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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: November 7, 2011

To: Members, Ethics Commission

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

Re: Request for waivers from post-employment restrictions

Tiffany Bohee, a former employee with the Office of Economic and Workforce Development ("OEWD"), has asked the Ethics Commission to grant her waivers from two post-employment restrictions set forth in San Francisco Campaign and Governmental Conduct Code sections 3.234(a)(1) and (a)(2). For the reasons set forth in Ms. Bohee's letter, staff recommends that the Commission grant both waivers. However, with respect to the one-year ban on communications with the OEWD, staff recommends that it be granted only insofar as Ms. Bohee's communications with her former department are made on behalf of Redevelopment Agency of the City and County of San Francisco ("SFRA"). Ms. Bohee will attend the Commission's November 14th meeting in order to address any questions the Commission may have.

Background

Ms. Bohee left her position with the OEWD on October 17 to serve as the Interim Executive Director of the SFRA. The SFRA is an entity legally separate from the City and County of San Francisco authorized and organized under state law. While the SFRA is not a City agency, it exists solely to perform certain functions exclusively for and as authorized by the City. It operates primarily in redevelopment project areas designated by the Board of Supervisors. In accordance with state law, it works to improve the environment of the City and create better urban living conditions for City residents. As Ms. Bohee states in her request, the OEWD functions "to support the ongoing economic vitality of the City by providing citywide leadership for workforce development, business attraction and retention, neighborhood commercial revitalization, international business and development planning."

Ms. Bohee seeks waivers so that she may perform her duties in her new position at SFRA that involve the same matters that she handled while she was at the OEWD. At the OEWD, Ms. Bohee worked only on redevelopment matters and managed certain aspects of the Hunters Point Shipyard-Candlestick Point development project, which is located in two redevelopment project areas under the jurisdiction of the SFRA. Over many years, the City and the SFRA have engaged in an effort to develop this area of the City. Because of the similar nature of their missions, staff at both the OEWD and

SFRA work closely and cooperatively together to advance their parallel goals on this redevelopment project and others throughout the City.

As the Interim Executive Director of the SFRA, Ms. Bohee is responsible for “promoting community, economic and physical development of the City’s blighted neighborhoods,” including projects located in the redevelopment areas where she worked as an employee of OEWD. Because of the similarity of interests between the OEWD and SFRA in furthering economic development in San Francisco, Ms. Bohee believes that there would no danger of undue influence or unfair advantage were the Commission to grant the waivers. As shown by the attached email, Jennifer Matz, the Director of the OEWD, also supports her request for the waivers.

Relevant Laws

The first post-employment restriction at issue is the permanent restriction on representation in certain matters, set forth in subsection 3.234(a)(1):

- (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.

The second post employment restriction at issue here is a one-year ban on communicating with the officer’s or employee’s former department. Subsection 3.234(a)(2) states:

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.

Under section 3.234(c), the Commission may waive the restrictions established by these two subsections if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. A request for a waiver must be in writing and include information describing the former position held by the employee; the particular matter for which the waiver is sought; the individual's prior involvement in the matter, if any; and reasons why granting a waiver would not create the potential for undue influence or unfair advantage. Ethics Commission Reg. ("EC Reg.") 3.234-4(a)(1). The Commission may not approve any request for waiver from the permanent or one-year bans 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 individual will have with his or her former department, the subject matter of such communications, the former position held by the employee, the type of inside knowledge that the individual may possess, and any other factors the Commission deems relevant. EC Reg. 3.234-4(a)(5).

