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EXECUTIVE DIRECTOR

Date: May 5, 2010

To: Members, Ethics Commission

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

Re: Draft amendments to regulations related to post-employment restrictions

In September 2010, the Board of Supervisors amended the City's post-employment restrictions in San Francisco Campaign and Governmental Conduct Code section 3.234. The Ethics Commission has adopted a number of regulations to implement the post-employment restrictions, and staff now proposes amending those regulations to conform them to the new law.

Section 3.234(a) sets forth three post-employment restrictions governing current and former City officers and employees: (1) a permanent restriction on switching sides and representing someone other than the City in a matter on which you have worked personally and substantially; (2) a one-year restriction on lobbying your former department, board or commission on any matter; and (3) a one-year restriction on accepting employment or compensation from a City contractor where you worked personally and substantially on the contract. Last year's amendments made two significant changes:

- First, section 3.234 previously applied only to employees and officers who have left City service. After the legislation, section 3.234 now extends the one-year restriction on lobbying one's former department to officers and employees who have not left City service altogether but have transferred departments within the City.
- Second, section 3.234 previously provided that for one year after leaving City service, City officers and employees could not accept employment with anyone who entered a contract with the City within the twelve months prior to the officer or employee's departure from the City, if the officer or employee participated personally and substantially in the award of the contract. The law had two relevant twelve-month periods: an officer or employee had to look *backward* to determine whether he or she participated in the award of a contract in the twelve months prior to leaving City service, and also had to look *forward* twelve months because the ban applies for one year after the termination of City

service. The legislation simplified that rule, and the law now prohibits employment within 12 months of the contract date, regardless of when the employee or officer leaves City service. The legislation also moved and consolidated former sections to permit the Commission to grant waivers from the post-employment restrictions.

The proposed amendments to Regulations 3.234-1, 3.234-2, 3.234-3, 3.234-4, and 3.234-5 generally update existing regulations to conform to the current law, and make some additional technical and linguistic changes to provide greater clarity.

Regulations adopted by the Commission become effective 60 days after the date of their adoption unless before the expiration of the 60-day period, two-thirds of all members of the Board of Supervisors vote to veto the regulation(s). S.F. Charter § 15.102.

Recommendations

1. Regulation 3.234-1. Permanent Restriction on Representing and Assisting Others in Particular Matters

Under GEO section 3.234(a)(1), no officer or employee who participated personally or substantially on a matter and who has left City service may switch sides to participate in any proceeding related to the matter if the City is a party or has a direct and substantial interest in the matter. Regulation 3.234-1 sets out the scope of the restriction and the basic rule for determining whether the permanent ban applies. The proposed amendments make citation changes to reference the new law, add language to provide clarity and strike language that is superfluous in subsection 3.234-1(b)(5)(D) (as it generally repeats subsection 3.234-1(b)(5)(B)).

Decision Point 1:

Shall the Commission approve the draft changes to Regulation 3.234-1, as set forth on page 5 of this memo?

2. Regulation 3.234-2. One-Year Restriction on Communicating with Former Department

As explained above, an employee who leaves service from one City department to work for another City department is now subject to the one-year ban on communicating with his or her former department on behalf of someone other than himself or herself or the City in an attempt to influence a governmental decision.

Regulation 3.234-2 sets out the scope of the one-year communication restriction and the basic rule for determining whether the ban applies. The proposed amendments make citation changes to reference current law. They also make other technical additions or deletions in language to reflect the new law. For example, in subsection 3.234-2(b)(1), new language “If the officer or employee remains an officer or employee of the City but has terminated his or her service with the department, board, commission, office or unit of government, then the prohibition may apply” has been added to reflect the situation where an officer or employee has merely

transferred departments and not left City service – in such situations, the one-year ban on lobbying one’s former department would apply.

Decision Point 2:

Shall the Commission approve the draft changes to Regulation 3.234-2, as set forth on page 6 of this memo?

