



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

DAINA CHIU  
CHAIR

QUENTIN L. KOPP  
VICE-CHAIR

PAUL A. RENNE  
COMMISSIONER

YVONNE LEE  
COMMISSIONER

NOREEN AMBROSE  
COMMISSIONER

LEEANN PELHAM  
EXECUTIVE DIRECTOR

Date: July 16, 2018

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst

Subject: **AGENDA ITEM 5 – Discussion and possible action regarding request for waiver of post-service employment restriction by Former Supervisor Jeff Sheehy**

### Summary

This memo provides background and analysis to assist the Commission in deciding whether to grant a waiver to former Supervisor Jeff Sheehy from the post-service employment restrictions contained in Campaign and Governmental Conduct Code § 3.234(a)(3).

### Recommendation

That the Commission evaluate the waiver request as discussed below and, if it chooses to grant a waiver, narrowly tailor the waiver to address the particular hardship at issue.

### I. Background

Until July 11, 2018, Jeff Sheehy was a member of the Board of Supervisors representing District 8. Currently, Supervisor Sheehy is no longer an officer of the City and County. Supervisor Sheehy now desires to seek employment with the University of California. However, during his service on the Board, Supervisor Sheehy voted on three contracts that involved the University of California as a party. As discussed in Section IV, this participation in the approval of the contracts triggers a provision of City law that prohibits Supervisor Sheehy from receiving compensation from the University of California for one year following the approval of each contract. Consequently, Supervisor Sheehy has requested that the Commission grant him a waiver allowing him to receive compensation from the University of California notwithstanding the restrictions of City law. In support of his request, Supervisor Sheehy has submitted a brief with exhibits ("Requestor's Brief"), which is attached here as Attachment 1.

### II. Applicable Law

Section 3.234(a)(3) of the Campaign and Governmental Conduct Code (the "Code") states that no individuals shall "be employed by or otherwise receive compensation from a person or

entity that entered into a contract with the City within the preceding 12 months where the officer or employee personally and substantially participated in the award of the contract.<sup>1</sup>

Notwithstanding this prohibition, the Code enables the Commission to grant a waiver allowing an individual to engage in employment or receive compensation that would otherwise be prohibited under Code section 3.234(a)(3). The Commission may grant such a waiver if it finds that “imposing the restriction would cause extreme hardship” for the individual in question.<sup>2</sup> In determining whether the individual will experience extreme hardship under the post-service restriction, “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.”<sup>3</sup>

If the Commission finds that extreme hardship will be imposed, the Commission should then consider whether granting a waiver would further, or impede, the purposes of Article III Section II of the Code, known as the San Francisco Government Ethics Ordinance (the “Ethics Ordinance”), which includes Code section 3.234(a)(3). The Ethics Ordinance seeks to, among other objectives, “eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.”<sup>4</sup>

The Commission should only grant a waiver if it finds that the extreme hardship imposed by the employment restriction outweighs the danger of undue influence, favoritism or preferential treatment with respect to contract awards or other government decision-making if the employment restriction is waived. This balancing approach reflects one of the stated intentions of the Ethics Ordinance of “eliminat[ing] both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.”

### **III. Facts**

Jeff Sheehy represented District 8 as a member of the Board of Supervisors from his appointment in January 2017 until July 11, 2018, when Rafael Mandelman was sworn in as District 8 Supervisor. This section presents facts, as relayed by Supervisor Sheehy, regarding three contracts he voted on while serving as a member of the Board and his current prospects for employment following his departure from the Board.

#### **A. Contracts Involving University of California as a Party**

During his tenure on the Board, Supervisor Sheehy voted on the approval of three separate contracts to which the University of California was a party. Approval of the Board was required in order for the City to enter into these agreements. In each instance, Supervisor Sheehy voted to approve the contract in question.

---

<sup>1</sup> Campaign & Gov. Conduct Code § 3.234(a)(3).

<sup>2</sup> *Id.* at § 3.234(c)(3).

<sup>3</sup> Regulation 3.234-4(a)(5).

<sup>4</sup> Campaign & Gov. Conduct Code § 3.200(e).