Discussion

Ms. Bohee is seeking a waiver from the permanent ban on switching sides in section 3.234(a)(1) in order to continue her personal involvement in a legislative package that will likely be presented to the Board of Supervisors and the Mayor for their approval in the near future. The legislative package addresses the ongoing funding of the SFRA, in light of recent state legislation that dissolves redevelopment agencies. The legislative package includes a reimbursement agreement between the City and the SFRA, under which the SFRA would pay the City for its costs in maintaining redevelopment activities. Ms. Bohee states that in formulating the legislative package, including the reimbursement agreement, the City and SFRA have not taken adverse positions to one another because they both have the same goals in ensuring that redevelopment projects can continue. Because the City's and SFRA's interests "are already perfectly aligned, and the OEWD's and SFRA's relationship will continue to be cooperative and non-adversarial," Ms. Bohee states "there is no opportunity for undue influence or advantage in her further work on this legislation,"

Staff has no reason to doubt that the interests of the City and the SFRA are mutually aligned for the purposes of the pending legislation. Nor does staff believe that there will be opportunity for undue influence when the matter comes before the Board or the Mayor for approval. For these reasons, and because of the general overlapping interests between the City and the SFRA, staff recommends approval of the waiver from the restrictions of subsection 3.234(a)(1) so that Ms. Bohee may continue to work on the pending legislative package that would fund redevelopment activities in San Francisco.¹

¹ Section 3.234(a) bans certain communications that are made "in connection with a particular matter." Ethics Commission Regulation 3.234-5(d) defines "particular matter" as follows: "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

Ms. Bohee is also seeking a waiver from the one-year ban on communications with her former department, set forth in subsection 3.234(a)(2). Ms. Bohee anticipates that as the Interim Executive Director of the SFRA, she will be in contact with many of her former colleagues at the OEWD to discuss redevelopment-related matters. With respect to this waiver, staff agrees that in general, given the OEWD's and the SFRA's common interests in local redevelopment projects, granting the waiver would not create the potential for undue influence or unfair advantage. The one-year post-employment communications ban was enacted to protect the integrity of government decision-making by preventing a public employee from using her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public. Since Ms. Bohee's work for the SFRA would advance the City's interests as much as the SFRA's, there is no reason to believe that her communications made on behalf of the SFRA would result in undue influence or unfair advantage. However, staff recommends that the waiver be limited to Ms. Bohee's communications on behalf of the SFRA, and that the waiver not extend to communications made to influence governmental decisions on behalf of other persons or entities.

For the reasons discussed above, staff recommends approval of the request for a waiver from subsection 3.234(a)(1) and approval of a limited waiver from subsection 3.234(a)(2).

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application are not particular matters.” Because an agreement between the City and SFRA is part of the legislative package at issue here, staff believes that the ban in section 3.234(a)(1) applies, although the ban would not apply if the legislation were exclusively a matter of general application.

October 28, 2011

John St. Croix
Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Dear Mr. St. Croix:

I respectfully request that the San Francisco Ethics Commission grant me a waiver with respect to Sections 3.234(a)(1) and 3.234(a)(2) of the San Francisco Campaign and Governmental Conduct Code. For the last five years, I was employed by the City's Office of Economic and Workforce Development ("OEWD"). The mission of OEWD is to support the ongoing economic vitality of San Francisco by providing citywide leadership for workforce development, business attraction and retention, neighborhood commercial revitalization, international business and development planning. At OEWD, I managed the entitlements, negotiations, and implementation of the Hunters Point Shipyard-Candlestick Point development project, which is located in two redevelopment project areas, the Hunters Point Shipyard redevelopment project area and the Bayview Hunters Point redevelopment project area. Because these areas are under the jurisdiction of the Redevelopment Agency of the City and County of San Francisco ("SFRA"), OEWD staff work closely and cooperatively with SFRA to move these projects forward.

As of October 17, I have left my employment with OEWD and am currently the Interim Executive Director of SFRA. In this role, I am responsible for promoting community, economic and physical development in the City's blighted neighborhoods, including the Hunters Point Shipyard and Bayview Hunters Point redevelopment areas. In other words, I will continue to work on many of the same projects that I worked on while at OEWD, although I will now do so as the Executive Director of SFRA.

While SFRA is a legally separate entity from the City, it is closely tied to the City in many respects. For example, the Board of Supervisors and the Mayor approve SFRA's annual budget and any legislation that may be required to effectuate SFRA's redevelopment program in accordance with California Redevelopment Law or the City's Codes. In addition, SFRA's mission largely serves the City of San Francisco and its citizens by producing much-needed economic growth, jobs, tax revenues, and housing, including significant affordable housing in San Francisco's most distressed urban areas.

