



## CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

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May 10, 2016

The Honorable City Council  
Attention: Policy & Services Committee  
Palo Alto, California

### **Discussion and Possible Recommendation to Council Regarding Conflict of Interest Provision that Allows Architects and Engineers to Advocate for Private Clients Before the City Under Certain Conditions**

#### **Recommendation**

Staff recommends that the Policy and Services Committee review the Clerk's survey of commissioners, former commissioners and applicants to the PTC, ARB and HRB regarding whether their willingness to serve is affected by the current conflicts rule that allows commissioners to appear before the City on behalf of private clients, and consider whether to recommend that Council amend the Municipal Code to prohibit such appearances.

#### **Background**

At the City Council retreat in January of 2015, a Council Member suggested that Palo Alto explore adopting amendments to the City's revolving door ordinance to strengthen its provisions. Later in 2015, Council requested Policy and Services to review and make a recommendation on this issue.

Policy and Services considered this item on October 27, 2015 (Attachment A). The Committee directed staff to prepare an ordinance updating Palo Alto's local revolving door regulation to ensure all department heads are covered by the rule banning senior officials from appearing before their former agency as a paid advocate for one year after leaving City employment. (Attachment B). In December 2015, the Council adopted an ordinance implementing this direction. (Attachment C).

In addition to updating the local one-year post-employment ban, the Committee also discussed the Fair Political Practice Commission (FPPC) regulation that allows a narrow class of current City officials to appear before the City to advocate on behalf of private clients. The Committee directed staff to return to Policy and Services for further discussion and a recommendation to Council on this issue.

### *The Political Reform Act*

The Political Reform Act prohibits local officials from making, participating in making or attempting to influence a governmental decision that has a foreseeable and material financial impact on themselves or another person, entity or thing in which they have a financial interest. (Cal. Govt. Code section 87100.)

### *The FPPC Regulation Allowing Paid Advocacy by Architects and Engineers in Certain Circumstances*

The Fair Political Practices Commission (FPPC) has adopted a narrow exception to this rule to allow architects and engineers to represent private clients doing business with their agency, under certain circumstances. The FPPC regulations provide:

(d) Exceptions. Making, participating in, or influencing a governmental decision does not include:

...

(6) Architectural and Engineering Documents.

(A) Drawings or submissions of an architectural, engineering, or similar nature prepared by a public official for a client to submit in a proceeding before the official's agency if:

(i) The work is performed pursuant to the official's profession; and

(ii) The official does not make any contact with the agency other than contact with agency staff concerning the process or evaluation of the documents prepared by the official.

(B) An official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if:

(i) The review committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency;

(ii) The review committee is required by law to include architects, engineers or persons in related professions, and the official was appointed to the body to fulfill this requirement; and

(iii) The official is a sole practitioner.

(Cal. Code of Regs. 18704(d)(6).)

### *Survey Regarding Potential Stricter Local Rule*

Local jurisdictions must comply with state law at a minimum, and may adopt stricter rules. The Committee discussed whether it would be appropriate for Palo Alto to adopt a stricter local rule that would prohibit paid advocacy by architects and engineers serving as City commissioners. The Committee wanted further information, however, regarding potential impacts on recruitment and retention of commissioners willing to serve on the Planning & Transportation Commission, the Architecture Review Board and the Historic Resources Board. The Committee directed the Clerk to survey past, present and non-appointed board and commission applicants to assess whether a prohibition on presenting a project to their board or commission, the staff and the Council would discourage them from serving as a City commissioner.

The Clerk conducted the survey soliciting feedback from past and present members of the P TC, HRB, and ARB. Staff asked the following questions:

- A. Are you a practicing architect, engineer or designer with a solo practice (no partners employed)?
- B. If your answer to the first question is yes, in the course of your business, do you have interactions with City of Palo Alto staff and/or advisory boards?
- C. Please indicate one of the following:
  - a. Yes, a rule prohibiting representation of private clients before the HRB, ARB, City Staff or the City Council would discourage me from serving on the HRB or ARB.
  - b. No, a rule prohibiting representation of private clients before the HRB, ARB, City staff or City Council would have no impact on my willingness to serve on the HRB or ARB.
- D. Do you have any additional comments or feedback?

The Clerk received a total of 14 responses.