*1. Contract 1 – Approval of Grant from University of California*

On October 3, 2017, Supervisor Sheehy sponsored a resolution to approve a grant that had been awarded by the Regents of the University of California, Office of the President to the Department of Public Health. The purpose of the grant was to fund certain health care services and research, and the total value of the grant was \$144,996.<sup>5</sup> Acceptance of the grant required the City to enter into an agreement with the Regents of the University of California. Supervisor Sheehy voted in favor of this resolution.<sup>6</sup>

*2. Contract 2 – Approval of Zeller Settlement*

On February 27, 2018, Supervisor Sheehy voted to approve a legal settlement in which the City agreed to pay a plaintiff \$290,000 to settle allegations of medical malpractice at San Francisco General Hospital. In this same settlement agreement, the Regents of the University of California agreed to pay the plaintiff \$200,245 to settle allegations of medical malpractice.<sup>7</sup>

*3. Contract 3 – Approval of Spadini Settlement*

On February 27, 2018, Supervisor Sheehy voted to approve a legal settlement in which the City agreed to pay a plaintiff \$120,600 to settle allegations of medical malpractice. In this same settlement agreement, the Regents of the University of California agreed to pay the plaintiff \$59,400 to settle allegations of medical malpractice.<sup>8</sup>

B. Supervisor Sheehy’s Description of His Prospects for Future Employment

According to Requestor’s Brief, Supervisor Sheehy wishes to secure employment with the University California in a position in which he can “advocate for those living with HIV, and to support and advocate for medical research.”<sup>9</sup> His request indicates that such positions are not common and thus reduce the number of employment options that he could pursue. Supervisor Sheehy has described an established record of employment in this field, including employment in this capacity with the University of California prior to his joining the Board.<sup>10</sup>

Supervisor Sheehy’s request further explains that he is married and has one child and that both he and the members of his family rely on his employment as their primary source of income and sole source for health insurance. His request describes the requirement that he maintain high quality health insurance without regard to any pre-existing conditions, and that acquiring health insurance outside of employment would be prohibitively expensive. Together, these factors lead Supervisor Sheehy to pursue

---

<sup>5</sup> See Requestor’s Brief, Exhibits A—B.

<sup>6</sup> *Id.*, Exhibit B.

<sup>7</sup> *Id.*, Exhibit E—F.

<sup>8</sup> *Id.*, Exhibit F—G.

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

<sup>10</sup> Supervisor Sheehy was the Communications Director for the UCSF AIDS Research Institute from 2000 to 2016. *Id.*

employment only with employers that can offer high quality health insurance to persons with pre-existing conditions.<sup>11</sup> Additionally, Supervisor Sheehy believes that only public sector employers would offer him affordable life and disability insurance, further limiting his employment opportunities.

Presently, the University of California is seeking to fill a position that fulfills Supervisor Sheehy's desired role of advocating for individuals with HIV and for HIV research. Supervisor Sheehy believes that attaining this position would allow him to secure affordable health, life, and disability insurance coverage that meets the needs of himself and his family. He notes that returning to work at the University of California, where he previously worked for seventeen years, would allow him to continue to work toward twenty years of service, at which point he would become eligible for further healthcare benefits. Supervisor Sheehy has declined to specifically identify the position that is currently open at the University of California but has agreed to answer questions about it at the Commission's request.<sup>12</sup>

Supervisor Sheehy's request states that he has searched for employment in his desired field that meets the needs of himself and his family, and the position with the University of California is the only one he has found that can achieve both ends. He does not wish to expand his search beyond the Bay Area, as he believes that a relocation would constitute a significant disruption for his family.

#### IV. Analysis

A. The restriction on post-service employment contained in Code section 3.234(a)(3) prohibits Supervisor Sheehy from receiving compensation from the University of California.

Under Code section 3.234(a)(3), no individual may receive compensation from a person or entity who entered into a contract with the City during the last twelve months if the individual participated personally and substantially in the award of the contract. Supporting regulations clarify that "[p]articipate 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."<sup>13</sup> In the present case, Supervisor Sheehy voted on three separate contracts to which the University of California is a party, including one for which he sponsored the resolution to adopt the contract. Voting on a contract constitutes personal and substantial participation in the award of the contract. Thus each of these contracts would trigger a one-year prohibition on Supervisor Sheehy receiving compensation from the University of California. The latter two contracts were approved on February 27, 2018. Thus, Code section 3.234(a)(3) prohibits Supervisor Sheehy from being employed by or otherwise receiving compensation from the University of California prior to February 27, 2019.