To continue working on the redevelopment projects important to the City's economic future, and because my former position at OEWD would not provide me with any undue influence or advantage, it would be appropriate for the Ethics Commission to grant a waiver of the prohibitions found in Sections 3.234(a)(1) and 3.234(a)(2).

First, with respect to Section 3.234(a)(1), the permanent restriction on representation in particular matters, I will require a waiver to continue my personal involvement in a legislative package, including a reimbursement agreement between the City and SFRA, that will likely be presented to the Board of Supervisors and Mayor for their approval in the near future. This legislative package would ensure that redevelopment programs and activities in San Francisco continue in light of the recent state legislation that dissolves redevelopment agencies, but establishes a replacement redevelopment program whereby cities or counties must make, to continue redevelopment activities, an annual payment for the benefit of the local school districts and other taxing entities ("Community Remittance").

The City has already indicated its intent to participate in the replacement redevelopment program. On August 2, 2011, the Board passed and on August 3, 2011 the Mayor approved Resolution No. 350-11, expressing the City's intent to enact an ordinance committing the City to make the Community Remittance. The state legislation authorizes, but does not require, redevelopment agencies to reimburse cities or counties for payment of the Community Remittance. The California Supreme Court is reviewing the constitutionality of the legislation; a decision is expected in January 2012. Pending that decision, most elements of the replacement redevelopment program are on hold.

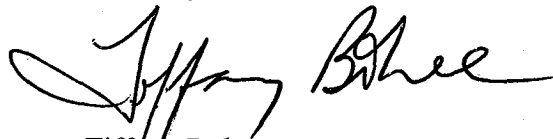
In formulating this legislative package, the City and SFRA have not taken adverse positions to one another, because they both have the same goals in ensuring that redevelopment projects can continue. In general, SFRA and the City work closely on all matters related to economic development, increasing the City's housing supply for all income ranges with a key focus on very low, low, and moderate incomes, and neighborhood revitalization, and this legislation is no different. Further, there is no opportunity for undue influence or advantage in my further work on this legislation. The City's and SFRA's interests are already perfectly aligned, and the OEWD's and SFRA's relationship will continue to be cooperative and non-adversarial.

Second, with respect to Section 3.234(a)(2), the one-year restriction on communicating with my former department, OEWD, there is no potential for any undue influence or unfair advantage to myself or SFRA. I anticipate that I will continue to communicate with my former colleagues at OEWD on the legislation discussed above, as well as many other redevelopment-related issues and projects. A waiver for those communications would also be appropriate because both SFRA and OEWD work cooperatively together to serve the interests of the City and all of its citizens with respect to all of the redevelopment projects in San Francisco.

I have submitted a copy of this waiver request to my former employer, Jennifer Matz, Director of the Office of Economic Development. I would welcome the opportunity to answer any questions or provide any additional information that may be needed for the Commission's favorable consideration of this waiver request at the next regularly scheduled meeting, which is on November 14.

Thank you for your consideration of this request.

Sincerely,



Tiffany Bohee

Cc: Jennifer Matz, Director, Office of Economic and Workforce Development
Mabel Ng, Deputy Director, Ethics Commission

From: Jennifer Entine Matz/MAYOR/SFGOV
To: John St.Croix/ETHICS/SFGOV@SFGOV, Mabel Ng/ETHICS/SFGOV@SFGOV

Date: Monday, November 07, 2011 05:04PM
Subject: Tiffany Bohee

Greetings John and Mabel,

I understand Tiffany Bohee is applying for a wavier to City's the post employment restrictions and that the Ethics Commission will be hearing this matter at its meeting on November 14th.

I am writing to let you know that I fully support the granting of this waiver for Tiffany. Please feel free to call or email me with any questions.

Best regards,

Jennifer

Jennifer Matz
Director
Office of Economic and Workforce Development
City Hall
1 Dr. Carlton B. Goodlett Place, Room 448
San Francisco, CA 94102-4689

Phone: (415) 554-6511
Fax: (415) 554-6018