



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: November 20, 2017

To: Members of the Ethics Commission

From: Kyle Kundert, Senior Policy Analyst  
Pat Ford, Policy Analyst

Re: **AGENDA ITEM 5 – Request from Kearstin Dischinger for waiver of postemployment restrictions in San Francisco Campaign & Governmental Conduct Code section 3.234(a)(2).**

**Summary:** This memorandum provides an overview and Staff's recommendation regarding a waiver request received from Kearstin Dischinger on November 7, 2017.

**Action Requested:** Staff recommends that the Commission deny the waiver request.

On November 7, 2017, the Ethics Commission received a written request from Kearstin Dischinger for a waiver from the one-year post employment communication restriction set forth in San Francisco Campaign & Governmental Conduct Code ("Code") section 3.234(a)(2). Ms. Dischinger has been notified that this matter is on the Commission's agenda for the November 27, 2017, meeting and has indicated she will attend the meeting to address any questions the Commission may have. Based on the analysis detailed below, Staff recommends that the Commission deny the waiver request.

### I. Background

Ms. Dischinger is a Project Manager with the non-profit BRIDGE Housing Corporation ("BRIDGE").<sup>1</sup> Until earlier this year, Ms. Dischinger was employed with the San Francisco Planning Department (the "Department"), Ms. Dischinger recites in her request that she left her position with the Department on June 29, 2017.<sup>2</sup> Ms. Dischinger was, most recently, employed with the Department as a Senior Community Development Specialist II.<sup>3</sup> Ms. Dischinger believes that she may be required to communicate with the Department in order to represent BRIDGE regarding a project known as the Balboa Reservoir project (the "Project").

<sup>1</sup> See Kearstin Dischinger Waiver Request at 1 – Attachment 1

<sup>2</sup> *Id.*; see *infra* Part III.B.

<sup>3</sup> *Id.* at 9.

Ms. Dischinger states that BRIDGE is a non-profit affordable housing developer based in San Francisco formed in response to concerns about high costs of housing. In August of 2017, BRIDGE was selected as the lead co-developer, along with AvalonBay Communities, through a competitive process managed by the City to build housing on the site of the Balboa Reservoir.<sup>4</sup> Fifty percent of all housing developed on the Balboa Reservoir site will be permanently affordable – BRIDGE is the lead developer for the affordable housing component of the Project.<sup>5</sup>

Ms. Dischinger states that “[o]ver the next several months and prior to the expiration of the one-year communication period, I will be involved in refining the project design, finalizing a project description to facilitate environmental impact review of the project under the California Environmental Protection Act (CEQA).”<sup>1</sup> Further, her “work will include participation in several team meetings including: a weekly project management team with staff from OEWD, Department, the SF PUC, BRIDGE and Avalon Bay meetings with the environmental planning staff on CEQA review; monthly meetings with the Balboa Reservoir CAC (BRCAC) to discuss project design and schedule”.<sup>6</sup> Finally, Ms. Dischinger has stated that her role will include and require the following:

1. Ongoing community outreach, including communications with BRCAC and other Community stakeholders.
2. Fiscal feasibility analysis – this effort will mostly be led by the PUC and OEWD, with limited participation by the Department.
3. Develop a legal description of the project, so the Department can initiate Environmental Review. The project description sets the boundaries for the project – ie. maximum number of units, maximum volume of project, and detailed description of transportation and public amenities to evaluate the environmental impact of the development.
4. Refine the initial proposal – regarding the schematic design, road design, park design, public benefits, etc. – with input from the community and City agencies including the Department

Ms. Dischinger has requested that the Ethics Commission grant her a waiver from the one-year restriction on communicating with her former department, set forth section 3.234(a)(2). In her waiver request, Ms. Dischinger also asks a specific question as to when her employment with the City terminated for the purpose of the one-year restriction. Ms. Dischinger states that granting the requested waiver will further the mutual interests of the City and BRIDGE’s non-profit clients in developing and preserving affordable housing in San Francisco. She anticipates the need to participate in meetings with the Department prior to the expiration of the one-year restriction on June 28, 2018. She also states that the waivers will not create the potential for undue influence or unfair advantage. The Directors of the Mayor’s Office of Housing and Community Development and Planning Department, Kate

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<sup>4</sup> See Kearstin Dischinger Waiver Request at Attachment 1.

<sup>5</sup> Id.

<sup>6</sup> Id. at 1, 4-5.

Hartley and John Rahaim, respectively, have communicated support for Ms. Dischinger' waiver request.

## **II. Applicable Law and Policy**

### **A. Policy Purpose of the City's Post-Employment Restrictions**

As established in the Code, "[g]overnment decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis."<sup>7</sup> The practice of former officers and employees communicating with their former colleagues on behalf of private interests "creates the potential for, and the appearance of, undue influence, favoritism, or preferential treatment."<sup>8</sup> Prohibiting former officers and employees "from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time will eliminate both actual and perceived undue influence, favoritism, or preferential treatment without creating unnecessary barriers to public service."<sup>9</sup>

Employees who leave public service with the City and County of San Francisco to work for private organizations whose work involves close interaction with CCSF enjoy comprehensive guidance from the City ethics laws.<sup>10</sup> These broad rules were designed to fulfill the City's stated goal to "eliminate both actual and perceived undue influence, favoritism, or preferential treatment" that can result when private interests with a stake in a governmental outcomes hire former government officials through an unrestricted revolving door between public and private sector employment.<sup>11</sup>

### **B. Post-Employment Restrictions & Waiver Analysis**

SF C&GCC section 3.234(a)(2) provides the following one-year restriction on certain communications:

No current or former officer or employee of the City and County, for one year after termination of her 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.

Ethics Commission Regulation 3.234-2 further informs the scope of the restriction contained in Code section 3.234(a)(2):

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<sup>7</sup> SF C&GCC § 3.200(e).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See SF C&GCC § 3.234.

<sup>11</sup> SF C&GCC § 3.200(e).

Subsection 3.234(a)(2) applies to attempts to influence any government decisions made by the department, board, commission, office or unit of government for which an officer or employee served, including decisions in which the 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.

