulation 18746.3(b)(5)(D).)
- Any action involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

The following conduct is not prohibited because it does not involve an attempt to influence a decision:

- Formal participation in a panel or conference for educational purposes or to disseminate research.
- Attendance at general informational meetings, seminars, or similar events.
- Making requests for information about any matter of public record.
- Communications with the press. (Regulation 18746.2.)

### ***Is the appearance before or communication made to your former agency employer?***

An official subject to the local one-year ban may not appear before or communicate with any officer or employee of either of the following:

- The local agency, or any committee, subcommittee, or present member of the local agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. (Regulation 18746.3(b)(6)(A).)
- Any local agency that is subject to the direction and control of the agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. This is known as the “pyramid concept.” If a former official’s local agency controls the budget, personnel, and other operations of another agency, the official is prohibited from appearing before or communicating with both agencies. (Regulation 18746.3(b)(6)(B).)

## **Section 87406.1: One-Year Ban for Air Pollution Control and Air Quality Management Districts**

The ***one-year ban for air pollution control and air quality management districts*** prohibits former district board members, officers, and certain employees from representing any other person by appearing before or communicating with, their former district in an attempt to influence any regulatory action for a one-year period. A former district employee is subject to this ban if the former employee made or

participated in making decisions while employed by the district that may have foreseeably had a material financial effect on any financial interest. For purposes of Section 87406.1, “regulatory action” has been interpreted to include any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding before the district. (*Wood Advice Letter, No. A-95-167.*)

Former general managers and chief administrative officers of air pollution control and air quality management districts are subject to both Section 87406.1, the one-year ban for air pollution control and air quality management districts, and Section 87406.3, the one-year ban for local officials. Since the one-year ban of Section 87406.3 fully encompasses the one-year ban of 87406.1, a former general manager or chief administrative officer of an air pollution control or air quality management district who complies with Section 87406.3 and Regulation 18746.3 as detailed above has fully complied with Section 87406.1. Board members, officers, or employees of these districts, who are subject only to Section 87406.1, with questions relating to their obligations under this section should seek further Commission assistance.

### **Influencing Prospective Employment**

The ***ban on influencing prospective employment*** prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (Section 87407; Regulation 18747.) In short, this law expands the Act’s conflict-of-interest rules and related disqualification obligations to situations where a decision will have a reasonably foreseeable material financial effect on the prospective employer even though the official does not yet have an economic interest in the employer.

#### ***Are you covered by this law?***

The ban applies to *all* “public officials” including every member, officer, employee, or consultant of a local governmental agency. (See Section 82048.)

#### ***What activities trigger this prohibition?***

The ban is triggered by negotiating or having an arrangement regarding prospective employment. While submitting a résumé or an application to a prospective employer does not trigger the ban, the following contacts will trigger the ban:

- An interview with an employer or his or her agent.
- Discussing an offer of employment with an employer or his or her agent.
- Accepting an offer of employment.

*Brenda, a city council member and engineer by trade, is interested in finding a more lucrative position in the private sector and submits her résumé to several large construction companies including Company X. Company X will be appearing before the city council for approval of its bid for work on a city project. May Brenda participate in the city council decision? Yes, Brenda has only submitted a résumé, which is not enough to disqualify Brenda from participating in the decision.*

*After receiving Brenda’s résumé but prior to the city council meeting, Company X calls Brenda to discuss job openings. Brenda is unsure whether she wants to work for this particular company so she schedules a lunch appointment with company managers to discuss the position. May Brenda participate in the city council decision? No, Brenda is interviewing with Company X and, therefore, negotiating prospective employment. Brenda may not participate in any governmental decision directly related to Company X.*

#### **When does a decision “directly relate” to a prospective employer?**

Under the ban on influencing prospective employment, an official may not make, participate in making or influence decisions that “directly relate” to a prospective employer. A decision “directly relates” to a prospective employer if:

- The employer, either directly or by an agent, has initiated a proceeding in which a decision will be made by filing an application, claim, appeal, or similar request.

- The employer, either directly or by an agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the subject person.
- The employer will be financially affected by the decision, as defined in the Commission's conflict-of-interest regulations. (Regulations 18705.1 and 18705.3.) Officials should consult the conflict-of-interest regulations to determine the dollar threshold of the financial effect on the prospective employer that will trigger the official's disqualification from a decision.

***How do you determine the financial effect on the prospective employer?***

An official must try to obtain information regarding the financial effect of a decision from the prospective employer. An official must make a good faith determination of the potential financial effect of the decision on the prospective employer.

***Do any exceptions apply?***

The ban on influencing prospective employment does not apply if:

- The prospective employer is a state, local, or federal governmental agency.
- The official is legally required to make or participate in the making of the governmental decision.
- The governmental decision will affect the prospective employer in substantially the same manner as it will affect a "significant segment" of the public generally.