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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: June 7, 2011

To: Members, Ethics Commission

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

Re: Request for Waiver from Post-Employment Ban

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Doug Shoemaker, the Director of the Mayor's Office of Housing (MOH), has submitted a request for waiver from San Francisco Campaign and Governmental Conduct Code (C&GC Code) section 3.234(a)(3), in order that he may take a job as President of Mercy Housing California, a non-profit housing organization located in San Francisco. For the reasons discussed below and set forth in Mr. Shoemaker's letter, as well as the letters of the Mayor and the Deputy Director of MOH supporting the waiver request, staff recommends that the Commission grant the waiver. Mr. Shoemaker will attend the Commission's June 13, 2011 meeting to address any questions from the Commission.

## Background

According to its website, the mission of the MOH is to provide financing for the development, rehabilitation and purchase of affordable housing in San Francisco. As the City's housing finance agency, MOH guides and coordinates the City's housing policy. It administers a variety of programs – through loans and grants – to finance the development of affordable housing by non-profit and for profit developers, provides financial and educational assistance to first-time homebuyers, and finances housing rehabilitation costs for low-income homeowners. MOH is also responsible for monitoring and ensuring the long-term affordability and physical viability of the City's stock of affordable housing.

In addition, MOH's Community Development Division administers the federally-funded Community Development Block Grant (CDBG) program, which provides decent housing, suitable living environments, and economic development opportunities principally for persons of low- and moderate-income. MOH also administers programs to prevent homelessness and to enable homeless individuals and families to move toward independent living.

## Relevant Law

C&GC Code section 3.234(a)(3) provides the following:

*No current or former 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.*

Section 3.234(a)(3) ensures that City contracts are awarded on a fair and impartial basis by prohibiting any officer or employee who personally and substantially participates in the award of a contract from obtaining employment with the contracting party for one year. (Sections 3.234(a)(1) and (2) separately prohibit former City employees and officers from lobbying their former colleagues for one year or switching sides and taking positions against the City in particular matters. Mr. Shoemaker is not seeking a waiver from these two restrictions.)

The Commission may grant a waiver from the ban on employment with City contractors if it “determines that imposing the restriction would cause extreme hardship” for the individual. See C&GC Code § 3.234(c)(3). In making this determination, the Commission may consider: the vocation of the individual; the range of employers for whom the individual could work; the steps the individual has taken to find new employment; and any other factors the Commission deems relevant. See EC Regulation 3.234-4(a)(5).

## Discussion

Mr. Shoemaker states that as part of his job as department head of MOH, he approves 150-175 grants and loans each year. He signs contracts, loan documents and grant agreements for some 80-90 organizations annually. In the past year, he has approved five contracts with Mercy Housing. Because he “participated personally and substantially in the award of the contracts” by virtue of signing the agreements, he may not accept employment with the Mercy Housing unless the Commission waives the ban in section 3.234(c)(3). See Ethics Commission Regulation 3.234-5(e) (the “single act of approving [a contract] may be substantial”). The Commission may grant his waiver request if the Commission determines that imposing the ban would cause extreme hardship for him.

Staff believes that imposing the ban would cause extreme hardship for Mr. Shoemaker. As he explains in his letter, Mr. Shoemaker has worked in the field of non-profit affordable housing throughout his professional career. Because most, if not all, local non-profit organizations in his field have contractual relationships with MOH, for him to seek employment with any of them would pose the same conflict and would require the same waiver request.

Mr. Shoemaker adds that the non-profit affordable housing field is small, so there are relatively few opportunities for employment, particularly in the City where he and his family reside, work and attend school. Staff believes that Mr. Shoemaker may suffer financial as well as professional hardship because he will be unable to pursue his chosen career path if he cannot take the position offered to him by Mercy Housing. As stated in the letter from the Mayor, Mr.

Shoemaker “is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government.”

Mr. Shoemaker states that he has not taken any action to influence Mercy Housing to offer him a position. Nor has he signed any contracts or made any decisions regarding its funding since he began talks about possible employment with the organization. Instead, as indicated in the two letters supporting his waiver request, all decisions related to Mercy Housing have been delegated to the Deputy Director of MOH during that period.

The post-employment restriction in section 3.234(a)(3) was designed to prevent corruption, favoritism or inappropriate influence in the City’s contracting process. There is no apparent risk of any of those harms here. Moreover, the prohibition would cause undue hardship to Mr. Shoemaker for the reasons discussed above and in his letter. For these reasons, staff recommends that the Commission grant the waiver.

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May 16, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

FILED  
2011 MAY 25 PM 2:37  
SAN FRANCISCO  
ETHICS COMMISSION

BY \_\_\_\_\_

Commissioners,

I write seeking a waiver from the Ethics Commission so that I may accept an offer of employment from Mercy Housing California, a non-profit housing organization located in San Francisco. I currently serve as the Director of the Mayor's Office of Housing (MOH), which provides loans and grants to approximately 80-90 organizations annually. I am asking for a waiver because among the 150-175 grants and loans I approve each year as a department head, I have approved 5 contracts to Mercy Housing California in the past year.