The Commission may grant a waiver allowing for communication with the individuals' former department only "if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage."<sup>12</sup>

Ethics Commission Reg. 3.234-4(a)(4) provides that in determining whether granting a waiver would create the potential for undue influence or unfair advantage, the Commission may consider:

1. The nature and scope of the communications the individual will have with her former department,
2. The subject matter of such communications,
3. The former position held by the employee,
4. The type of inside knowledge that the individual may possess, and
5. Any other factors the Commission deems relevant.

### **III. Discussion**

#### **A. Post-Employment Communication Restriction Waiver**

Applying the five factors outlined in Regulation 3.234-4, Staff finds that granting Ms. Dischinger's waiver request would result in undue influence on a government decision. Staff discusses each of the five factors below.

##### *1. Nature and scope of communications*

We understand that Ms. Dischinger will be involved in refining the project design and finalizing a project description to facilitate environmental impact review of the project under the California Environmental Quality Act (CEQA).<sup>13</sup> Ms. Dischinger's work will include participation in team meetings with several public agencies, including the Department. The meetings will mostly be limited to discussions of project design and scheduling but could also include more specific discussions on transportation issues and site design.<sup>14</sup> As stated previously, the Project is a multi-year project with most of the formal decisions of the City and Ms. Dischinger's former department, if any, coming much later after the term of the restriction would have lapsed. Much of these communications will be in person, however it appears that Ms. Dischinger will not be communicating directly with Department employees with whom she previously worked. However, Some of Ms. Dischinger's communications, such as her summary of the

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<sup>12</sup> SF C&GCC § 3.234(c)(1).

<sup>13</sup> See Waiver Request at 4

<sup>14</sup> Id. at 5.

Project and her presentations to Planning Department staff, are likely to have an impact on how the Planning Department approaches the Project going forward.

Staff believes that, on balance, Ms. Dischinger's communications with her former Department, although limited, would create the potential for undue influence or unfair advantage. Because some of Ms. Dischinger's communications, such as her summary of the Project, her presentations to Planning Department staff, and her participation in the fiscal feasibility analysis and environmental review are likely to have an impact on how the Planning Department approaches the Project. BRIDGE has already been selected by the Department as a developer for the Project. However, the Project, as Staff understands it, requires numerous and ongoing approvals by the Department and numerous other City agencies. Thus, Ms. Dischinger will be participating in discussions and other communications that are likely to affect the Department's ongoing review and oversight of the Project. It seems that Ms. Dischinger's communications would largely be limited to scheduling, informational discussions and other procedural and administrative communications that attempt to coordinate the Project, but some of her activity goes beyond mere administrative tasks and relates to communications that may affect how the Department decides whether or not to grant certain approvals. This creates the potential for undue influence.

## *2. Subject matter of communications*

Ms. Dischinger states in her request that, as a staff level project manager, she will participate in numerous ongoing meetings, scheduled events, and public discussions on the Project. Specifically, her role will include fiscal feasibility analysis, environmental review analysis, proposal refinement and development of a project legal description for the initiation of environmental review by the Department.<sup>15</sup> As discussed above, the subject matter of these communications relate to not only the administration of the Project but also the environmental impact review and fiscal feasibility analysis, which would show the impact of Project's effect on the City and affect decisions made by the Department. As such, there is a risk of undue influence or unfair advantage.

## *3. Former position*

In her former position with the Department, Ms. Dischinger held various positions, including Planner II, Planner III, and, most recently, Senior Community Development Specialist II.<sup>16</sup> As Ms. Dischinger notes in her request, the Department is divided into a number of 'units' or 'divisions' with varying duties and responsibilities. The Citywide division is charged with long term planning and policy work. Her role in the Citywide Division included conducting research, developing policy and plan documents, working with community groups, staffing the Market and Octavia CAC, and staffing the interagency plan implementation committee.<sup>17</sup> Currently, the Citywide Division staffs the Balboa Reservoir CAC. The responsibilities of Citywide Division staff, however, are limited to an administrative role: setting up

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<sup>15</sup> Id. at 8

<sup>16</sup> See Id. 9.

<sup>17</sup> Id.

meeting times, providing notices, etc.<sup>18</sup> Thus, for this factor there is not a strong link between Ms. Dischinger's former position and her future communications with the Department. This does not appear to create a significant risk for undue influence or unfair advantage.

#### *4. Type of knowledge possessed*

Ms. Dischinger states in her request that "[d]uring [her] 12 years with the Department she did not work on or participate in any meetings about the Balboa Park Reservoir, the Public Sites Program, or the Balboa Park Station Area Plan."<sup>19</sup> She goes on to explain that she did "not work[] directly with any of the Department staff assigned to the Balboa Reservoir."<sup>20</sup> However, Ms. Dischinger notes that she has a general knowledge of the planning entitlement process and the planning code. Additionally, in her role with the Department, Ms. Dischinger also assisted in community outreach and engagement and presumably has extensive knowledge of how the Department engages in the citizen advisory committee process.

There appears to be a nexus between the knowledge that Ms. Dischinger gained while employed by the department and her role with BRIDGE. Ms. Dischinger will be participating in "[o]ngoing community outreach, including communications with BRCAC and other [c]ommunity stakeholders." Presumably she will also be employing her knowledge of the planning process when preparing project descriptions and otherwise communicating with the Department. This nexus indicates a risk for undue influence or unfair advantage.

#### *5. Other considerations*

Ethics Commission Regulation Section 3.234-4(a)(4) additionally allows for the Commission to evaluate "any other factors the Commission deems relevant".<sup>21</sup> Ms. Dischinger's makes several additional arguments in favor of her waiver request: 1) BRIDGE's interests are aligned with those of the City and the civic purposes which they are attempting to fulfill; 2) the Project is being reviewed by numerous City agencies; and 3) the Project has extensive public oversight, including by a local community advisory committee.

In evaluating these additional factors proposed by Ms. Dischinger, Staff makes reference to the policy objectives underlying the communication restriction: "[g]overnment decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis."<sup>22</sup> The practice of former officers and employees communicating with their former colleagues on behalf of private interests "creates the potential for, and the appearance of, undue influence, favoritism, or preferential treatment."<sup>23</sup> Prohibiting former officers and employees "from communicating orally, in

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 9-10.

<sup>20</sup> *Id.*

<sup>21</sup> EC Regulation § 3.234-4(4).

<sup>22</sup> SF C&GCC § 3.200(e).