3. Regulation 3.234-3. Restrictions on Future Employment with Parties that Contract with the City

Section 3.234(a)(3) now prohibits a current or former City officer or employee who personally and substantially participates in the award of a contract from being employed by any party to that contract within 12 months of the contract date, regardless of when the officer or employee leaves City service. Regulation 3.234-3 sets out the scope of the future employment restriction and the basic rule for determining whether the ban applies. The proposed changes make citation changes to reference the current law. They also make grammatical and clarifying changes.

Decision Point 3:

Shall the Commission approve the draft changes to Regulation 3.234-3, as set forth on pages 6-7 of this memo?

4. Regulation 3.234-4. Waivers

Section 3.234(c) consolidates two former sections that authorized the Ethics Commission to grant waivers from the post-employment restrictions to former officers and employees. Under section 3.234(c)(1), an individual may receive a waiver from the permanent ban on switching sides or one-year ban on communicating with one’s former department if the Commission determines that granting a waiver would not create the potential for undue influence. Under section 3.234(c)(2), the Commission may waive the same restrictions for any member of a board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. And under section 3.234(c)(3), the Commission may waive the one-year future employment ban for any individual if it determines that imposing the restriction would cause extreme hardship for the individual.

The proposed amendments to Regulation 3.234-4 make citation changes to reference the new law. They also clarify that in addition to former officers or employees, current officers or employees may seek waivers. The waiver process remains the same.

Decision Point 4:

Shall the Commission approve the draft changes to Regulation 3.234-4, as set forth on pages 7-9 of this memo?

5. Regulation 3.234-5. Definitions

The proposed amendments would also change several of the definitions in current Regulation 3.234-5:

- Because sections 3.234(a)(1)-(2) now apply to current officers and employees who transfer to different City departments, staff proposes to strike the term “former” from the regulatory definitions in several places, and to add the word “current” in others.
- In subsection 3.234-5(a), under the definition of “department, board, commission, office or other unit of government for which a former City officer or employee served,” staff has replaced Example 1 with another example that more accurately reflects a current structure in City government.
- In subsection 3.234-5(c), under the definition of “intent to influence,” staff has added language to clarify that having one’s name appear on a development proposal submitted to one’s former department, board or commission qualifies as an unlawful communication under the one-year ban on communications. This regulation is consonant with informal, oral advice that staff has given in the past.
- The recent legislation deleted the term “same matter” from section 2.324. So in subsection 3.234-5(d), staff has moved language and examples from former subsection 3.234-5(f) to (d) because it is no longer necessary to define the term “same matter.”
- Staff has added new subsection 3.234-5(g) to clarify that the one-year post-employment communication ban may apply when an officer or employee terminates service with the City, takes a leave of absence from his or her department, or transfers to another City department.

Decision Point 5:

Shall the Commission approve the draft changes to Regulation 3.234-5, as set forth on pages 9-14 of this memo?

Proposed Changes to Regulations to Government Ethics Ordinance

(Additions in **bold, underlined italic** text; deletions in ~~***bold, italic strike-through***~~ text)

Regulation 3.234-1. Permanent Restrictions on Representing and Assisting Others in Particular Matters

(a) Scope of Restriction; Only Activities, Not Employment Prohibited. Subsections 3.234(a)(1)(A) ~~and (a)(1)(B)~~ restricts only specific activities. Nothing in ~~these that~~ subsections requires a former officer or employee to decline employment with any person or entity. The restrictions ~~applies~~ solely to activities, not employment.

(b) Basic Rule; Guide to Determining Whether Permanent Ban Applies. To determine whether ~~either~~ subsection 3.234(a)(1)(A) ~~or (a)(1)(B)~~ prohibits a former City officer or employee from making or assisting or aiding another in making any formal or informal appearance or any oral, written or other communication, proceed with the following analysis:

(1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibitions do not apply.

(2) Determine whether the former officer or employee is representing a person or entity other than himself, herself or the City ~~and County~~. If the former officer or employee is not representing a person or entity other than himself, herself or the City ~~and County~~, the prohibitions do not apply.

(3) Determine whether the representation is before any court, or before any state, federal, or local agency, or any employee or officer thereof. If the representation is not before any of these entities or officials, the prohibitions do not apply.

(4) Determine whether the representation is made with an intent to influence **the court or agency or the officer or employee thereof**. If the representation is not made with an intent to influence, the prohibitions do not apply.