Question	YES	NO	NO RESPONSE
A	10	4	
B	8	4	2
C	7	7	

As for Question D, some of the additional comments received were:

- This seems like a common sense proposal. Members of the HRB and ARB should prioritize serving the city's interest over serving the interest of a private client.
- I don't think there's an inherent conflict in bringing a client before your own board or council. However, members should be darn clear about this, and staff should discourage the practice.
- I have employees who can speak before the Board. Although it is always better if I was able to speak directly to the Board. But rules are rules so I will not speak if I have a project to go before the Board. I have none in the works.....

### **Discussion**

Staff is available to assist the Committee in its review and potential recommendation to Council regarding the exception for architects and engineers.

### **ATTACHMENTS:**

- Attachment A - October 27, 2015 Policy & Services Staff Report #6237 (PDF)
- Attachment B - October 27, 2015 Final Action Minutes from Policy and Services Committee Meeting (PDF)
- Attachment C - December 15, 2015 Council Meeting Staff Report # 6414 (PDF)

Department Head: Molly Stump, City Attorney





# CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

October 27, 2015

The Honorable City Council  
Palo Alto, California

## Discussion and Direction to Staff Regarding Palo Alto's "Revolving Door" Ordinance

### Recommendation

Staff recommends that the Policy and Services Committee review local “revolving door” ordinances adopted by neighboring cities and discuss whether amendments should be made to Palo Alto’s local ordinance.

### Background

At the City Council retreat in January, a Council Member suggested that Palo Alto explore adopting amendments to the City’s revolving door ordinance to strengthen its provisions. Council subsequently requested Policy and Services to review and make a recommendation on this issue.

### Discussion

#### *Post-Government Employment Restrictions Generally*

State law restricts certain local employees and officials, for one year after leaving local office or employment, from representing private parties, for compensation, before the bodies on which they served. The purpose of the restrictions is to reduce actual or perceived conflicts of interest between the government official and the body on which the official formerly served, and to prevent private entities from gaining or being perceived to gain an unfair advantage. These restrictions are often referred to as “revolving door” regulations because they attempt to limit the influence of officials who move between public service and the private sector.

Specifically, Chapter 7 of the Political Reform Act bans certain local officials, for a period of one year after leaving office or employment, from representing any other person or entity, 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, contract or transaction involving the sale or purchase of property or goods. (Gov. Code Section 87406.3; 2 Cal Code Regs 18746.2; 18746.3.)

The following city officials are subject to the one-year ban:

- Local elected officials
- City managers or chief administrative officers of cities

*When does the ban go into effect?*

The ban on compensated advocacy begins when the official permanently leaves the office or employment that is subject to the ban. The official is considered to have “permanently” left her position on the date she is no longer authorized to perform the duties of her office. Thus, an official or employee has not permanently left her office if she merely takes a leave of absence.

*What activities are banned by state law?*

Any appearance or communication with the official’s former body that takes place in representation of another person is a violation of Section 87406.3. An appearance or communication includes the following:

- Conversing by telephone or in person
- Corresponding with in writing or by electronic communication
- Attending a meeting
- Delivering or sending any communication

The rule is intended to eliminate communication that is meant to influence a governing body’s decision making process. State law does not prohibit former government officials from assisting or advising their new clients or employers “behind the scenes.” Assisting or advising is permitted so long as the former official’s connection is not revealed. In addition, the former official is not prohibited from participation at a conference for educational purposes or from attendance at general informational meetings or seminars because such conduct does not involve an attempt at communication for the purposes of influencing a governing body’s decision.

*Cities May Adopt More Restrictive Rules*

With Section 87406.3 serving as a floor, local governmental agencies are free to adopt their own more restrictive ordinances or policies that limit the activities of former government officials. The City of Palo Alto has adopted such an ordinance. Palo Alto’s ordinance expands the number of officials covered by the one-year ban to include all employees whose appointments are confirmed by the City Council. These include the Assistant City Managers, Director of Administrative Services, Police Chief, Fire Chief, HR Director, Planning Director, Utilities Director, Director of Public Works, Director of Community Services, Library Director, and

Principal and Senior Assistant City Attorneys. Palo Alto's expanded local restrictions do not apply to representation of government agencies.

The neighboring cities of San Francisco, San Jose, and Santa Clara have also adopted local ordinances that are stricter than state law. The most common elements addressed in these ordinances are 1) the duration of the restrictions; 2) the agency positions subject to the ban; 3) whether the ban extends to uncompensated or volunteer work; 4) whether the ban is limited to representation or also extends to "behind the scenes" work; and 5) whether there are any exceptions to the restrictions. **Attachment A** provides a chart comparing these elements for the cities listed above.