<sup>23</sup> *Id.*

writing, or in any other manner with their former colleagues for specified periods of time will eliminate both actual and perceived undue influence, favoritism, or preferential treatment without creating unnecessary barriers to public service.”<sup>24</sup>

As for the argument that BRIDGE’s interests in the Project align with those of the City, this does not reduce the risk of undue influence or unfair advantage. It is no less likely that an individual would use her special status as a former employee of a department to influence decisions of the department when it happens to be the case that the interests of the former employee’s new employer and those of the City are aligned. Secondly, review by additional City departments does not significantly reduce the risk of undue influence or unfair advantage. While additional layers of review may be helpful in discovering outright malfeasance by a department’s employees in the execution of a project, it does not significantly reduce the risk that a former employee will have a degree of unfair advantage when dealing with her former department. Likewise, oversight by outside groups does little to reduce any unfair advantage that a former employee might have when dealing with her former department. Thus, the additional factors proposed by Ms. Dischinger do not reduce the risk of undue influence or unfair advantage established in Staff’s analysis of the above four factors.

On balance, the factors listed in Regulation 3.234(a)(4) taken together appear to indicate that there is a potential for undue influence or unfair advantage if Ms. Dischinger is granted a waiver allowing her to communicate with the Department in the manners described in her waiver request.

**B.     Date of Termination of City Service**

If the Commission declines to grant Ms. Dischinger a waiver from the ban, Ms. Dischinger will be prohibited from communicating with the Department with the intent to influence a government decision for one year following the termination of her employment. Ms. Dischinger has requested Commission guidance as to when this one-year period would expire. This depends on the date on which her employment was terminated. Ethics Commission Regulation 3.234-5(g) provides, in relevant part:

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.

Subsection (f) provides the following:

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

By example, Subsection (f) further provides:

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<sup>24</sup> *Id.*

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.

For purposes of this one-year ban, Ms. Dischinger's service to the Planning Department is considered to have terminated her service on June 29, 2017. On that date, she and her supervisor formally signed her separation papers with the City. More importantly, after that date Ms. Dischinger never returned to work at the Department. Although Ms. Dischinger continued to receive pay after June 29<sup>th</sup>, this was only because Ms. Dischinger was exhausting her accumulated sick and vacation days. Ms. Dischinger performed no job duties after June 29<sup>th</sup>. Her only remaining relationship to the Department after June 29<sup>th</sup> was her lawful use of accrued leave time. Thus, if Ms. Dischinger is not granted a waiver, she will be prohibited from communicating with the Department with the intent to influence a government decision until June 28, 2018.

#### **IV. Waiver Recommendation**

Staff finds that Ms. Dischinger's activities with BRIDGE, would create the potential for undue influence and unfair advantage. For the reasons discussed above, Staff recommends that the Commission deny Ms. Dischinger's waiver request from the restrictions in Code section 3.234(a)(2).

Staff further recommends that the Commission adopt Staff's interpretation of Regulation 3.234-5(g) as it relates to the date of termination of employment with a department.

#### **Attachments:**

- Waiver Request of Kearstin Dischinger
- Email in Support of Waiver – Kate Hartley, Director – MOHCD
- Letter in Support of Waiver – John Rahaim, Director – Planning Department





BUILDING SUSTAINING LEADING

BRIDGE HOUSING  
CORPORATION

BRIDGE PROPERTY  
MANAGEMENT COMPANY

BRIDGE ECONOMIC  
DEVELOPMENT CORPORATION

November 7, 2017

Dear Ms. Pelham,

As a former employee of the City of San Francisco Planning Department (Planning Department) and a current employee of BRIDGE Housing Corporation (BRIDGE) I would like to request a waiver from the Post-Employment restrictions as set forth in section 3.234(a)(2) in the City's Campaign and Governmental Conduct Code. I am also requesting confirmation on my exact termination day for the purposes of Section 3.234. I was employed as staff planner in the Citywide policy division of the Planning Department from April 2005 until June 29, 2017. I joined BRIDGE as a Project Manager and Policy Planner on July 18, 2017. Although I signed my separation papers on June 29, 2017, my last day of service at the Planning Department, I continued to receive compensation for accrued vacation time through September 15, 2017. I did not return to work at the Planning Department after June 29, 2017.

BRIDGE is non-profit affordable housing developer based in San Francisco since 1983 formed in response to concerns about high costs of housing. BRIDGE owns and operates a number of affordable homes in the city. In August of 2017 BRIDGE was selected as the lead co-developer with Avalon Bay through a competitive process managed by the city to build housing on the Balboa Reservoir. Fifty percent of all housing developed on the Balboa Reservoir will be permanently affordable – BRIDGE is the lead developer for the affordable housing component of Balboa Reservoir project. The City's selection of a master developer for this site is the culmination of nearly 4 years of City led community planning for the Balboa Reservoir. Next, BRIDGE and partners, will continue the planning process with three main actions: 1) refining the site design and public amenities; 2) developing a project description for Environmental Review; and 3) Continuing conversations with the community, especially with the Balboa Reservoir Community Advisory Committee (BRCAC) the Board of Supervisor's established for this project.

I would like to request a *limited* waiver from the one year communication ban to represent BRIDGE the co-developer in the capacity of project manager for the Balboa Reservoir project. I will be required to participate in meetings with the Planning Department and many other city agencies prior to the

expiration of my one year communication ban (estimated June 29, 2018). The attached narrative describes BRIDGE Housing, the Balboa Reservoir Project and related history, the nature of communication that will be included, a description of my previous role, and a discussion of how my communications with Planning Department Staff would not create the potential for undue influence or unfair advantage.

Given the civic purpose of BRIDGE and its non-profit status; the number of City agencies participating in the project in addition to the Planning Department; the number of private parties participating on BRIDGE's team; the level of public oversight on the project including the Balboa Reservoir CAC; and that the project team is NOT looking for approvals from the Planning Department in the next year; and the nature of the conversations that I will participate in over the next year of the project; **I do not believe that my prior position at the Planning Department will confer any undue influence or advantage to myself, BRIDGE, or the project team, were I to participate in communications with the Planning Department.** The City, including OEWD, Planning Department, the Mayor's Office of Housing, and PUC is committed to implementing the Balboa Reservoir Project. My role as project manager will facilitate the City and community's plan for this site.