After five very rewarding years with the City, I would like to return to private work in the field of non-profit affordable housing, which has been my sole area of employment during my professional career. Prior to joining MOH, I worked for 5 years at the Non-Profit Housing Association and 5 years at Mission Housing Development Corporation. As I will explain in more detail below, I am seeking the waiver because my current position results in similar contracting conflicts for nearly all potential employers in my field. As such, it would be a financial hardship for me if this waiver were denied.

I seek a waiver specifically from Campaign & Governmental Conduct Code section 3.234(a)(3)), which limits employment with City contractors. I am not seeking a waiver of any other portion of the Government Ethics Ordinance. If the waiver is granted, I understand that I will not be allowed to communicate with MOH for at least the 12 months required by law, nor may I involve myself in any matters that I am currently party to as the Director of MOH.

I am painfully aware of the appearance of a conflict of interest. I can assure the Commission that I have taken no actions to create a financial windfall for myself nor have I sought in any way to use my current position to coerce or otherwise influence Mercy Housing to offer me employment. Since I began discussions with Mercy, I have not signed any contracts or made any decisions regarding their funding. While the contracts I have signed with Mercy are important to their mission, they do not represent a disproportionately significant source of operating income to the organization, which currently provides affordable housing to over 23,000 people.

The Mayor's Office of Housing provides loans and grants to non-profit housing and community development organizations. In that capacity, I sign contracts, loan documents and grant agreements for 80-90 organizations annually. So, while I specifically seek a waiver only to accept the offer from Mercy Housing, I have similar conflicts with nearly all of the private

companies and non-profit organizations in my field. I would note that I was recruited to MOH in large part because of my deep background in affordable housing development and finance.

My chosen field is relatively small, so there are relatively few opportunities for employment. In the past two years, I have been aware of only three director-level positions in all of the Bay Area. All three of these positions had the same conflict of interest as the Mercy Housing position. The only other positions I have considered would have required relocation to New York City or Washington, D.C. Ultimately my wife and I decided not to pursue these options, in part because it would have forced her to leave her job at San Francisco General Hospital.

I have been offered the position of President of Mercy Housing California, a position that has not been vacant in the past 20 years. I feel a deep connection to the organization's mission to provide housing and services to those most in need. Their work is focused on providing affordable housing with services to fixed-income seniors, homeless individuals and lower income families. The organization is statewide with offices in San Francisco, Sacramento, and Los Angeles, so it would be possible for me to perform the job of President without being involved on work in San Francisco for the next 12 months.

The Government Ethics Ordinance requires that I describe the contracts which necessitate this request. I have asked MOH's Chief Financial Officer, Gigi Whitley, to review our records for any contracts that I signed in the past 12 months, and she found 5 contracts with Mercy Housing California. I did not approve any of these contracts while I was negotiating employment with Mercy Housing. Four of the contracts are loan agreements to develop or repair affordable housing. As is typical for MOH loans to housing developers, these loans require that Mercy Housing provide housing affordable to low income residents for 55 years.

The specific details of each contract follows:

- 1) Sunnydale predevelopment loan (signed June 2010)—this specific contract provides predevelopment funding to develop plans for the rebuilding of the Sunnydale public housing development. The San Francisco Housing Authority awarded the Sunnydale project to a joint venture of Mercy Housing California and the Related Companies in 2008. In 2010 the Citywide Loan Committee, of which I am a member, recommended funding for this project and the Mayor accepted their recommendation. The Citywide Loan committee reviews all applications for funding of affordable housing in the city and is comprised of representatives of the Mayor's Office of Housing, the Department of Public Health, the Human Services Agency and the San Francisco Redevelopment Agency. Prior to Loan Committee action, I was directly involved in underwriting this project. This loan will be fully expended by the end of the year.
- 2) Sunnydale services grant (signed August 2010)—this contract was provided to Mercy Housing to provide social services to the residents of Sunnydale. The grant was the

result of a recommendation in March 2010 by the Citizens Committee on Community Development to then-Mayor Gavin Newsom. The grant was additionally ratified by the Board of Supervisors in May 2010 along with over 100 other grants as part of the annual "Accept and Expend" resolution for the Community Development Block Grant. This grant will be fully expended by the end of the year. As is the case with the Sunnydale predevelopment loan, I was actively involved in the decision making on this grant.