#### *Duration of Restrictions*

Palo Alto, San Francisco and Santa Clara have all retained the one-year ban contained in the Political Reform Act.

San Jose adopted a more restrictive *two-year* prohibition on compensated representation. The San Jose ordinance prohibits its commissioners from communicating with their own commission or board for two years but does not prohibit them from communicating with other commissions of which they were not a member. (San Jose Code of Ordinances, Title 12 ch. 12.10.040).

#### *Positions within the Scope of the Restrictions*

San Francisco's ban is the broadest of the neighboring cities', prohibiting all city and county officers *and* employees from communicating with their former department on behalf of another with the intent to influence a decision. (San Francisco Municipal Code, Art. III section 3.234(a)(2)).

#### *Compensation*

Cities may also adopt advocacy bans that apply even when the former official is not compensated for their efforts on behalf of the private entity. San Jose explicitly prohibits representation regardless of whether the former official or employee receives compensation. San Francisco's ordinance also applies without regard to whether compensation is received.

#### *What is Prohibited: Representation or "Behind the Scenes" Work*

State law and most local laws prohibit representation, but do not prohibit "behind the scenes" support work.

San Jose prohibits both representation and any work for an entity that is within the scope of the former public job duties.



San Francisco prohibits:

- all former employees from representing or doing any work on any matter that the employee personally and substantially worked on for the City of San Francisco.
- All former employees from representing (but “behind the scenes work is permitted”) any private party in front of the employee’s former department.
- The Mayor and Board of Supervisors and their key staff members from representing a private party before any city department.
- All employees from going to work for an entity that had a City contract within the preceding 12 months, where the former employee personally and substantially participated in the award of the contract.

#### *Exceptions*

The San Jose ordinance states that the prohibitions do not apply to employees and volunteers of non-profits, government employees and officials, and employees who were separated from San Jose service due to layoff. The San Jose ordinance also allows agencies to consider and make exceptions for independent contractors who are providing transitional services.

#### **Attachments**

- A: City by City Comparison Chart of Post-Government Employment Restrictions
- B: Palo Alto Post-Government Employment Regulations
- C: San Francisco Post-Employment and Post Service Restrictions
- D: San Jose Revolving Door Restrictions
- E: Santa Clara Restrictions on Activities of City Officials and Certain Employees

#### **ATTACHMENTS:**

- Attachment A: Cities Comparison Chart (PDF)
- Attachment B: Palo Alto Post-Government Employment Regulations (PDF)
- Attachment C: San Francisco Post-Employment and Post Service Restrictions (PDF)
- Attachment D: San Jose Revolving Door Restrictions (PDF)
- Attachment E: Santa Clara Restrictions on Activities of City Officials and Certain Employees (PDF)

Department Head: Molly Stump, City Attorney



## Gov. Code, § 87406.3

**Summary.** Certain local officials are banned, for one year after leaving government service, from being paid to communicate with their former agency or governing body and any of its employees or members of the agency's subcommittees in an attempt to influence certain actions or proceedings. Applies to all cities, counties and special districts. Local agencies may adopt stricter rules.

## Officers and Positions Impacted

Local elected official  
Chief administrative officer of a county  
City manager

Jurisdiction	Summary	Who	How Long	Comments
<b>Palo Alto</b>  <a href="#">See Post-Government Employment Regulations Title 2, Chapter 2.07.010 - 2 2.08.020</a>	Bans former elected officials and all officials whose appointments require City Council confirmation from communicating with that body or an employee of the city in an attempt to influence a decision.	City manager City attorney City clerk City auditor Assistant city manager Director of administrative services Chief of police Fire chief Director of human resources Director of planning and community environment Director of utilities Director of public works - city engineer Director of community service Director of libraries	1 year	Ban may not apply to former official representing another without compensation.
Jurisdiction		Who	How Long	Comments
<b>San Francisco</b>  <a href="#">See Campaign &amp; Gov. Code, Article III, Sec. 3.234 (a)(2)</a>	Bans all former officers and employees from representing another person except the City and County in matters where the City and County is a party or where the former officer or employee participated personally.	All Officers and Employees	1 year	