Thank you for your time and consideration. The project team values the role of ethics regulations that serve to protect the public interest and build public confidence in government. Per initial conversations with staff, I understand there is some ambiguity around whether the one year communication ban is applicable to my specific situation. **I request that the Ethics Commission grant me a waiver of the one year communication ban to provide clarity to the public about my participation in the Balboa Reservoir Project.**

Sincerely,

**Kearstin Dischinger**  
Project Manager and Policy Planner  
BRIDGE HOUSING Corporation

Cc: John Rahaim, Planning Director; AnMarie Rodgers, Director of Citywide Division

**BRIDGE HOUSING**

**BRIDGE** is non-profit affordable housing developer based in San Francisco since 1983 formed in response to concerns about high costs of housing. Beyond creating homes, BRIDGE is building and revitalizing communities often on a large scale. Our vision continues to be realized, building by building, year after year. BRIDGE’s mission Statement: **BRIDGE strengthens communities by developing, owning and managing high-quality, affordable homes for working families and seniors.**

**BALBOA RESERVOIR**

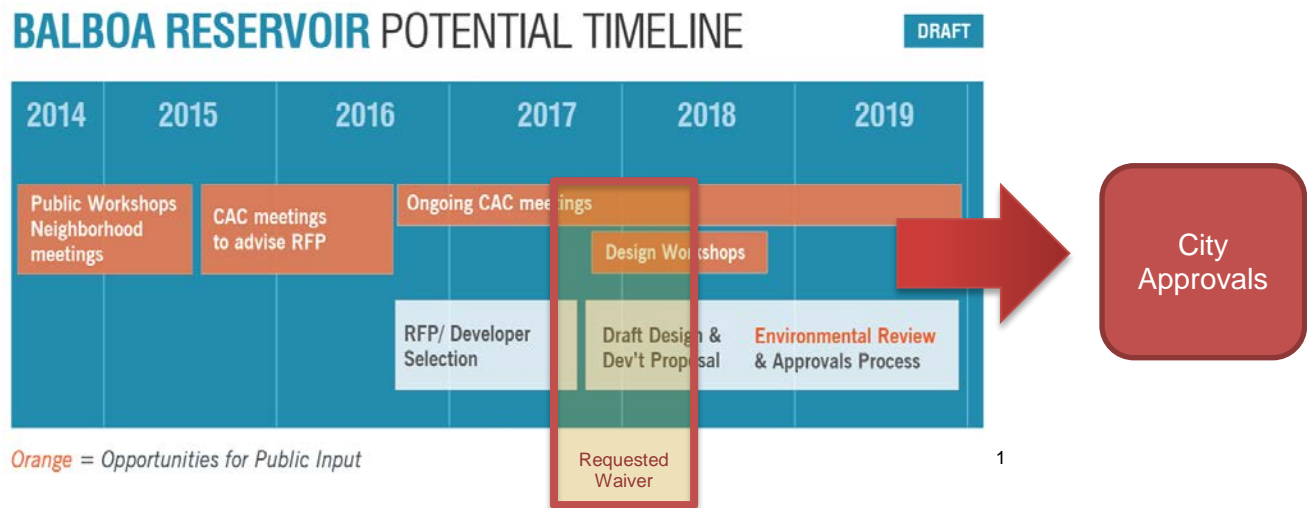
**Project Summary**

The Balboa Reservoir project will create a new neighborhood organized around a large central park with direct connections to surrounding neighborhoods on land owned by the SFPUC. At least 50 percent of all housing will be affordable to low-, moderate- and middle-income households. There will be at least four acres of open space, transportation amenities, and other community improvements identified through the community planning process.

BRIDGE will develop the majority of the proposed affordable housing units on Balboa Reservoir, the most prominent public amenity envisioned for the Balboa Reservoir.

**City Process to date – Balboa Reservoir**

The Balboa Reservoir project is a multi-year project under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), with technical and project management support from the Office of Economic and Workforce Development and the Planning Department.



- In 2014, to address the housing affordability crisis in San Francisco, the City initiated a process under the “Public Lands for Housing Program”<sup>2</sup> to examine the potential for

<sup>1</sup> Balboa Reservoir Website: <http://sf-planning.org/balboa-reservoir>

<sup>2</sup> Public Lands Website: <http://sf-planning.org/public-land-housing-formerly-public-sites-portfolio>

housing on underutilized publicly owned lands. The Balboa Reservoir site owned by the SFPUC was identified as an opportunity site through this public process. The City implements this program by forming public-private partnerships with developers who bring the expertise and capital necessary to realize these complex and expensive projects.

- In 2015 the Board of Supervisors established the Balboa Reservoir Community Advisory Committee (BRCAC)<sup>3</sup> to “provide community voice and function as a central clearinghouse for community input in the process as the City considers options. . for the site”.
- Between 2015 and 2016 City staff in coordination with the BRCAC established Development Principles and Parameters for the Balboa Reservoir<sup>4</sup>
- In fall 2016 the City released a Request for Proposals (RFP) for qualified teams to plan, develop, and operate a housing oriented mixed use project on Balboa Reservoir. Nine proposals were received and reviewed by an evaluation panel comprised of City staff from the SFPUC, the Office of Economic and Workforce Development (“OEWD”), the Planning Department, the Mayor’s Office of Housing and Community Development, the San Francisco Municipal Transportation Agency, the Chair of the BRCAC and a representative of City College of San Francisco.
- Three finalists were shortlisted including the BRDIGE and Avalon Bay team; finalist were invited to present their proposal at a community workshop.
- In August of 2017 BRIDGE Housing and AvalonBay Communities, in partnership with Mission Housing, Pacific Union Development Company, and Habitat for Humanity (Project Team), was selected to develop the Balboa Reservoir site.

Over the next several years the Project Team will work with City agencies and the BRCAC to refine the development proposal, complete environmental review, seek project entitlements, and build new housing.

#### **THE NATURE AND SCOPE OF THE COMMUNICATIONS THE FORMER EMPLOYEE WILL HAVE WITH HER FORMER DEPARTMENT**

Over the next several months and prior to the expiration of the one-year communication period, I will be involved in refining the project design, finalizing a project description to facilitate environmental impact review of the project under the California Environmental Protection Act (CEQA). This work will include very large teams including several public agencies and a public process with dedicated Community oversight. During the seven month communication ban period – BRIDGE will not be seeking any approvals or decisions from the City or Planning Department staff.