(5) Determine whether the representation is in connection with a particular matter:

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

(B) in which the former officer or employee participated personally and substantially as a City officer or employee; **and**

(C) which involved a specific party or parties at the time of such participation; ~~and~~

~~(D) which is the same matter in which the officer or employee participated as a City officer or employee.~~

If the representation is not in connection with a particular matter as noted above, the prohibitions do not apply.

(6) Determine whether the duties being performed by the former officer or employee consist of activities that fall within the exception for serving as a witness based on the former officer's or employee's personal knowledge, without compensation other than fees regularly provided for by

law or regulation of witnesses. If the duties of the former officer or employee fall within the exception for witness testimony, the prohibitions do not apply.

Regulation 3.234-2. One Year Restriction on Communicating with Former Department

(a) Scope of Restriction. Subsection 3.234(a)(~~2~~)(~~1~~)(~~D~~) applies to attempts to influence any government decisions made by the department, board, commission, office or unit of government for which an former officer or employee served, including decisions in which the former officer or employee had no prior involvement as well as decisions related to matters that first arise after the officer or employee has left the department, board, commission, office or unit of government. ~~City service.~~

(b) Basic Rule; Guide to Determining Whether the One-Year Restriction Applies. To determine whether subsection 3.234(a)(~~2~~)(~~1~~)(~~D~~) prohibits a current or former City officer or employee from communicating orally, in writing or in any other manner with the department, board, commission, office or unit of government for which the officer or employee served, proceed with the following analysis:

(1) Determine whether the officer or employee has terminated his or her service to the particular department, board, commission, office or unit of government. ~~City.~~ If the officer or employee has not terminated his or her service to the department, board, commission, office or unit of government. ~~City,~~ the prohibition does not apply. If the officer or employee remains an officer or employee of the City but has terminated his or her service with the department, board, commission, office or unit of government, then the prohibition may apply.

(2) Determine whether more than one year has elapsed since the officer or employee terminated his or her service with the department, board, commission, office or unit of government qualified as a former officer or employee. If more than one year has elapsed since the officer or employee qualified as a former officer or employee, the prohibition does not apply.

(3) Determine whether the former officer or employee is representing a person or entity other than himself, herself or the City and County. If the former officer or employee is representing himself, herself or the City and County, the prohibition does not apply.

(4) Determine whether the communication from the former officer or employee is being made with an intent to influence a government decision. If the communication is not being made with an intent to influence a government decision, the prohibition does not apply.

Regulation 3.234-3. Restrictions on Future Employment with Parties that Contract with the City

(a) Scope of Restriction. Subsection 3.234(a)(~~3~~)(~~2~~)(~~A~~) applies to any and all employment arrangements, including but not limited to employment as a full or part-time employee, consultant or independent contractor and any and all forms of compensation. A person or entity enters into a contract with the City when either the contract or a modification to the contract is executed.

(b) Basic Rule; Guide to Determining Whether the Restriction on Future Employment Applies. To determine whether subsection 3.234(a)(~~3~~)(~~2~~)(~~A~~) prohibits a current or former officer or employee from accepting employment or receiving compensation from a particular person or entity, proceed with the following analysis:

~~(1) Determine whether the officer or employee has terminated his or her service to the City. If the officer or employee has not terminated his or her service to the City, the prohibition does not apply.~~

~~(2) Determine whether more than one year has elapsed since the officer or employee terminated his or her service to the City. If more than one year has elapsed since the officer or employee qualified as a former officer or employee, the prohibition does not apply.~~

(1) Determine whether the officer or employee has accepted employment or has received or become entitled to compensation from a person or entity other than the City. If the officer or employee has not accepted employment or received or become entitled to compensation, the prohibition does not apply.

(23) Determine whether the person or entity offering **or providing** employment or compensation to the **former** officer or employee entered into any contracts with the City during the 12 months **prior to the officer or employee's acceptance of employment or the officer or employee's receipt or entitlement to compensation.** ~~preceding the date upon which the officer or employee terminated his or her service with the City.~~ If the person or entity did not enter into any such contracts with the City, the prohibition does not apply.