	In addition former officers and employees are prohibited from communicating with their former body for purposes of influencing a decision after departing their position.			
<b>Jurisdiction</b>		<b>Who</b>	<b>How Long</b>	<b>Comments</b>
<b>San Jose</b>  <a href="#">See Title 12, Revolving Door Restrictions, Chapter 12.10 et seq.</a>	<p>Bans former city and agency officials as well as designated employees from working on any matter they had previously worked on behalf of the city after departing their position.</p> <p>In addition former officials are prohibited from representing another person before a city governing body for two years.</p>	<p>Mayor City Council</p> <p>Chairperson and members of the board of directors of the redevelopment agency</p> <p>Designated employees w/in meaning of PRA* Commission Members*</p>	2 years	<p>Ban is upheld whether or not former official is compensated.</p> <p>Former commission members are only banned from representing others before their own commission</p>
<b>Jurisdiction</b>		<b>Who</b>	<b>How Long</b>	<b>Comments</b>
<b>Santa Clara</b>  <a href="#">See Restrictions on Activities of City Official and Certain Employees Title 2, Chapter 2.145 et seq.</a>	<p>Bans city, agency, and commission officials from working on any matter they had previously worked on behalf of the city after departing their position.</p> <p>In addition former officials are prohibited from representing another person before a city governing body for one year.</p>	<p>Mayor City Council</p> <p>Chairperson/agency members of Redevelopment Agency</p> <p>Chairperson/agency members of Sports and Open Space Authority</p> <p>Chairperson/agency members of SC Housing Authority</p> <p>Chairperson/agency members of SC Stadium Authority</p> <p>Any member of a City commission</p>	1 year	<p>Ban may not apply to former official representing another without compensation.</p>

[Print](#)

## 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)

## **Chapter 2.08**

### **OFFICERS AND DEPARTMENTS\***

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## Sections:

2.08.010 Officers of the city.

- 2.08.020 Approval of city manager's appointments.
- 2.08.030 Duties of officers.
- 2.08.040 General responsibilities of department heads.
- 2.08.050 Rules and regulations.
- 2.08.075 Care of city-owned property.
- 2.08.085 Fees and revenues.
- 2.08.090 Reports of department activities.
- 2.08.100 Holidays and other special days.
- 2.08.110 Office and duties of the city clerk.
- 2.08.120 Office and duties of the city attorney.
- 2.08.130 Office and duties of the city auditor.
- 2.08.140 Office and duties of the city manager.
- 2.08.145 Reserved.
- 2.08.150 Department of administrative services.
- 2.08.160 Department of human resources.
- 2.08.170 Police department.
- 2.08.180 Fire department.
- 2.08.190 Department of public works.
- 2.08.200 Department of utilities.
- 2.08.210 Department of community services.
- 2.08.220 Department of planning and community environment.
- 2.08.230 Department of libraries.
- 2.08.240 Department of information technology.
- 2.08.250 Department of Development Services.
- 2.08.300 Books and records.
- 2.08.310 Oath of office.
- 2.08.320 Duties of the city manager, relating to health.
- 2.08.330 Health officer.
- 2.08.340 Summons.
- 2.08.350 Powers and duties of health officer.

**2.08.360 Interference with health officer prohibited.****2.08.370 Reserved.**

\* Editor's Note: Prior ordinance history: Ordinance Nos. 1405, 2146, 2260, 2305, 2316, 2389, 2429, 2447, 2452, 2510, 2520, 2528, 2569, 2611, 2635, 2662, 2669, 2739, 2808, 2960, 3060, 3149, 3257, 3414, 3507, 3514, 3546, 3709, 3731, 3762, 3841, 3927, 3930, 4036, 4122.

**2.08.010 Officers of the city.**

(a) The following shall be considered officers of the city:

- (1) City manager;
- (2) City attorney;
- (3) City clerk;
- (4) City auditor;
- (5) Assistant city manager.

(Ord. 4274 § 1 (part), 1995)

**2.08.020 Approval of city manager's appointments.**

Appointments to the following positions shall be made by the city manager with the approval of the council:

- (a) Assistant city manager;
- (b) Director of administrative services;
- (c) Chief of police;
- (d) Fire chief;
- (e) Director of human resources;
- (f) Director of planning and community environment;
- (g) Director of utilities;
- (h) Director of public works - city engineer;
- (i) Director of community services; and
- (j) Director of libraries.

(Ord. 4809 § 1, 2003; Ord. 4274 § 1 (part), 1995)

**2.08.030 Duties of officers.**

Each officer shall perform all duties required of his or her office by state laws, the Charter, and

determine whether a payment is prohibited under this Section.

The Controller's decision regarding whether a payment is prohibited under this Section is final.