My work will include participation in several team meetings including: a weekly project management team with staff from OEWD, Planning Department, the SF PUC, BRIDGE and Avalon Bay; meetings with the environmental planning staff on CEQA review; monthly meetings with the Balboa Reservoir CAC (BRCAC) to discuss project design and schedule; ongoing

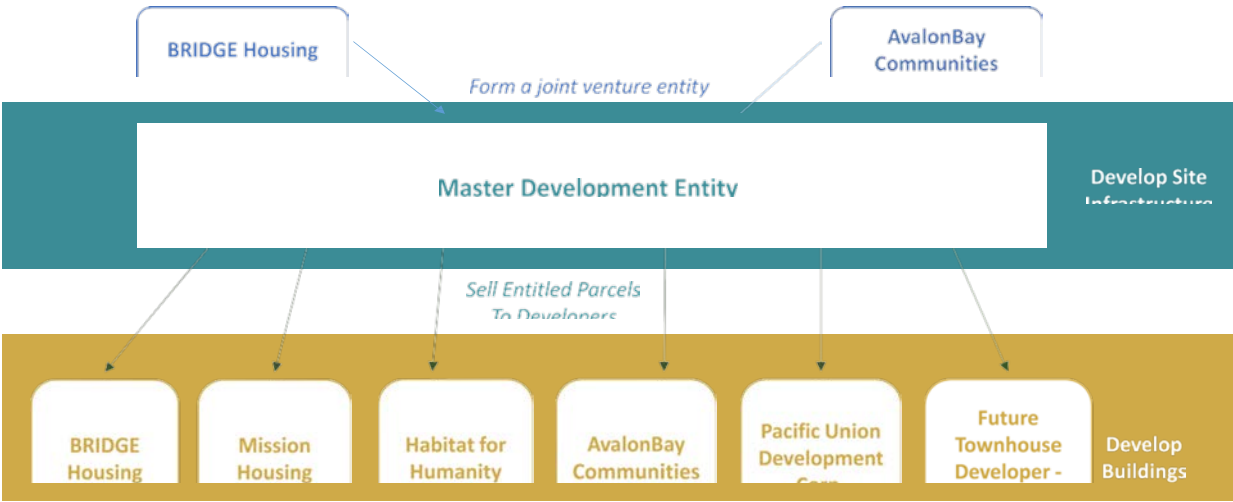
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<sup>3</sup> Administrative Code section 15.17

<sup>4</sup> [http://default.sfplanning.org/plans-and-programs/planning-for-the-city/public-sites/balboareservoir/balboareservoir\\_CAC\\_Complete\\_Parameters\\_Clean.pdf](http://default.sfplanning.org/plans-and-programs/planning-for-the-city/public-sites/balboareservoir/balboareservoir_CAC_Complete_Parameters_Clean.pdf)

meetings with city staff to discuss transportation and site design. I will also correspond with staff to collate and distribute project information and schedules.

**BRIDGE will be one of *many* members of the project team working with the Planning Department.** The Project team will include Master Developers AvalonBay Communities and BRIDGE Housing with partners Mission Housing, Habitat for Humanity, and Pacific Union Development Company. Meetings with the Planning Department will often be led by project architects PYATOK and Van Meter Williams Pollock, with BRIDGE participating. *Given the size of the project team and my specific role I will not have the potential for undue influence or unfair advantage.*

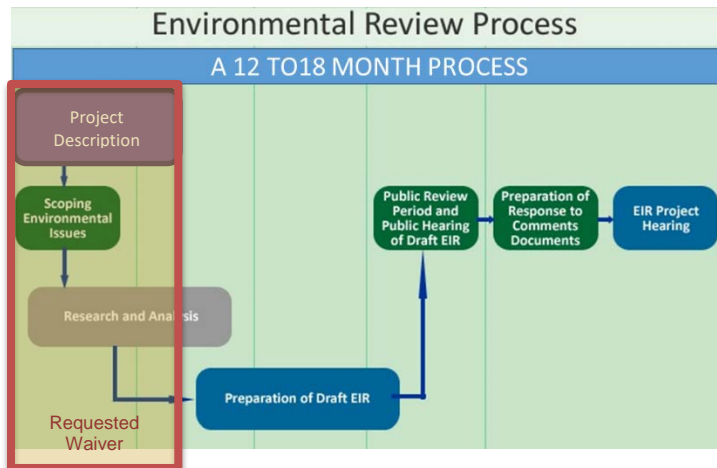


**The Planning Department is one of *many* city agencies representing the City on the project.** The city team will include Office of Economic and Workforce Development (OEWD), Planning Department, the Public Utilities Commission (PUC), and often include Department of Public Works, SFMTA, Mayor's Office of Housing (MOHCD). OEWD and Planning Department will co-lead many of the project meetings and discussions on behalf of the City. The Planning Department will lead discussion on CEQA review and physical design. *I would participate in meetings with City agencies, including the Planning Department, to vet details about the project. Given the size of the project team and the number of city agencies involved in the project, including project management, I will not have the potential for undue influence or unfair advantage.*



**There will be citizen oversight of the project.** The Balboa Reservoir Community Advisory Committee (CAC) will participate in the project development. The Board of Supervisors established the BRCAC ([Section 5.17 of the Administrative Code](#)). Per section 5.17-7 the BRCAC shall remain in effect until the project is entitled, approximately another two years. The BRCAC will continue to participate in the Balboa Reservoir project, including monthly meetings with the project team. The BRCAC will provide additional oversight to the project. I will participate in monthly meetings with the BRCAC to provide project updates and gather community feedback. *Given the Citizen oversight of the project, I will not have the potential for undue influence or unfair advantage.*

**Balboa Reservoir is a multi-year project.** The City has hosted community planning meetings since 2014. The earlier phases included planning, establishing goals for the site, and selecting a development team to implement the next phases of work. The next phase of work, which I will be involved with includes: create a 'project description' which would be analyzed by the Environmental Planning Division of the Planning Department per CEQA (State Law). This includes developing detail for the recently submitted proposal – including site configuration, site amenities, dimensions and configurations of roadways and public infrastructure, etc. The project description sets the outside parameters for what the Planning Department's Environmental Review division will review. I will work with the Planning Department staff in Environmental Planning and other project team members to refine and finalize the project description for Balboa Reservoir. The project schedule currently proposal submittal of the Preliminary Project Proposal and Project Description for Environmental review by March 1, 2018. Typically environmental review requires 12-18 months. Once the environmental review is complete the project team will begin the process of finalizing the project design, including transportation, parks and buildings. Subsequently the project team will seek city approval of the projects. Construction of the project will be completed in several phases through 2025. *Given the scale of the project, including nearly four years of community planning to date, and the anticipated several more years of work, I will not have the potential for undue influence or unfair advantage.*