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4.

<sup>13</sup> Regulation 3.234-5(e) (emphasis added).

B. Do facts provided indicate that a limited waiver of the restriction in Code section 3.234(a)(3) is appropriate?

The Ethics Ordinance enables the Commission to grant a waiver allowing for employment or compensation that would otherwise be prohibited under Code section 3.234(a)(3) if the Commission finds that the prohibition would impose extreme hardship on the individual in question. Additionally, the Commission should consider whether allowing the prohibited employment or compensation would conform with the purposes of the Ethics Ordinance. The Commission should only grant a waiver if it finds that the degree of hardship imposed on the individual outweighs the purposes served by the Ethics Ordinance.

To assist in the Commission's analysis, the following subsections provide guidance as to how the Commission should analyze (a) the degree of hardship imposed and (b) the purposes served by the Ethics Ordinance, primarily the danger of undue influence, favoritism, or preferential treatment in official decision-making.

*a. Likelihood of Extreme Hardship*

The Commission should review the facts presented by Supervisor Sheehy and evaluate whether these facts demonstrate a high likelihood of extreme hardship if the restriction in Code section 3.234(a)(3) is imposed. Important factors for the Commission to consider in this regard are:

- The degree to which Supervisor Sheehy's professional skills limit him to only applying for the position in question;
- The degree to which it is reasonable for Supervisor Sheehy to confine his job search to positions in his desired field;
- The likelihood that Supervisor Sheehy will experience financial instability if he is prevented from working for the University of California until February 2019; and
- In analyzing whether any hardship would be *extreme*, the degree to which the specific facts of Supervisor Sheehy's situation, apart from the general facts that would be true of all individuals subject to Code section 3.234(a)(3), subject him to extreme hardship.

*b. Potential for Actual or Perceived Undue Influence, Favoritism, or Preferential Treatment*

The Commission should also evaluate whether the waiver would conform with the overall purposes of the Ethics Ordinance. Most relevant to the question at hand is the objective of the Ethics Ordinance to "eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service."<sup>14</sup>

If a public servant is permitted to take official action on a contract to which a particular entity is a party and, within a year, leave public service and begin receiving compensation from that same entity, this series of events would indicate a high risk of undue influence. Specifically, the prospect of future employment can serve as a strong inducement to public servants to take official action that is beneficial to the potential employer. Such events create the potential for favoritism and preferential treatment when public servants attempt to ingratiate themselves with potential employers through beneficial

---

<sup>14</sup> Campaign & Gov. Conduct Code § 3.200(e).

official actions. For this reason, in many cases issuance of a waiver would be contrary to the purposes of the Ethics Ordinance.

The Commission should evaluate the degree to which Supervisor Sheehy's taking employment with the University of California would create a danger of undue influence, favoritism, or preferential treatment. Most likely, given the nature of the contracts in question, the danger of undue influence, favoritism, or preferential treatment is low in the present case because the contracts did not bestow a material benefit on the University of California. One contract secured a grant of funds from the University to the City, and the other two contracts approved agreements in which the University paid settlements to third parties, not to the City.

## **V. Conclusion**

In determining whether to grant a waiver in response to Supervisor Sheehy's request, the Commission should evaluate whether Supervisor Sheehy is likely to experience extreme hardship under the restriction of section 3.234(a)(3) and whether that hardship outweighs the danger of undue influence, favoritism, or preferential treatment if he is granted a waiver of the restriction.

If the Commission decides to grant such a waiver, Staff recommends that the waiver be narrowly tailored to only allow employment in the specific position referred to by Supervisor Sheehy. This is because the uniqueness of Supervisor Sheehy's professional skills and interests, and the uniqueness of the position in question, are key factors in Supervisor Sheehy's argument as to why a waiver is appropriate. Consequently, any waiver granted should not allow Supervisor Sheehy to obtain compensation from the University of California in any other capacity than this particular position. Any waiver should also be clearly limited to Code section 3.234(a)(3) and should not waive the application of other rules contained in the Code.