(Added by Proposition E, 11/4/2003)

## **SEC. 3.234. POST-EMPLOYMENT AND POST SERVICE RESTRICTIONS.**

Attachment C

### **(a) All Officers and Employees.**

#### **(1) Permanent Restriction on Representation In Particular Matters.**

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

- (i) in which the City and County is a party or has a direct and substantial interest;
- (ii) in which the former officer or employee participated personally and substantially as a City officer or employee; and
- (iii) which involved a specific party or parties at the time of such participation.

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

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

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

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

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

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

- (A) a board, department, commission or agency of the City and County;
- (B) an officer or employee of the City and County;



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

(D) a representative of the City and County.

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

**(2) City service.**

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

(B) Notwithstanding the one-year restriction in Subsection (A), a former Mayor who was appointed to that office under Charter Section 13.101.5 to fill a vacancy shall be eligible for appointment to any City employment, provided that (i) the former Mayor did not file a declaration of candidacy for election to the office of Mayor after being appointed to that office, (ii) the former Mayor was employed by the City immediately prior to assuming the office of Mayor, and (iii) the salary in the first year of the new employment shall not exceed the salary received by the former Mayor in the City employment that he or she held immediately prior to assuming office as Mayor.

**(c) Waiver.**

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

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

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

(4) The Ethics Commission may adopted regulations implementing these waiver provisions.

(Added by Proposition E, 11/4/2003; amended by Ord. 218-07, File No. 070505, App. 9/21/2007; Ord. 208-09, File No. 090219, App. 9/25/2009; Ord. [86-11](#), File No. 110023, App. 5/31/2011, Eff. 6/30/11)

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## **SEC. 3.236. AIDING AND ABETTING.**

No person shall knowingly and intentionally provide assistance to or otherwise aid or abet any other person in violating any of the provisions of this Chapter.

(Added by Proposition E, 11/4/2003)

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## **SEC. 3.238. FILING OF FALSE CHARGES.**

No person shall knowingly and intentionally file with the Ethics Commission, the District Attorney or the City Attorney any false charge alleging a violation of this Chapter.

Chapter 12.10 - REVOLVING DOOR RESTRICTIONS<sup>[3]</sup>

Footnotes:

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**Editor's note**—Ord. No. 28074, § 1, adopted June 26, 2007, effective August 1, 2007, amended Chapter 12.10, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Chapter 12.10 pertained to similar subject matter.

## 12.10.010 - Purpose.

The purposes of this chapter are:

- A. To assure the independence, impartiality and integrity of city and agency officials and designated employees in making governmental decisions and taking governmental actions.
- B. To prevent such former officials and designated employees from using their positions with the city or agency for personal gain.
- C. To prevent private for-profit business entities from obtaining a real or perceived unfair advantage in dealing with the city or agency by hiring former officials and designated employees.

(Ord. 28074.)

## 12.10.020 - Definitions.

For purposes of this chapter, the terms below have the following meaning:

- A. "Agency official" means the chairperson and members of the board of directors of the redevelopment agency of the City of San José.
- B. "City official" means the mayor and city councilmembers.
- C. "Commission" means any body created by the city council or agency board whose members are required to file statements of economic interest pursuant to the Political Reform Act of 1974 as amended (Gov. Code §§ 81000 et seq.).
- D. "Employee" has the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- E. "Nonprofit organization" means an entity which would qualify as such under the federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the city council or redevelopment agency board within the past five years.
- F. "Transitional services" means services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the city or the agency.
- G. "Work" means any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 12.10.050. Work for the city or agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a city or agency official or designated employee on any type of board, committee or similar body as a representative of the city or agency is deemed to be work for the city or agency.

(Ord. 28074.)

## 12.10.030 - Prohibitions for former officials and designated employees.

No city or agency official or designated employee, for two years after terminating city or agency office or employment, may:

- A. Work on any legislative or administrative matter on which the official or employee worked on behalf of the city or agency during the twelve months prior to termination of service, or which was within the former city or agency official's or designated employee's area of job responsibility. "Work on any legislative or administrative matter" includes, but is not limited to, providing advice or recommending any action with regard to a city or agency legislative or administrative matter such as a project involving land use, development, or public works. Legislative matters include city council, agency board and city board or commission actions related to ordinances, resolutions, agreements, permits or licenses.
- B. Represent anyone else on any matter, whether or not for compensation, before the city council, redevelopment agency board, any commission thereof, any individual member of the city council, redevelopment agency board, or commission, or any staff of the city or agency.
- C. Receive any gift or payment which would be prohibited under Chapter 12.08 from any person who was, in any way, involved in or affected by the work of the official or employee during the twelve months prior to the termination of service.