**BRIDGE will not be seeking final decision or approval from the City for any component of the Balboa Reservoir in the next year.** Once the project team submits the 'project description' the Planning Department will initiate analysis of the program under CEQA. This analysis is estimated to require 12-18 months of work, and will be supported by a team of consultants managed by the Planning Department. Until the CEQA analysis is completed, the project team



## Kearstin Dischinger – Waiver Request

cannot seek final decisions or approval from the Planning Department. I may be talking with City staff about schedules and considerations for future public decisions. *Given the nature of the work that will be completed during the next 7 months, I will not have the potential for undue influence or unfair advantage.*

### BALBOA RESERVOIR - CONCEPTUAL DEVELOPMENT SCHEDULE

		CITY PROCESS	COMMUNITY OUTREACH	PLANNING/ENVIRONMENTAL, BUILDING PERMIT	DESIGN, ENGINEERING - MASTER PLAN	DESIGN, ENGINEERING - PHASE 1 BUILDINGS	DESIGN, ENGINEERING - PHASE 2 BUILDINGS
2017	June						
	July	RFP Selection					
	August				DUE DILIGENCE		
	September	Execute ENA			DUE DILIGENCE		
	October				DUE DILIGENCE		
2018	November				DUE DILIGENCE		
	December	Draft Non-Binding Term Sheet & Fiscal Feasibility Analysis, if nec	Community Outreach - Stakeholder meetings and other stakeholders groups. Incorporate formal outreach to C&S.		Start Schematic Design of Master Plan Prepare for Community Outreach		
	January	Draft Non-Binding Term Sheet & Fiscal Feasibility Analysis, if nec	Community Outreach	Develop Draft Project Description	Schematic Design Incorporate Feedback and Refine		
	February	Finalize Non-Binding Term Sheet	Community Outreach		Schematic Design Incorporate Feedback and Refine		
	March		Community Outreach		Schematic Design Incorporate Feedback and Refine		
	April	SFPUC Endorse Term Sheet	Community Outreach	Finalize Project Description for CEQA, Begin Technical Studies	Complete Schematic Design Incorporate Feedback and Refine		
	May		Community Outreach	Technical Studies	Incorporate Feedback and Refine		
	June	BoS Approve Term Sheet, if nec ENA Phase 1 Deadline	Requested Waiver	Technical Studies	Incorporate Feedback and Refine		
2019	July			Technical Studies Complete			
	August			Draft ADEIR			
	September			Draft ADEIR			
	October			Finalize ADEIR			
	November			Staff Review			
	December	Draft of All Transaction Docs Circulated	Community Outreach	Staff Review			
	January		Community Outreach	Publish ADEIR			
	February		Community Outreach	Comment Period			
	March	Negotiate Transaction Docs	Community Outreach	Comment Period			
	April	Negotiate Transaction Docs	Community Outreach	Draft Response to Comments			
	May	Negotiate Transaction Docs	Community Outreach	Draft Response to Comments			
	June	Negotiate Transaction Docs	Community Outreach	Publish Response to Comments	Master Plan - Design Development		
	July	Negotiate Transaction Docs	Community Outreach		Master Plan - Design Development		
	August	Negotiate Transaction Docs		Planning Commission Approval of EIR, Zoning Application	Master Plan - Design Development		
	September	Negotiate Transaction Docs			Master Plan - Design Development	Phase 1 Bldgs - Schematic Design	
	October	Negotiate Transaction Docs	Community Outreach - Check in		Master Plan - Design Development	Phase 1 Bldgs - Schematic Design	
2020	November	BoS Approval of All Transaction Docs			Master Plan - Design Development	Phase 1 Bldgs - Schematic Design	
	December	Execute Transaction Docs				Phase 1 Bldgs - Schematic Design	
	January				Master Plan - Construction Docs	Phase 1 Bldgs - Schematic Design	
	February		Community Outreach - Check in		Master Plan - Construction Docs	Phase 1 Bldgs - Schematic Design	
	March	ENA Phase 2 Deadline (Based on June '18 BoS)			Master Plan - Construction Docs		
	April			Submit Master Plan Building Permits		Phase 1 Bldgs - Design Development	
	May				Master Plan - Construction Docs	Phase 1 Bldgs - Design Development	
	June		Community Outreach - Check in		Master Plan - Construction Docs	Phase 1 Bldgs - Design Development	
	July				Pricing	Phase 1 Bldgs - Design Development	
	August				Pricing		
	September			Pull Permits for Master Plan Work		Phase 1 Bldgs - Construction Docs	
	October		Community Outreach - Check in			Phase 1 Bldgs - Construction Docs	
2021	November					Phase 1 Bldgs - Construction Docs	
	December			Submit Ph1 Buildings - Bldg Permits		Phase 1 Bldgs - Construction Docs	
	January				SITE CONSTRUCTION - Ph1	Phase 1 Bldgs - Construction Docs	
	February				SITE CONSTRUCTION - Ph1	Phase 1 Bldgs - Construction Docs	
	March				SITE CONSTRUCTION - Ph1	Phase 1 Bldgs - Construction Docs	
	April	Close on Land - Phase 1 Building Parcels			SITE CONSTRUCTION - Ph1	Pricing	
	May			Pull Permits for Ph1 Buildings	SITE CONSTRUCTION - Ph1	CONSTRUCTION	
	June				SITE CONSTRUCTION - Ph1	CONSTRUCTION	
	July					CONSTRUCTION	

Construction is scheduled to take place in multiple phases through 2025.