- 3) Phelan Loop Affordable Housing construction loan (committed in July 2010) -- This affordable housing development for families and emancipated foster youth was awarded to Mercy Housing California and Bernal Heights Community Center via a competitive Request for Proposals/Qualifications in 2009. MOH and Human Rights Commission staff reviewed the proposals, and I accepted their recommendation to award the project to Mercy and Bernal Heights. Following the same process as the Sunnydale loan, the Citywide Loan Committee recommended funding in July 2010. Because the project has not yet started construction, this loan has not yet been expended.
- 4) Seismic Safety loan to the Arlington Hotel (signed November 2010). The Arlington is an affordable single room occupancy (SRO) hotel in the Tenderloin. Because it is an unreinforced masonry building, the City required that it be seismically retrofitted, an expense that could not be paid from the low rents charged at this property. In order to preserve this housing, MOH staff made a recommendation for funding to the Seismic Safety Loan Committee, which then recommended funding to the Mayor. I was actively involved in the decision to fund this project.
- 5) Permanent Loan to Edith Witt Senior Housing (signed December 2010). MOH made a very small loan to this project, which has been fully expended. Unlike the other contracts, the decision to fund this project was made before I became Director. Even though my role in this contract was minimal, I understand that the restriction in Section 3.234(a)(3) applies because I signed the contract in my role as department head.

In closing, I hope you will grant this waiver. When I took this job five years ago, I fully expected to leave San Francisco when I was done. Fortunately, my daughter made it into a great public school, my wife got a job at San Francisco General Hospital, and we were able to buy a home here in the city. I have deeply appreciated the opportunity to serve San Francisco during my time in government and want to keep serving the city by working in the non-profit housing sector again. I hope you will give me that opportunity.

Sincerely,



Doug Shoemaker



Edwin M. Lee

2011 MAY 25 PM 2:37  
SAN FRANCISCO  
ETHICS COMMISSION

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

BY \_\_\_\_\_

Subject: Waiver Request for Doug Shoemaker

Dear Commissioners:

I am writing in support of Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. Mr. Shoemaker came to me immediately after he was offered this position and explained his desire to seek this waiver. I have read Mr. Shoemaker's letter to the Ethics Commission, and I believe he has demonstrated why a waiver in this circumstance is appropriate.

As Mayor, we seek people like Mr. Shoemaker to serve in government because they have a deep experience and connection to our communities. As Director of the Mayor's Office of Housing (MOH), he signs contracts with virtually every affordable housing developer and many of the community based non-profits that work in San Francisco. As such, he is faced with the unenviable choice of leaving the field of affordable housing or leaving our City in order to accept work outside of government. From my perspective, I would prefer that people like Doug stay in San Francisco and make use of their experience in the non-profit sector.

In regard to decision-making and the specifics of his request, I am confident that Mr. Shoemaker has maintained the highest ethical standards in regard to the Government Ethics Code. In consultation with me, he has delegated decision-making and contract approvals in regard to Mercy Housing to his Deputy Director, Dariush Kayhan. I can also confirm that the affordable housing loans and community development grants that Mr. Shoemaker has signed have been through a rigorous public review process that ensures that there is no opportunity for a public employee to affect future employment opportunities.

As a long-time public servant, I am extremely cognizant of how real and perceived conflicts of interest can affect how our citizens view government. I would not support this request if I were not confident that Mr. Shoemaker has and will continue to take every appropriate measure to look after the interests of the City and County of San Francisco. In closing, I respectfully hope that you will grant his request.

Sincerely,

A handwritten signature in cursive script that reads "Edwin M. Lee".

Edwin M. Lee  
Mayor



**MAYOR'S OFFICE OF HOUSING  
CITY AND COUNTY OF SAN FRANCISCO**



FILED  
2011 MAY 25 PM 2:37  
SAN FRANCISCO  
ETHICS COMMISSION  
EDWIN M. LEE  
MAYOR  
BY \_\_\_\_\_  
DOUGLAS SHOEMAKER  
DIRECTOR

May 24, 2011

San Francisco Ethics Commission  
25 Van Ness Avenue, Suite 220  
San Francisco, CA 94102

Commissioners,

I am writing in regard to Doug Shoemaker's request for a waiver from the Ethics Commission to accept a position with Mercy Housing California. As the Deputy Director of the Mayor's Office of Housing (MOH), I felt it was appropriate to provide the Ethics Commission with independent information about how we have handled the potential conflicts of interest regarding Mr. Shoemaker and Mercy Housing.

At Mr. Shoemaker's request, I have handled all of the decision making and contracting issues related to Mercy Housing since I started at MOH on February 28, 2011. I have assumed his duties on the Citywide Loan Committee as well as oversight of project management staff working on Mercy Housing developments.

I also wanted to provide more information regarding the loans made to Mercy Housing California. Like other MOH development funding, these loans are specifically for expenses related to development: principally construction costs, land acquisition, architectural services, and project management. Each of the loans is available only to the individual project and cannot be used by the parent organization as a source of funding for costs unrelated to the project. Once a development is completed, any unspent funds are returned to MOH.

If you have any questions related to the existing loans or MOH's ongoing operations, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dariush Kayhan".

Dariush Kayhan

Deputy Director