(Ord. 28074.)

12.10.035 - Designated employees terminated due to reductions in work force.

- A. Notwithstanding the provisions in this chapter to the contrary, a designated employee who was terminated or involuntarily separated from city or agency service due to consolidation or elimination of functions or other reduction in the city or agency work force which was based solely on economic or budgetary conditions is permitted to:
  - 1. Work on any legislative or administrative matter on which the employee worked on behalf of the city or agency during the twelve months prior to termination of service, or which was within the former designated employee's area of job responsibility. "Work on any legislative or administrative matter" includes, but is not limited to, providing advice or recommending any action with regard to a city or agency legislative or administrative matter, such as a project involving land use, development, or public works. Legislative matters include city council, agency board and city or agency board or commission actions related to ordinances, resolutions, agreements, permits or licenses.
  - 2. Represent, before city or agency commissions or city or agency staff, any business or person that within the last twelve months of the employee's employment: (a) did not receive any subsidy from the city or agency; or (b) was not involved in any project on which the employee worked.
- B. Except as permitted by Subsection A.1., for two years after leaving city or agency employment, no designated employee described under this section may accept any gift or payment which would be prohibited under Chapter 12.08 from any person who was in any way involved in or affected by the work of the official or employee during the twelve months prior to the termination of service.

(Ord. 28989.)

12.10.040 - Prohibition for former commission members.

No member of a commission may, for two years after leaving the commission, represent anyone else, whether or not for compensation, before the commission on which the former member served. No other provisions of this chapter apply to persons serving on a commission who are not otherwise city or agency

officials or designated employees.

(Ord. 28074.)

#### 12.10.050 - Exceptions.

The following persons are not subject to the prohibitions of Section 12.10.030:

- A. An employee or volunteer of a nonprofit organization, as defined in Section 12.10.020 E.;
- B. An employee or official of a government entity;
- C. An independent contractor of the city or agency where it has been determined that it is in the best interest of the city or agency to retain the former official or employee to provide transitional services. Such determination will be made by the person or body authorized to enter into such a contract. In such event, the city or agency will contract directly with the former official or employee. The rate of compensation for such services must not exceed the former official's or employee's rate of pay, including benefits, at the time city or agency service terminated.

(Ord. 28074.)

**Chapter 2.145**  
**RESTRICTIONS ON ACTIVITIES**  
**OF CITY OFFICIALS AND**  
**CERTAIN CITY EMPLOYEES**

Sections:

- 2.145.010 Purpose.**
- 2.145.020 Definitions.**
- 2.145.030 Prohibitions – Post service activities for compensation.**
- 2.145.040 Exceptions.**
- 2.145.050 Applicability.**
- 2.145.060 Waiver.**
- 2.145.070 Sanctions.**

**2.145.010 Purpose.**

The purposes of this chapter are:

- (a) To prevent former City officials and designated City employees from using their influence with the City or agency for personal gain.
- (b) To prevent private for-profit business entities from obtaining a real or perceived unfair advantage in dealing with the City or agencies by hiring former City or agency officials and/or designated City employees.
- (c) To comply with the City “Code of Ethics and Values.”
- (d) To attempt to assure the independence, impartiality and integrity of City and agency officials and designated City employees in making governmental actions and decisions. (Ord. 1755 § 2, 7-18-00).

**2.145.020 Definitions.**

For purposes of this chapter, the terms below shall have the following meaning:

- (a) “Agency official” shall mean, respectively, the Chairperson and agency members of (1) the Redevelopment Agency of the City of Santa Clara (“RDA”), (2) the Sports and Open Space Authority of the City of Santa Clara (“SOSA”), (3) the City of Santa Clara Housing Authority (“HA”) and (4) the Santa Clara Stadium Authority (“SA”). The RDA, SOSA, HA and SA may be referred to individually or collectively as “agency” as the context indicates.
- (b) “City official” shall mean the Mayor and City Council members.
- (c) “Commission” shall mean any body (commission, board, etc.) created by the City Charter, City Code or action of the City Council whose members are required to file statements of economic interest pursuant to the State Political Reform Act of 1974 (Government Code Section [81000](#) et seq.)
- (d) “Commission official” shall mean any member of a City commission.

(e) "Designated City employee" shall be those City employees designated from time to time by the City Manager as subject to the provisions of this chapter. Annually, the City Manager will provide the City Council with a list of designated City employees.