**Prior to implementation, the Balboa Reservoir will require approval by several boards and commissions, at public hearings** (these hearings and decisions will be made no earlier than March 2019). After the CEQA analysis is completed, the project team will work with the City team, including the Planning Department, to refine the project and seek city approval. This

process will include – approval from the Public Utilities Commission for the disposition of the property; Approval by the Planning Commission of CEQA documents, the proposed zoning changes, the project-specific design controls, and related Planning Code amendments; Approval by the Board of Supervisors of the property's disposition, all changes to the Planning Code, and a development agreement. In the next 7 months I may be staffing preliminary informational hearings or presentations to city staff and decision makers, generally at this stage in the project, these meetings would be limited to project updates and discussion of proposed schedules. *Given the extent that this project requires commission and board approval (outside the period of the requested waiver), I will not have the potential for undue influence or advantage.*



## THE SUBJECT MATTER OF SUCH COMMUNICATIONS

BRIDGE will staff this project with Smitha Seshadri, Vice President of Development and me as Project Manager and Policy Planner. As the staff level project manager – it is critical that I can participate fully in ongoing conversations with the entire project team over the next year about the project description, schematic design, and related. Staff from both the Planning Department and OEWD staff will participate in most meetings with City agencies to ensure continuity.

My duties will include:

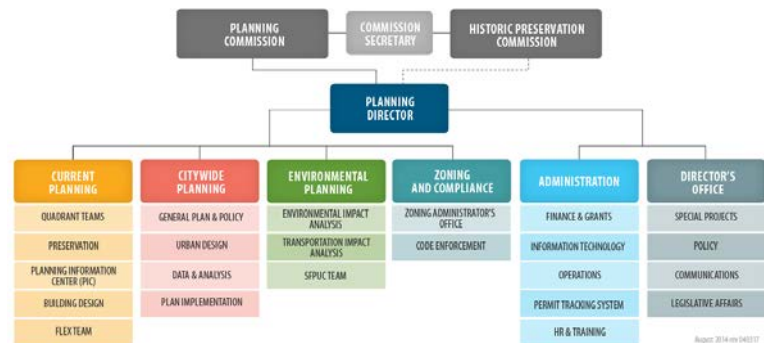
- Ongoing community outreach, including communications with BRCAC and other Community stakeholders.
- Fiscal feasibility analysis – this effort will mostly be led by the PUC and OEWD, with limited participation by the Planning Department.
- Develop a legal description of the project, so the Planning Department can initiate Environmental Review. The project description sets the boundaries for the project – ie. Maximum number of units, maximum volume of project, and detailed description of transportation and public amenities to evaluate the environmental impact of the development.
- Refine the initial proposal – regarding the schematic design, road design, park design, public benefits, etc. – with input from the community and City agencies including the Planning Department
- Begin negotiating the terms of a development agreement and property disposition agreement with OEWD.

## THE FORMER POSITION HELD BY THE OFFICER OR EMPLOYEE

The Planning Department includes roughly 250 staff members, divided into roughly four functioning groups: The Administrative group; The Citywide Division – which works on Policy, data analysis, streetscape design and long range planning (40 people); The Current Planning



Division which works on project approvals (50 people); and the Environmental Planning Division (50 people) which works on project review and entitlements. I worked on teams and projects that generally included only Citywide policy staff, with limited collaboration with staff in other divisions for the department.



During my tenure at the Planning Department I held various positions (Planner II, Planner III, and Senior Community Development Specialist II) within the Citywide division. The Citywide division is charged with long term planning and policy work. I worked on several projects including the Market and Octavia Plan, the Housing Element (2009 and 2011), HOME SF, and Green Connections. My role at the Planning Department included conducting research, developing policy and plan documents, working with community groups, staffing the Market and Octavia CAC, and staffing the interagency plan implementation committee. The citywide division, including roughly 40/50 staff, develops policy recommendations and presents these proposals to the Planning Commission, Board of Supervisors and the public for review and approval. My work did not include CEQA analysis or residential development project approvals.

The Citywide Division staffs the Balboa Reservoir CAC and also serves a project management role in partnership with OEWD. The Environmental Planning and Current Planning Division are charged with review and analysis of the Balboa Reservoir Project which will eventually result in project approvals.

I was employed as staff planner in the Citywide policy division of the Planning Department from April 2005 until June 29, 2017. I joined Bridge as a project manager and Policy Planner on July 18, 2017. Although I signed my separation papers on June 29, 2017, my last day of service with the Planning Department, I continued to receive compensation for accrued vacation time through September 15, 2017. I did not return to work at the Planning Department after June 29, 2017, I exhausted remaining leave time, and I declared this intention to my supervisor and signed my separation papers in June. The period of time during which I used remaining leave time is effectively the same as a "leave of absence," since I was not present at the Planning Department during this period and were not carrying out any job duties. I am bringing this detail to your attention to seek confirmation of my termination date for the purposes of accurately establishing the one-year restriction period under section 3.234(a)(2).

**THE TYPE OF INSIDE KNOWLEDGE THAT THE FORMER OFFICER OR EMPLOYEE MAY POSSESS**

**I have no specific knowledge of the Balboa Reservoir Project.** During my 12 years with the Planning Department I did not work on or participate in any meetings about the Balboa Park

Reservoir, the Public Sites Program, or the Balboa Park Station Area Plan. BRIDGE was awarded the Balboa Reservoir project roughly one month after I joined the organization. I have not participated in any meetings which include Planning Department staff, since I joined the Planning Department.

**I have not worked directly with any of the Planning Department staff assigned to the Balboa Reservoir.** Currently two staff from the Citywide Division and two staff from the Environmental Planning division have been assigned to the Balboa Reservoir. In my 12 years at the Planning Department I have not worked on any projects or program teams that included these members of the planning department staff.

**I have general knowledge of the Planning Process.** As a staff planner in the Citywide division, I have general knowledge of the planning entitlement process, the planning code and the City's General Plan. I wrote housing policy and planning code that applied to other parts of this City. Generally those projects included public and stakeholder participation, and were adopted through several public hearings – accordingly the knowledge I have about those policies and planning codes are generally known and not unique to Planning Department staff. I have managed policy projects that required CEQA review, but otherwise have limited exposure to this complex State Law.

The skills I developed over my past nearly 15 years of practice, that are most relevant to the Balboa Reservoir include: project management; community outreach skills, including facilitating community meetings, creating formats for community input and understanding effective community engagement; understanding the necessary community amenities with new residential uses; and general understanding of coordinating transportation improvements with land use planning.