(34) Determine whether the **former** officer or employee participated personally and substantially in the award of any such contracts. If the **former** officer or employee did not participate personally and substantially in the award of any such contracts, the prohibition does not apply.

Regulation 3.234-4. Waivers

(a) Requests for Waivers from Post-Employment Restrictions.

(1) Requests for waivers from permanent and one-year bans. Any **current or** former City officer or employee may submit a request to the Commission for a waiver from the permanent bans on working or advising on particular matters **imposed by subsection 3.234(a)(1) or** the one-year ban on communicating with former colleagues imposed by subsections ~~3.234(a)(2) 3.234(a)(1)(A), (a)(1)(B) and (a)(1)(D).~~ Such ~~a~~ requests must be in writing and include information describing the former position held by the officer or employee; the particular matter for which the waiver is sought; the ~~former City officer's or employee's~~ **individual's** prior involvement in ~~the such~~ matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. The ~~former City officer's or employee~~ **individual** must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her **former** department, board, commission, office, or unit of government.

(2) Requests for waivers of ban on compensation from City contractors. Any **current or** former City officer or employee may submit a request to the Commission for a waiver from the ban on receiving compensation from certain City contractors imposed by subsection 3.234(a)~~(3)(2)(A).~~ Such a request must be in writing and include information describing the name and business activity of the potential new employer of the **former** officer or employee; the contracts that the **former** officer or employee personally and substantially participated in awarding to his or her potential new employer during the 12 months prior to the officer's or employee's **acceptance of employment or receipt of or entitlement to compensation; the exact nature of the officer or employee's participation in awarding those contracts; leaving City service;** and reasons why

imposing the restriction in subsection 3.234(a)(3)(2)(A) would cause extreme hardship for the *former* City officer or employee. The *former* City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her *former* department, board, commission, office, or unit of government.

(3) Consideration of waiver requests. The Ethics Commission shall consider, at its next regularly scheduled meeting, any request that meets the criteria set forth in subsections (a)(1) or (a)(2) of this Regulation, provided that such request is received at least two calendar weeks in advance of the meeting. The Commission shall not consider at its next meeting any waiver request that does not comply with this deadline. The *former City officer or employee individual* who has requested the waiver, or his or her representative, and a designated representative from the department, board, commission, office or unit of government of the *former City officer or employee individual*, may make a presentation to the Commission supporting or opposing the waiver request. The Commission may set reasonable time limits on such presentations in accordance with the Sunshine Ordinance and the Brown Act.

(4) Approval of waiver requests from permanent and one-year bans. The Commission shall not approve any request for a waiver from the permanent *and or* one-year bans made under subsection 3.234(c)(1)(a)(1)(E)(i) unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage. In making this determination, the Commission may consider: the nature and scope of the communications the *former City officer or employee individual* will have with his or her former department, board, commission, office, or unit of government; the subject matter of such communications; the former position held by the officer or employee; the type of inside knowledge that the *former City officer or employee individual* may possess; and any other factors the Commission deems relevant.

(5) Approval of waiver requests from ban on compensation from City contractors. The Commission shall not approve any request for a waiver from the ban on receiving compensation from certain City contractors made under subsection 3.234(c)(3)(a)(2)(B) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3)(2)(A) would cause extreme hardship for the *former City officer or employee individual*. In making this determination, the Commission may consider: the vocation of the *former City officer or employee individual*; the range of employers for whom the *former City officer or employee individual* could work; the steps the *former City officer or employee individual* has taken to find new employment; and any other factors the Commission deems relevant.

(b) Waivers for Former Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations.

(1) Waivers from the permanent and one-year bans. The Ethics Commission may waive the permanent bans on working or advising on particular matters and the one-year ban on communicating with former colleagues imposed by subsections 3.234(a)(1) and 3.234(a)(2) ~~3.234(a)(1)(A), (a)(1)(B) and (a)(1)(D)~~ for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the Commission's own initiative; at the request of the appointing authority of a member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association; or at the request of an individual a former City official or

employee who was appointed or is being considered for appointment to a board or commission to represent a profession, trade, business, union or association.