(f) "Nonprofit organization" shall mean an entity which would qualify as such under the Federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the City Council or agency board within the past five years.

(g) "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the City or agency.

(h) "Work" shall mean any activity, for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in SCCC [2.145.050](#). Work for the City or an agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a City or an agency official or designated City employee on any type of board, committee, subcommittee or similar body as a representative of the City or agency is deemed to be work for the City or an agency. (Ord. 1755 § 2, 7-18-00; Ord. 1884 § 1, 4-19-11).

#### **2.145.030 Prohibitions – Post service activities for compensation.**

Except as provided otherwise in this chapter, for one year immediately following the termination of City, agency or commission office or employment, former City officials, agency officials, commission officials (collectively referred to as "affected City official(s)") and designated City employees shall not, for compensation:

(a) Work on any matter which the affected City official or designated City employee previously worked on for the City.

(b) Represent anyone else before the City Council, a City agency, a City commission or staff of the City.

(c) Receive any gift or payment in excess of the amount determined from time to time by the Fair Political Practices Commission from any person who was, in any way, involved in or affected by the work of the affected City official or designated City employee. (Ord. 1755 § 2, 7-18-00).

#### **2.145.040 Exceptions.**

The following work shall not be subject to the prohibitions of SCCC [2.145.030](#):

(a) As an employee or volunteer of a nonprofit organization, as defined in SCCC [2.145.020](#)(f).

(b) As an employee of a governmental entity.

(c) As an employee pursuant to City Charter Section 802 which, subject to the civil service provisions of the City Charter, grants authority to the City Manager to make personnel appointments.

(d) As an independent contractor of the City or agency where it has been determined that it is in the best interest of the City or agency to retain the former affected City official or City employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In the independent contractor situation, the City or agency shall contract directly with the former affected City official or City employee. The rate of compensation for such services shall not exceed the former official or employee's rate of pay, including benefits, at the time City or agency service terminated. (Ord. 1755 § 2, 7-18-00).

#### **2.145.050 Applicability.**

(a) The provisions of this chapter shall not apply to prevent a former affected City official or designated City employee from testifying as a percipient witness in any legal proceeding.

(b) The provisions of this chapter shall not apply to prevent a former affected City official or designated City employee from working as a supervisor of a person or persons performing work that would be prohibited by this chapter, so long as the supervisor is screened from any personal participation in the work and receives no part of the fee therefrom. (Ord. 1755 § 2, 7-18-00).

#### **2.145.060 Waiver.**

The City Council, RDA, SOSA, HA or SA may waive the prohibitions of SCCC [2.145.030](#), upon full disclosure of the facts surrounding the proposed activity, if the City Council, RDA, SOSA, HA or SA finds that such waiver is in the best interest of the City or agency and that such waiver is not inconsistent with the purposes of this chapter as set forth in SCCC [2.145.010](#). (Ord. 1755 § 2, 7-18-00; Ord. 1884 § 2, 4-19-11).

#### **2.145.070 Sanctions.**

In addition to any other remedy provided in this Code, the following sanctions shall also apply to any violations of this chapter where appropriate:

(a) Upon the petition of any person, a court or the presiding officer of any proceeding shall, after providing notice and an opportunity for hearing, exclude any person found to be in violation of this chapter from further participation, or from assisting or counseling any other participant, in the matter then pending before such court or body.

(b) The City or agency shall be entitled to recover from any former City or agency official or designated City employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this chapter. (Ord. 1755 § 2, 7-18-00).

[Mobile Version](#)



## POLICY AND SERVICES COMMITTEE ACTION MINUTES

Special Meeting  
October 27, 2015

Chairperson Burt called the meeting to order at 7:04 P.M. in the Community Meeting Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, Burt (Chair), DuBois, Wolbach

Absent:

### Agenda Items

1. Discussion and Direction to Staff Regarding Palo Alto's "Revolving Door" Ordinance

**MOTION:** Council Member DuBois moved, seconded by Chair Burt to recommend the City Council approve adding the following language to the Revolving Door Ordinance:

- A. Add all Department Heads; and
- B. Add active Board and Commission Members be restricted to appear in front of their own Board or Commission as a representative of their firm.

**SUBSTITUTE MOTION:** Council Member DuBois moved, seconded by Chair Burt to recommend City Council approve the changes to the language of the Revolving Door Ordinance to include all Department Heads.