#### **ANY OTHER FACTORS THE COMMISSION DEEMS RELEVANT.**

**While each case is unique, my request for a waiver is similar to other requests approved the Ethics Commission.** Ethics Commission records indicate that the Commission has considered 8 waivers for 1 year post employment communication bans since 2010 and five have been granted. Those granted, include

1. OEWD staff who took a position as executive director in a public private partnership, where staff stated: *“her communications with the City will likely be made only to advance the purposes set forth in the Agreement. . . . Because her work on the Committee will complement the work of her current colleagues in the OEWD—and in essence will promote the efforts of the City—staff recommends that the Commission grant a waiver from the one-year post-employment communication ban.”* My communication with the City will be made to advance the purposes set forth in the City approved plan for development of the Balboa Reservoir, in an effort to implement the City's Public Sites Program.
2. A former Historic Preservation Commissioner who was able to work with the Planning Department on behalf of private parties as an architect, and
3. A former OEWD staff who became the interim director of SFRA, where staff concluded: *“With respect to this (one-year ban on communications) 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."* My work for BRIDGE would advance the City's goal of providing 50% affordable housing on the Balboa Reservoir.

Previous denials were based on lack of information provided about the exact communication the former employee intended to have with the City<sup>5</sup>, the specific knowledge the employee had of specific projects<sup>6</sup>, or position of authority<sup>7</sup> the employee held during their tenure at the City that was deemed by the Commission to require the one year 'cooling off' period. These specific conditions do not apply to my request.

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<sup>5</sup> Robert Selna

<sup>6</sup> Evan Gross

<sup>7</sup> Julianne Christensen

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

- (a) Scope of Restriction. Subsection 3.234(a)(2) applies to attempts to influence any government decisions made by the department, board, commission, office or unit of government for which an officer or employee served, including decisions in which the 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.
- (b) Basic Rule; Guide to Determining Whether the One-Year Restriction Applies. To determine whether subsection 3.234(a)(2) 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. If the officer or employee has not terminated his or her service to the department, board, commission, office or unit of government, 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. If more than one year has elapsed, the prohibition does not apply.
- (3) Determine whether the officer or employee is representing a person or entity other than himself, herself or the City. If the officer or employee is representing himself, herself or the City, the prohibition does not apply.
- (4) Determine whether the communication from the 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 3.234-4. 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). Such 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 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. The 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). Such a request must be in writing and include information describing the name and business activity of the potential new employer of the officer or employee; the contracts that the 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; and reasons why imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the City officer or employee. The 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 the department, board, commission, office, or unit of government for which the officer or employee served at the time he or she participated in awarding the contract.
- (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 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 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 or one-year bans made under subsection 3.234(c)(1) 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, 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 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) unless the Commission makes a finding that imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the individual. 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.

(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) 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 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) must be made at a public meeting. Requests for waivers made by an appointing authority or a member of a board or commission 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) Notice. The Commission shall maintain a list of waivers granted under subsection 3.234(c) 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 City officer or employee served.

(1) The department, board, commission, office or other unit of government for which a 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 or transferred to another department, board, commission, office or other unit of City government, including any government unit to which the officer or employee was loaned at that time; 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 an officer or employee directly served:

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

- (B) the department or agency on which the officer's or employee's position was 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 was a separate entity; and
- (D) any other factors the Ethics Commission deems relevant.

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, 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 did participate 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 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) Termination of City Service. For the purpose of the permanent ban on switching sides in section 3.234(a)(1), 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 .



**From:** [Pelham, Leeann \(ETH\)](#)  
**To:** [Kundert, Kyle \(ETH\)](#)  
**Subject:** FW: Support for Kearstin Dischinger's Request  
**Date:** Wednesday, November 15, 2017 12:11:25 PM

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**From:** Hartley, Kate (MYR)  
**Sent:** Wednesday, November 15, 2017 12:11 PM  
**To:** Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>  
**Subject:** Support for Kearstin Dischinger's Request

Hi LeeAnn:

I understand that Kearstin Dischinger, formerly of the City's Planning Department and now a staff member at BRIDGE Housing, is requesting a waiver of the one-year communication ban with Planning so that she can work on the Balboa Reservoir Project for BRIDGE. I'm writing to express my support for Kearstin's request, for these reasons:

- Kearstin's previous experience as a planner in San Francisco will be very beneficial to this important project.
- BRIDGE was selected through a lengthy and rigorous competitive RFP process, one in which Kearstin played no role whatsoever.
- Because Balboa reservoir will not be seeking any Planning approvals during the remaining portion of the one-year ban, we do not feel that Kearstin's participation represents any type of undue advantage to BRIDGE Housing as co-developer of the site.
- Balboa Reservoir promises to be a great and beneficial opportunity for community members because of the high percentage of affordable housing units that are planned. Kearstin's role moving forward as BRIDGE's project manager will only serve to strengthen the project during this important predevelopment phase.

I appreciate your consideration of this recommendation. Please don't hesitate to call with any questions or if I can provide additional information.

Thanks so much.

Kate

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# SAN FRANCISCO PLANNING DEPARTMENT

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November 17, 2017

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**Re: Letter in Support of Commission Waiver of Campaign and Governmental Conduct Code Sections 3.234(a)(1) and (a)(2) for Kearstin Dischinger, former Senior Community Development Specialist II at the San Francisco Planning Department**

Dear Ms. Pelham,

This letter is to strongly support the request of former Senior Community Development Specialist II Kearstin Dischinger that the Commission waive Campaign and Government Code Sections 3.234(a)(1) and (a)(2).

Affordable housing has been identified as a significant urgent issue and is needed now more than ever. Kearstin Dischinger represents an important resource in the non-profit housing community, both in her current role as a Project Manager with BRIDGE housing and in her previous role as a Senior Community Development Specialist II. Given her deep knowledge and extensive experience in the field, I believe it is in the City's interest to allow Ms. Dischinger to work on Balboa Reservoir Project.

BRIDGE Housing is a non-profit organization that works on the development of affordable housing in the City. The Balboa Reservoir Project will involve a number of City agencies, including the Mayor's Office of Economic and Workforce Development, the Planning Department, the Mayor's Office of Housing, and the Public Utilities Commission, as well as the Balboa Reservoir Community Action Committee. The project team is not looking for approvals from the Planning Department in the next year and will seek entitlement from the Planning Department during this planning phase of the project. Over the next year, the project team along with the community will develop a plan for the Balboa Reservoir site. Ms. Dischinger's role as Project manager will facilitate the City and community's plan for this site.

Thank you for your consideration.

  
John Rahaim  
Director of Planning

cc: Kyle Kundert, SF Ethics Commission