(2) Process for Granting Waivers. All waivers granted pursuant to subsection 3.234(c)(2) 3.234(a)(1)(E)(ii) must be made at a public meeting. Requests for waivers made by an appointing authority or a member of a board or commission ~~former City officer or employee~~ must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the restrictions are not waived; the ability of the commissioner or board member to engage in his or her particular vocation if the restrictions are not waived; and any other factors the Commission deems relevant.

~~(c)(3)~~ Notice. The Commission shall maintain a list of waivers granted under subsection 3.234(c)3.234(a)(1)(E)(ii) and post the list on the Commission's web page.

Regulation 3.234-5. Definitions

For the purposes of Section 3.234, the terms listed below shall mean:

(a) Department, board, commission, office or other unit of government for which a former City officer or employee served.

(1) The department, board, commission, office or other unit of government for which a **former** City officer or employee served shall be:

(A) the unit of City government that the officer or employee directly served ~~at the time he or she left City service~~, including any government unit to which the officer or employee was loaned; and

(B) any other unit of City government subject to the direction and control of the body of City government described in subsection (a)(1)(A) of this regulation.

(2) The following factors shall be used to determine the unit of government for which a former officer or employee directly served at the time the officer or employee left City service:

(A) the unit of government that controlled the budget, personnel and other operations related to the **former** officer's or employee's position;

(B) the department or agency on which the **former** officer's or employee's position is listed in the City's conflict of interest code (Article III, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code);

(C) whether the law creating a unit of government suggests that it is a separate entity; and

(D) any other factors the Ethics Commission deems relevant.

Example 1. The Board of Directors of the Municipal Transportation Agency oversees both the Department of Parking and Traffic and the Municipal Railway. A former employee of the Department of Parking and Traffic would be considered a former employee of the Department of Parking and Traffic and not of the Municipal Transportation Agency or the Municipal Railway. Although both the Department of Parking and Traffic and the Municipal Railway

~~are under the direction and control of the Municipal Transportation Agency's Board of Directors, the Charter sets up an organizational structure within the Municipal Transportation Agency so that both the Department of Parking and Traffic and the Municipal Railway function as separate departments. In contrast, a member of the Board of Directors of the Municipal Transportation Agency would be considered to have served both the Department of Parking and Traffic and the Municipal Railway because both the Department of Parking and Traffic and the Municipal Railway are under the direction and control of the Municipal Transportation Agency's Board of Directors.~~

Example 1. The General Services Agency (GSA) is comprised of a broad array of departments, divisions, programs, and offices reporting to the Office of the City Administrator. Among the departments under GSA's oversight is the Department of Technology (DT). A former employee of DT would be considered a former employee of the DT and not of GSA or the other departments under GSA's control. Although DT is under the direction and control of GSA, DT and the other departments under GSA function as separate departments. In contrast, a former employee in the City Administrator's Office would be considered to have served GSA and DT and all other departments under GSA because all those departments are under the direction and control of the City Administrator.

Example 2. A former employee of the Bureau of Street Use and Mapping at the Department of Public Works would be considered a former employee of the Department of Public Works. Although the Department of Public Works is divided into several different bureaus, the Director of Public Works is responsible for the budget, personnel and operations of each bureau; positions within the Bureau of Street Use and Mapping are listed in the City's conflict of interest code under the Department of Public Works; and the laws creating the Department of Public Works do not suggest that each bureau is a separate department.

(b) Direct and Substantial Interest in a Particular Matter.

The City has a direct and substantial interest in a particular matter if the City is the subject of the proceeding or transaction or would be significantly affected by the result of the proceeding or transaction. If it is unclear whether the City has a direct and substantial interest in a particular matter, the Commission shall consider the importance of the City's interest in the matter; the potential impact the outcome of a matter will have on these interests; as well as any other factors the Commission deems relevant.

Example. An investigator in the City Attorney's Office participated personally and substantially in preparing the City's case against a landlord who was in violation of several of the City's building code regulations. After the investigator leaves City employment, leaving the City, a private attorney representing the tenants of the landlord being sued by the City wishes to hire the former investigator to help with a lawsuit brought against the landlord by the tenants. The former investigator may not assist the private attorney in the lawsuit. Although the City is not a subject of the lawsuit, the City has an important interest in the outcome of a case that involves the same party and facts. Results in the tenants' lawsuit could affect the City's lawsuit. But if the City's case against the landlord has ended, the City no longer has a direct and substantial interest in the tenants' lawsuit, and the investigator may assist the private attorney, provided that this does not violate other restrictions such as the prohibition on the use of confidential information.

(c) Intent to influence.

(1) A ***current or*** former City officer or employee acts with an intent to influence when he or she communicates for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.

(2) A ***current or*** former City officer or employee does not act with an intent to influence for the purposes of section 3.234 when:

(A) his or her communications involve only routine requests for information such as a request for publicly available documents;

(B) he or she participates as a panelist or speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;

(C) he or she attends a general informational meeting, seminar, or similar event;

(D) he or she communicates with the press; or

(E) he or she seeks to influence an action that is solely ministerial, secretarial, manual or clerical.

Example 1. While with the City, an employee of the Department on the Environment drafted a report on one of the City's energy conservation programs. Two months after leaving the City, the former employee's new employer decides it would like to participate in the program and would like a copy of the report and information related to what documents it needs to file in order to be eligible to participate in the program. The former employee may contact the Department on the Environment to request a copy of the report and may ask general questions related to what documents must be filed to participate in the program because such communications involve only routine requests for information and are not made with an intent to influence.

Example 2. A former member of the Port Commission is hired by a shipping company three months after leaving City service. The shipping company is interested in bidding on the rights to develop one of the City's piers but will be unable to meet the City's deadline for submitting development proposals. The former member of the Port Commission may not contact employees at the Port to seek an extension on the deadline for submitting proposals. Such communications would be made with an intent to influence because they would be made for the purpose of delaying a government decision. **Similarly, if the shipping company submits a development proposal to the Port, the former member of the Port Commission may not be listed as a participant in the proposal because the communication would be made for the purpose of influencing the governmental decision regarding which company will be the winning bidder.**

(d) Particular Matter. A particular matter involves a specific proceeding affecting the legal rights of parties or an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, applications, requests for rulings, litigation, or investigations. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other actions of general application are not particular matters. **Two matters are the same matter if they involve the same facts or related issues, involve the same or related parties, and relate to the same confidential information or legal issues. Two matters are not the same merely because the second matter is related to or arises out of the first matter, if they involve different parties, different subject matters or different factual and legal issues.**

Example 1. A Civil Service Commission employee participated in drafting a rule related to outside employment. Two years after she terminated her employment with the City, one of the City's unions asked the former employee to represent one of its members before the Civil Service Commission on a matter that involved applying the outside employment rule. Because the original rulemaking process did not involve a particular matter, the permanent post-employment restrictions would not prohibit the former employee from representing the union member in this matter.

Example 2. While with the City, an employee in the Assessor's office participated personally and substantially in the assessment of a new office building. After the employee retired, the owner of the office building asked the former employee to represent the owner in an appeal to the Assessment Appeals Board challenging the previous assessment. The former employee may not represent the owner of the office building before the Assessment Appeals Board because she has already participated personally and substantially in the assessment, which is a particular matter because it involved an isolated transaction between identifiable parties.

Example 3. While with the City, an employee in the Department of Parking and Traffic personally and substantially participated in reviewing proposals for a contract to perform maintenance work on the City's parking meters. Two years after the employee terminated his service with the City, the company that received the maintenance contract offered the former employee a job overseeing a team of workers that performs maintenance work under the contract. The former employee may perform work related to the implementation of the contract because implementation of the contract is not the same matter as making the contract. Although the work involves the same contract and the same parties, implementation involves different factual and legal issues than the making of the contract.

Example 4. A month after the employee in Example 3 started with his new company, a dispute arose over the monthly payment the City owed under the contract. The dispute involved the interpretation of some of the terms in the company's initial proposal to the City. Because the dispute involves the same parties, facts, legal issues and confidential information about a matter in which the former employee participated personally and substantially while with the City, the award of the contract and subsequent dispute of the meaning of the contract are considered the same matter. The employee may not perform work or provide assistance to his new company related to the contract dispute.

(e) Participate personally and substantially. Participate personally means to participate directly, and includes the participation of a subordinate when the subordinate is under the direction and supervision of an officer or employee. Participate substantially means that the officer's or employee's involvement is, or reasonably appears to be, significant to the matter. Significant to the matter requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participate substantially relates not only to the effort devoted to a matter, but also to the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial.

Example 1. An employee of the Department of Building Inspection did not perform the actual investigation of possible code violations at the remodeling of an apartment complex but was responsible for reviewing and approving the investigation report that her subordinates drafted and presented to the Building Inspection Commission. Although she did not do the actual

investigation, the employee ~~would be deemed to have~~ **did** participated personally and substantially. The employee participated personally in the investigation because she directed and supervised the work of her subordinates. The employee participated substantially in the investigation because her approval of the investigation report was a critical step in the matter.

Example 2. An employee of the Arts Commission is responsible for serving as the contact person for grant applicants for a particular City grant program. The employee's responsibilities include providing basic information to the grant applicants related to deadlines and required application documents as well as gathering all application packets and providing copies of such packets to the grant program's selection committee. The employee ~~would not be deemed to have~~ **did not** personally and substantially participated in awarding the grants to the eventual recipients for the purpose of the permanent post-employment bans. The employee's participation in awarding the grants was not personal because his actions did not directly relate to the award of the grant. His participation was not substantial because his actions merely related to administrative and peripheral issues.

~~(f) Same Matter. Two matters are the same matter if they involve the same facts or related issues, involve the same or related parties, and relate to the same confidential information or legal issues. Two matters are not the same merely because the second matter is related to or arises out of the first matter, if they involve different parties, different subject matters or different factual and legal issues.~~

~~*Example 1.* While with the City, an employee in the Department of Parking and Traffic personally and substantially participated in reviewing proposals for a contract to perform maintenance work on the City's parking meters. Two years after the employee terminated his service with the City, the company that received the maintenance contract offered the former employee a job overseeing a team of workers that performs maintenance work under the contract. The former employee may perform work related to the implementation of the contract because implementation of the contract is not the same matter as making the contract. Although the work involves the same contract and the same parties, implementation involves different factual and legal issues than the making of the contract.~~

~~*Example 2.* A month after the employee in Example 1 started with his new company, a dispute arose over the monthly payment the City owed under the contract. The dispute involved the interpretation of some of the terms in the company's initial proposal to the City. Because the dispute involves the same parties, facts, legal issues and confidential information about a matter in which the former employee participated personally and substantially while with the City, the award of the contract and subsequent dispute of the meaning of the contract are considered the same matter. The employee may not perform work or provide assistance to his new company related to the contract dispute.~~

~~(fg) Termination of City Service. For the purpose of the permanent ban on switching sides in section 3.234(a)(1), an An officer or employee terminates his or her service with the City when he or she has permanently separated from the City.~~

Example 1. A city employee does not permanently separate from the City until she has signed her separation forms. Accordingly, a City employee at the Department of Health who takes vacation time during her final two weeks with the City has not terminated her service with the City. Even though this employee is no longer performing any work at the Department of Health,

she has not terminated her service with the City until the two-week vacation is over, and she has signed her separation forms.

Example 2. An employee in the Mayor's office takes a six-month leave of absence to finalize a screenplay she has been writing in her spare time. During her leave, this employee has not terminated her service to the City because she is on only a temporary leave of absence and has not permanently separated from the City.

Example 3. A member of the Fire Commission submits a letter of resignation to the Mayor with a future effective date. The officer terminates his service with the City on the date the resignation is effective, not on the date the letter is provided to the Mayor, because the date on which the resignation is effective is when the officer permanently separated from the City.

(g) Termination of Service to a Particular Department or Other Unit of the City. For the purpose of the one-year ban on communications in section 3.234(a)(2), an officer or employee terminates his or her service to the particular department, board, commission, office or unit of government when he or she: (a) terminates his or her service with City, as defined in subsection (f) of this Regulation; (b) takes a leave of absence from his or her department, board, commission, office or unit of government; or (c) transfers to or begins employment with another City department, board, commission, office or unit of government .