**SUBSTITUTE MOTION PASSED:** 4-0

**MOTION:** Council Member Berman moved, seconded by Council Member Wolbach to direct the City Clerk to:

- A. Return to the Policy and Services Committee with an Informational Report entailing the difficulty of performing a survey of past, present and non-appointed Board and Commission Applicants if a prohibition of them presenting a project to the Board or Commission they applied would prevent them from applying; or



# ACTION MINUTES

- B. If the City Clerk feels the survey workload is minimal, to direct the City Clerk to conduct the survey.

**MOTION PASSED:** 4-0

2. Staff Recommendation that the Policy and Services Committee Recommend That the City Council (1) Accept the Description of the Status of the SAP Security and Employee Ethics Policy Audits; and (2) Establish Schedule for Future Audit Recommendation Status Updates.

**MOTION:** Council Member Berman moved, seconded by Council Member Wolbach to recommend the City Council accept the description of the Status of Audit Recommendations for SAP Security and Employee Ethics Policies Audits.

**MOTION PASSED:** 4-0

ADJOURNMENT: Meeting adjourned at 8:18 P.M.



## **CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY**

**December 14, 2015**

**The Honorable City Council  
Palo Alto, California**

### **Adoption of an Ordinance Amending Municipal Code Section 2.07.010 to Update Post Government Employment Regulations to Include all City Department Heads**

#### **Recommendation**

The Policy and Services Committee unanimously recommends that Council adopt the ordinance attached as Exhibit A to update Palo Alto's local revolving door ordinance to apply to all department heads.

#### **Background**

State law restricts certain local officials, for a period of one year after leaving office or employment, from representing any other person or entity, 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, contract or transaction involving the sale or purchase of property or goods. (Gov. Code Section 87406.3; 2 Cal Code Regulations 18746.2; 18746.3.)

The purpose of the restrictions is to reduce actual or perceived conflicts of interest between the government official and the body on which the official formerly served, and to prevent private entities from gaining or being perceived to gain an unfair advantage. These restrictions are often referred to as "revolving door" regulations because they attempt to limit the influence of officials who move between public service and the private sector.

The state law prohibition applies to local elected officials and city managers or chief administrative officers of cities.

State law allows cities to adopt their own more restrictive ordinances or policies that limit the activities of former government officials. The City of Palo Alto has adopted such an ordinance. Palo Alto's ordinance expands the number of officials covered by the one-year ban to include all employees whose appointments are confirmed by the City Council. These include the City Attorney, City Clerk, City Auditor, Assistant City Managers, most department heads and senior attorneys in the City Attorney's Office.

At the City Council retreat in January 2015, a Council Member suggested that Palo Alto explore adopting amendments to the City's revolving door ordinance to strengthen its provisions. Council subsequently referred the matter to the Policy and Services Committee for review and recommendation. Policy and Services considered the issue on October 27, 2015.

The Committee considered several potential changes to Palo Alto's local revolving door ordinance. First, staff identified that Palo Alto's ordinance has not completely kept up to date with the changes in the City organization and includes most but not all department heads. Policy and Services unanimously directed staff to bring an ordinance to Council updating the revolving door regulation to apply to all department heads. That item is before you here.

Second, the Committee discussed other potential changes to the local regulation. The Committee directed the Clerk to survey current and former members of the Architectural Review Board (ARB) and Historic Resources Board (HRB), and ARB/HRB applicants, regarding their willingness to serve if the local regulation were amended to bar appearance before the ARB/HRB on a local project. The results of that survey and other related policy questions are scheduled for further consideration in Committee in the new year. Any additional recommendation will return to Council for adoption.

### **Discussion**

Policy and Services unanimously recommends that the local revolving door ordinance be updated to apply to all department heads.

### **Resource Impact**

Adoption of this ordinance will have no impact on staff resources.

### **Policy Implications**

This action is consistent with current City policy.

### **Environmental Review**

This is not a project for the purposes of the California Environmental Quality Act.

### **ATTACHMENTS:**

- Attachment A: Ordinance Amending Post Government Employment Regulations (PDF)

Department Head: Molly Stump, City Attorney

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Section  
2.07.010 of the Municipal Code to Provide that Post-Government  
Employment Regulations Apply to All Department Heads

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 2.07.010 of Chapter 2.07 Post-Government Employment  
Regulations of the Palo Alto Municipal Code is amended to read as follows:

“2.07.010 No representation for compensation.

No city officer, department head, 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, department head or employee has left employment with the city.”

SECTION 2. The City Council finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.

SECTION 3. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its adoption.

INTRODUCED

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

NOT YET APPROVED

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney