



San Francisco Ethics Commission

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Date: June 5, 2023

To: Members of the Ethics Commission

From: Michael Canning, Acting Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 09 – Discussion and possible action regarding request for waiver of post-employment restrictions for Joanne Lee.**

Summary and Action Requested

This memo provides background and analysis to assist the Commission in determining whether to grant a post-employment waiver to Joanne Lee. The Commission should evaluate Ms. Lee's waiver request and as required by City law, consider if not granting Ms. Lee's waiver would cause extreme hardship for Ms. Lee. Based on its review of Ms. Lee's request and applicable law, Staff recommends that the Commission not approve the waiver.

Background

On May 26, Joanne Lee sent a formal request to the Commission asking that part of the City's post-employment restrictions in the Campaign and Governmental Conduct Code (C&GCC) be waived. Ms. Lee is currently a City employee, serving as the Deputy Director of the Arts Commission (ART). Ms. Lee is seeking a waiver for City's prohibition on receiving compensation from City contractors imposed by Subsection 3.234(a)(3), so that she may accept an offer of employment from the Chinatown Media & Arts Collaborative (CMAC). Ms. Lee's waiver request is included as **Attachment 1**. The facts included in this memorandum are drawn from Ms. Lee's written request, documents acquired through Ms. Lee, and communications between Ms. Lee and Staff.

Ms. Lee first contacted Staff about this matter on April 28, following an email introduction from Deputy City Attorney Brad Russi. Staff met with Ms. Lee on May 2 to discuss her employment offer and the applicability of the City's post-employment restrictions.

Following several communications with Ms. Lee, Staff provided Lee with informal advice on May 16 that confirmed a waiver from the Commission would be required for her to accept employment with CMAC and offered guidance on how to formally request such a waiver. A copy of Staff's informal advice to Ms. Lee is included here as **Attachment 2**.

Applicable Law

The City has rules for all officers and employees that restrict what former City officials can do after they leave City service. These rules include a permanent restriction on representing any other person

(except the City) before any court or government agency in connection with particular matters in which the former City official was personally and substantially involved, a one-year restriction on communicating with the former City official's former department with the intent to influence a government decision, and a prohibition on being employed by parties that contract with the City.

These rules further the purposes of the Campaign and Governmental Conduct Code, which per [Section 3.200](#) is chiefly to “promote fairness and equity for all residents and to maintain public trust in governmental institutions.” The law seeks to ensure “that public officers and employees [are] independent, impartial, and responsible to the people and that public office and employment [is] not...used for personal gain.” The Code also asserts that government decisions by City officers and employees “should be, and should appear to be, made on a fair and impartial basis.”

Permanent Restriction on Representation in Particular Matters

[Subsection 3.234\(a\)\(1\)](#) of the C&GCC prohibits former employees from representing any other person (except the City) before any court or government agency in connection with particular matter in which the former employee was personally and substantially involved in as a City employee, with intent to influence. Ethics Commission [Regulation 3.234-1](#) outlines the scope of this restriction and provides guidance on determining whether this permanent ban applies to certain activities.

One-Year Restriction on Communicating with Former Department

[Subsection 3.234\(a\)\(2\)](#) of the C&GCC prohibits former employees from, with the intent to influence a government decision, communicating on behalf of any other person (except the City) with any officer or employee of the department for which the former employee served, for one year following the termination of their employment with the City. Ethics Commission [Regulation 3.234-2](#) outlines the scope of this restriction and provides guidance on determining whether this one-year ban applies.

Employment With Parties That Contract With the City

[Subsection 3.234\(a\)\(3\)](#) of the C&GCC prohibits current and former employees from being “employed by or otherwise receiv[ing] 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.” Ethics Commission [Regulation 3.234-3](#) outlines the scope of this restriction and provides guidance on determining whether this prohibition applies.

This prohibition on employment with City contractors furthers the goals of the Campaign and Governmental Conduct Code by ensuring that City officials cannot help award a City contract and then become employed by the contractor who has recently benefitted from the actions of the City official.

This rule is intended to create a buffer between the time a contract is awarded and when a City official involved in the award of that contract may become employed by the contractor. This buffer is an important tool for ensuring that government decisions are, and appear to be, made fairly and impartially. Without this rule, City officials could be tempted to make government decisions with

their short-term career goals in mind, rather than the best interests of the City. Even if a City official makes their decisions fairly and impartially, going to work for a City contractor within 12 months of them entering into their contract could create the appearance of corruption among the public. Just the appearance of corruption can erode the public's faith in government and is something this rule is intended to prevent.

Waiver Authority of the Ethics Commission

[Subsection 3.234\(c\)\(3\)](#) of the C&GCC grants the Commission the ability to waive the prohibition on employment with parties that contract with the City, "if the Commission determines that imposing the restriction would cause extreme hardship for the...employee."

Ethics Commission [Regulation 3.234-4](#) further outlines the process for submitting and potentially approving post-employment waivers. The regulation specifies that 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." When determining if not granting such a waiver would cause extreme hardship, the regulation specifies that 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.

When considering waiver requests, the Commission should also consider whether granting a waiver would further the purposes of the Campaign and Governmental Conduct Code. The Commission may grant a waiver only if it finds that not granting the waiver "would cause extreme hardship for the...employee."

Waiver requests are evaluated based on the facts that are provided in the request, shared in related communications with Staff and the Commission, and found in additional documents provided to Staff and the Commission. These facts allow the Commission to evaluate whether a waiver is appropriate and must therefore be complete and accurate. Any waiver that the Commission grants is limited to the facts provided, and, should the facts change, the requestor should seek an updated waiver from the Commission.

Facts Presented

Joanne Lee is currently the Deputy Director of Programs at the Arts Commission, a position which she has held since joining City service in September of 2019. Ms. Lee has received an employment offer from the Chinatown Media and Arts Collaborative (CMAC). In this new position, she would be serving as the Executive Director of CMAC's "Edge of the Square" project. Lee's responsibilities would include

developing the programs, building the administrative structure, fundraising, and managing the renovation of their building.

The job announcement for this position was emailed to Ms. Lee by CMAC's interim Director Mabel Teng, in December of 2022. Ms. Lee applied for the position on January 23, 2023, and was interviewed on February 8 and 17, along with April 1, 5, 10, and 13. Ms. Lee's pending employment offer from CMAC is dated April 18, 2023.

As a City employee, Ms. Lee has participated in the awarding of two grants to CMAC.

- 1. Storm Relief Grant from the Arts Commission:** In March of 2023, CMAC was awarded a \$3,750 grant from the Arts Commission and Grants for the Arts (GTFA), which is a division of the City Administrator's Office. This grant was awarded as part of the [San Francisco Arts Storm Relief Fund](#) program. As a City employee, Ms. Lee developed the RFP guidelines for this grant program, reviewed applications, and made the awards with two other staffers from ART and GFTA. These grants were jointly funded by ART and GFTA, with ART supplying the majority of the funding (\$98,994.70 of the \$118,994.70, the remaining \$20,000 was supplied by GFTA). This funding covered the grants awarded and the administrative fee charged by Intersection for the Arts (IFTA), a nonprofit organization that contracts with GFTA and was used to sub-grant out the grants to the awardees. As of mid-April, these grant funds had not yet been disbursed, but that may have changed since then.
- 2. Nonprofit Sustainability Initiative (NSI) Grant from the Office of Economic and Workforce Development (OEWD):** In March of 2022, Ms. Lee participated in a selection panel, which awarded CMAC a tentative grant of \$1,000,000 through the [Nonprofit Sustainability Initiative \(NSI\)](#) program. The NSI program is funded by the City's Office of Economic and Workforce Development (OEWD). The program is administered by a nonprofit organization, Community Vision, in partnership with the Mayor's Office of Housing and Community Development and the Arts Commission. Grants are awarded by a selection panel, which is comprised of six panelists, three of whom represent the City and three who do not represent the City. Ms. Lee served as one of these six panelists as a City employee. The panel met on March 16, 2022, and CMAC received their award letter last year on March 23. As a panelist, Ms. Lee reviewed and scored the grant proposals. While the NSI program is City-funded, the grants are administered by Community Vision and Community Vision is the party that signs the award letters and grant agreements. Ms. Lee has stated that as far as she is aware, these grant funds have not yet been disbursed, due to CMAC not having met the grant conditions and not having the staff capacity necessary to provide the required documentation.

Analysis

The Need for a Waiver for Ms. Lee to Accept Employment with CMAC and Perform the Duties of that Position

For both the permanent restriction on representation in particular matters rule and the one-year post-employment communication rule, Ms. Lee is aware of both rules and has stated she intends to comply with them. If Ms. Lee wanted to represent CMAC, or any other non-City entity regarding any particular matters in which she personally and substantially participated as a City employee (such as the awarding of the Storm Relief or NSI grants), she would need to seek a waiver from the Commission to allow that representation. Similarly, if Ms. Lee wanted to communicate with her former colleagues at the Arts Commission with the intent to influence a government decision within 12 months of leaving City service, she would also need a waiver from the Commission. Ms. Lee is aware of both of these rules and is not currently seeking a waiver for either rule. Based on the facts provided, Staff does not believe a waiver for either of these rules is necessary for Ms. Lee to be employed by CMAC and perform her duties as described.

Based on the facts presented in Ms. Lee's waiver request, Staff agrees that a waiver for the restriction on employment with parties that contract with City is necessary for Ms. Lee to accept employment with CMAC.

Based on Ethics Commission [Regulation 3.234-3](#), the restriction on employment with parties that contract with the City would apply to Ms. Lee's proposed employment with CMAC, since:

1. Ms. Lee would be accepting employment and be entitled to compensation from CMAC, which is an entity other than the City.
2. The entity offering the employment, CMAC, will have entered into contracts with the City during the 12 months prior to Ms. Lee receiving or being entitled to compensation.
3. Ms. Lee participated personally and substantially in the award of both the Storm Relief grant and the NSI grant, per the definition of "participate personally and substantially" found in [Ethics Commission Regulation 3.234-5\(e\)](#).

Regarding bullet point #2 above, since it appears CMAC has not yet accepted either the Storm Relief grant or the NSI grant, the 12-month period prohibitory period has not yet started. However, if Ms. Lee were to accept the employment with CMAC and then CMAC were to receive either grant, Ms. Lee would be prohibited from receiving or being entitled to compensation from CMAC for the following 12 months. Additionally, the Code and Regulations are clear that the 12-month period starts when the new employer enters into the contract, not when the City official participates in the award of the contract, so the fact that Ms. Lee participated in the award of the NSI grant more than 12 months ago does not prevent the rule from applying. Lastly, both of these grants are intended to be sub-granted out through non-City entities (IFTA and Community Vision), however both grants are funded by the City and the recipients are determined by City officials. Having these funds first pass through a non-City

entity does not prevent CMAC from being considered an entity that contracts with the City for the purpose of Subsection 3.234(a)(3).

In order for Ms. Lee to receive or be entitled to compensation from CMAC, within the 12 months following CMAC's acceptance of either the Storm Relief or NSI grant, Ms. Lee would need a waiver from the Ethics Commission for the restriction on employment with parties that contract with City.

Considering if Imposing the Prohibition on Employment with Parties that Contract with the City would Cause Extreme Hardship for Ms. Lee

As the Commission considers if not granting a waiver to Ms. Lee would cause Ms. Lee extreme hardship, [Regulation 3.234-4](#) identifies several factors for the Commission to consider. These factors include:

Ms. Lee's vocation, the range of employers for whom Ms. Lee could work, and the steps Ms. Lee has taken to find new employment.

Ms. Lee describes this employment opportunity with CMAC as unique and well suited to her talents, skills, and interests. Ms. Lee also has indicated that she may be qualified for other positions in the areas of arts, real estate, and economic development. While few positions may intersect with all three of these areas, it would appear Ms. Lee does likely have options should she wish to leave City service and pursue employment elsewhere.

Ms. Lee was notified of this position at CMAC when the interim director of the organization emailed her about it, and as far as Staff are aware, Ms. Lee has not been engaged in a larger job search or taken any other steps to seek out new employment. Given this, it is unclear how difficult it would be for Ms. Lee to acquire new employment in her field outside of the City.

While the position with CMAC does sound like a good opportunity for Ms. Lee, it is unclear how not accepting this position would be an extreme hardship. Ms. Lee is currently employed by the City and if she does not accept the offer with CMAC, she could presumably remain employed by the City indefinitely. Ms. Lee could also remain employed by the City while researching and applying for other jobs, with organizations where her employment would not be prohibited by City laws. Imposing the rule in Subsection 3.234(a)(3) on Ms. Lee would not leave her unemployed or without access to healthcare. Not granting the waiver would essentially leave Ms. Lee in the same position she was in in December of 2022, before she learned about this opportunity with CMAC. While the term 'extreme hardship' is not defined in the Code or regulations, it is difficult to argue that remaining the Deputy Director of Programs for a City department, while you potentially look for other employment opportunities, is an extreme hardship.

In her waiver request, Ms. Lee wrote about a waiver the Commission approved in 2011 for the then-Director of the Mayor's Office of Housing. In this waiver, the requestor issued 150-175 grants and loans each year in their role. This requestor argued that given the volume of grants and loans he

approved each year and the relatively small field in which he worked (affordable housing), that he did not believe it would be possible to find another director-level position in San Francisco where he could work without first acquiring a waiver for the rule in Subsection 3.234(a)(3). It is unclear how analogous this situation is to Ms. Lee's, considering the variety of fields in which she may be able to find employment.

Other factors that may be relevant.

While working on Ms. Lee's request for informal advice on this matter, Staff observed a potential violation of the C&GCC that Ms. Lee may have committed by participating in the award of the Storm Relief to CMAC, when she was already discussing employment with CMAC. [Subsection 3.206\(c\)](#) of the C&GCC prohibits employees from making, participating in making, or otherwise seeking to influence a government decision, affecting an entity with whom the employee is discussing or negotiating an agreement concerning future employment.

As presented above, Ms. Lee applied for the position with CMAC in January, began interviewing in February, participated in the award of the Storm Relief grant in March, and then continued to interview with CMAC in April. These facts suggest that Ms. Lee may have violated Subsection 3.206(c).

After identifying this potential violation, Staff notified Ms. Lee on May 10 and recommended she proactively reach out to the Commission's Enforcement Division regarding this matter. Ms. Lee contacted the Enforcement Division the following day regarding this potential violation. The current status of this matter and any subsequent actions by the Enforcement Division are confidential per the City Charter.

Staff have included this information so that the Commission is aware of the situation. The Commission can determine if it wishes to consider this potential violation a relevant factor in Ms. Lee's waiver request.

Recommendation

As previously mentioned, there is no definition of 'extreme hardship' in the Code or related regulations, as such it is up to the Commission to evaluate and determine if not granting Ms. Lee's waiver request would cause her extreme hardship.

Considering that Ms. Lee is already currently employed by the City, is not being forced to leave her current employment, and has not engaged in a lengthy or extensive search for new employment, Staff does not find that imposing the prohibition in Subsection 3.234(a)(3) on Ms. Lee would cause her extreme hardship, and thus recommends the Commission not approve Ms. Lee's waiver request.

Staff would like to thank Ms. Lee for her detailed waiver request, thoughtful communications throughout this process, and service to the City.

Attachments:

Attachment 1: Waiver Request from Joanne Lee Dated May 26, 2023

Attachment 2: Informal Advice Provided to Joanne Lee on May 16, 2023

ATTACHMENT 1

May 26, 2023

VIA E-MAIL

Ms. Gayathri Thaikkendiyil
Acting Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

RE: Waiver Request Under San Francisco Campaign and Governmental Conduct
Code Section 3.234(a)(3)

Dear Ms. Thaikkendiyil:

Pursuant to San Francisco Campaign and Governmental Conduct Code section 3.234(c)(3), I am requesting a waiver from the prohibition on receiving compensation from City contractors imposed by section 3.234(a)(3).

I am seeking this waiver in order to accept an offer of employment from the Chinatown Media & Arts Collaborative (“CMAC”), specifically as the Executive Director of CMAC’s “Edge of the Square” project. I have closely reviewed the law, the regulations adopted by the Ethics Commission, and the two prior examples of the Ethics Commission granting requests for waiver from this law, and believe that the circumstances about this unique employment opportunity warrant the Ethics Commission to grant me a waiver and allow me to accept this job.

CMAC is a pioneering partnership which will transform Chinatown’s social and economic landscape. My deep roots in the Chinatown neighborhood combined with my prior work experience uniquely qualify me for this position. After a long career focused on the arts and community, real estate, and economic development, this position is perfectly situated at the intersection of both my skills and passions: namely, working with San Francisco’s Chinese community to foster the arts and improve the economic and social fabric of the City’s Chinatown neighborhood.

Ms. Gayathri Thaikkendiyil

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While the COVID-19 pandemic undoubtedly affected large and varied segments of San Francisco, Chinatown was uniquely impacted. Chinatown traditionally depends on large influxes of tourists to support and sustain its local stores, restaurants and attractions. With stay-at-home orders, rising crime, and anti-Asian hate crimes, Chinatown's economy and social blueprint faded dramatically. As the oldest and largest neighborhood of Chinese immigrants and Chinese-speaking residents in the United States, San Francisco's Chinatown is both integral to the local economy and a symbol of the Chinese community's many positive contributions to our City's unique and diverse culture. CMAC will reinvigorate the neighborhood by renovating a building in the heart of Chinatown with a first-ever cultural hub with spaces for exhibition, performance, media, and artist workshops with the goal of showcasing Chinatown through a creative lens to attract residents and tourists to Chinatown. Advancing CMAC's agenda will require a blend of real estate and community economic development expertise, Chinatown community knowledge and contacts, and arts experience.

With this important context, combined with my long-held connection to this neighborhood and my unique experience at the intersection of real estate development, economic development and the arts, I believe I am perfectly suited for a role that will restore the vitality of one of San Francisco's most important and historic neighborhoods. It is a dream job in the community I worked in for 14 years, visited as a child to see my grandmother who lived there, volunteered in during my college years, and where my heart and passion lie.

Background

During my time as Deputy Director of the Arts Commission, I personally participated in the award of the following two contracts between CMAC and the City:

1. Arts Commission - Storm Relief Grant. After the recent winter storms, CMAC applied for and was awarded a very small (\$3,750) grant from the Arts Commission and the Grants for the Arts, a division of the City Administrator's office. I helped to develop the RFP guidelines for this grant program, reviewed applications, and made the awards along with two other individuals from the Arts Commission and Grants for the Arts. A total of 18 organizations and 26 individual artists received funding through this program. There was no scoring rubric and every organization and artist that met the program eligibility requirements was funded. If I had not reviewed the applications, CMAC still would have received the grant.

I have no oversight authority of the grant contract between the intermediary grant administrator and CMAC.

2. Nonprofit Sustainability (“NSI”) Grant from the Office of Economic Workforce Development (“OEWD”). Almost fifteen months ago, in March 2022, I participated on a selection panel for OEWD which awarded CMAC a grant of \$1 million through the NSI program. Though CMAC has not yet received these funds because of ongoing negotiations between the City and CMAC over certain project conditions, my involvement took place over a year ago and I have not been involved in these negotiations. I served on the selection panel with five other panelists (two other City employees and 3 non-City employees) who reviewed and scored the project proposals using objective criteria. The panel met on March 16, 2022, and all proposals in this review round were unanimously awarded funding. Again, my vote was not essential to CMAC receiving funding. OEWD has a contract with a nonprofit entity, Community Vision, to administer the NSI grant program; Community Vision delivered an award letter to CMAC on March 23, 2022. While funds come from the City, the City does not sign the award letter or grant agreement. Instead, these documents are executed by Community Vision.

The Prohibition Would Cause Extreme Hardship For Me

The opportunity to work with CMAC is truly a once-in-a-lifetime opportunity. Chinatown is my community and where my heart lies. In this role, I would be able to leverage my experience, knowledge, skills and passion to benefit San Francisco’s Chinese community and help revitalize a neighborhood of critical social and economic importance. This position is unique in that I would have the ability to join a brand-new organization on the ground floor and help deploy its capabilities for the benefit of my community. Jobs like this do not come around often, and rarely at a moment of such upheaval and change. Chinatown is in the midst of recovery from a once-in-a-generation pandemic which struck its economy particularly hard, and CMAC is poised to help usher in a new era for this community. I feel uniquely qualified to play a part in righting the ship and participating in the renewal of this neighborhood’s economy and culture. I have been a deputy director and senior manager for decades in several organizations, and this would be my first opportunity to serve as an executive director, in what will likely be my last job before retirement.

While it is true that I may be qualified for other jobs in the arts or real estate or economic development, I do not know of any other job which combines these three areas of my expertise in conjunction with the community which is central to who I am. In many ways I have been waiting my whole career for an opportunity like this. It was my deep, decades-long background in the arts, real estate, and economic development that led CMAC to recruit me for this position in the first place.

In 2011, when the Commission granted the former Director of the Mayor's Office of Housing's waiver request for the same prohibition I face now, the Commission noted the unique nature of the position he wanted to take: President of Mercy Housing California, one of the largest affordable housing developers in the state, a position which had not come up for 20 years up until that point. The Commission ultimately granted this waiver even though the former City employee had personally approved five large contracts to Mercy Housing California within the prior year.

In my situation, I was only involved with two grants to CMAC; more notably, I did not personally approve the NSI grant to CMAC, but rather was simply one of six panelists who scored the proposals. Like the Mercy Housing job sought by the former Director of the Mayor's Office of Housing, serving as the first Executive Director of Edge on the Square is an equally unique opportunity. For the reasons mentioned above, the opportunity to join an organization at its early stages and shape its impact from the bottom up to re-imagine Chinatown's social and economic future is tailor-made for my professional and personal life experiences.

Granting a Waiver Would Not Raise Ethical Concerns

I fully understand that the prohibition on employment with City contractors exists for an important reason. Protecting the integrity of governmental decision-making is of the utmost priority, and it is important that City contracts are – and that the public believes that they are – awarded on a fair and equitable basis. These are worthy goals, and I strongly believe that my involvement in these contracts does not hinder these objectives.

I had no conflict of interest at the time of my involvement with the NSI grant. Fifteen months ago, in early 2022 when this grant was being considered, I was completely unaware of this job opportunity and was fully focused on my work at the Arts Commission. I was not

seeking employment with any other employer and did not engage in any employment discussions with CMAC during this time period. In addition, while I sat on the panel which voted to grant the award to CMAC, it was a unanimous vote and was based on objective scoring criteria. In other words, whether or not I voted for or against the grant would have been immaterial to the ultimate outcome as the other five panelists all voted in favor of the grant. I was not in a position to exert undue influence over the award process, and I did not interact with any other Arts Commission employees about the CMAC proposal. In addition, I have not had any role in negotiating the contract conditions, and would not be involved in implementing the contract in my position at the Arts Commission. In sum, I did not exert any undue influence over the process, and therefore barring me from accepting the Executive Director position would, in my opinion, not promote the purposes of the underlying law.¹

The Permanent Restriction on Representation in Particular Matters

Ethics Commission staff has indicated that I would also require a waiver from the City law which prohibits former City employees from lobbying the City on matters in which they personally and substantially participated while at the City. (Camp. & Govt. Conduct Code section 3.234(a)(1).) Staff also clarified, however, that such a waiver request would only be necessary if I needed to represent CMAC before the City in connection with the award of the NSI grant. Because such action could create the appearance of conflict, should the Commission grant my request for a waiver from the post-employment ban and allow me to accept the CMAC position, I would refrain from interacting with any City employees or officials about the award of the NSI grant and would instead delegate this task to other CMAC representatives.

Certification and Conclusion

Pursuant to regulation 3.234-4(a)(2), I certify that I have provided a copy of this waiver to Ralph Remington, the Director of Cultural Affairs for the Arts Commission.

¹I now appreciate that I perhaps should have recused myself from the small Storm Relief Grant because I had been approached at that time about the CMAC job. Notably, all of the artists and nonprofits which met the limited eligibility requirements were awarded funds during this non-competitive grant process, and – again, the grants were only for a few thousand dollars each.

Ms. Gayathri Thaikkendiyil
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For the reasons described above, I respectfully request that the Commission grant my request for a waiver and allow me to accept this job. I will appear at the Commission's June 9 meeting, and will happily address any of the Commissioners' questions or concerns at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne Lee". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joanne Lee

cc: Ralph Remington, Director of Cultural Affairs, San Francisco Arts Commission
Michael Canning, Acting Policy and Legislative Affairs Manager
James R. Sutton, Esq., The Sutton Law Firm

ATTACHMENT 2

To: Joanne Lee
From: Michael Canning
Sent: 5/16/23

Hello Joanne,

Thank you for your questions. We appreciate you reaching out to the Ethics Commission for guidance and are happy to clarify the rules around post-employment restrictions as they pertain to your situation.

Background

You have stated that you are currently the Deputy Director of Programs at the Arts Commission (ART), a position which you have held since joining City service in September of 2019.

You have received an employment offer from the Chinatown Media and Arts Collaborative (CMAC), a new nonprofit arts organization in Chinatown. In this new position, you would be serving as the Executive Director of CMAC's "Edge of the Square" project. Your responsibilities would include developing the programs, building the administrative structure, fundraising, and managing the renovation of their building.

The job announcement for this position was emailed to you by CMAC's interim Director Mabel Teng, in December of 2022. You applied for the position on January 23, 2023, and were interviewed on February 8 and 17, along with April 1, 5, 10, and 13. The pending employment offer from CMAC is dated April 18, 2023.

As a City employee, you have participated in the awarding of two grants to CMAC.

- 1. Storm Relief Grant from the Arts Commission:** In March of 2023, CMAC was awarded a \$3,750 grant from the Arts Commission and Grants for the Arts (GTFA), which is a division of the City Administrator's Office. This grant was awarded as part of the [San Francisco Arts Storm Relief Fund](#) program. As a City employee, you developed the RFP guidelines for this grant program, reviewed applications, and made the awards with two other staffers from ART and GTFA. These grants were jointly funded by ART and GTFA, with ART supplying the majority of the funding (\$98,994.70 of the \$118,994.70, the remaining \$20,000 was supplied by GTFA). This funding covered the grants awarded and the administrative fee charged by Intersection for the Arts (IFTA), a nonprofit organization that contracts with GTFA and was used to sub-grant out the grants to the awardees. As of mid-April, these grant funds had not yet been disbursed, but that may have changed since then.
- 2. Nonprofit Sustainability Initiative (NSI) Grant from the Office of Economic and Workforce Development (OEWD):** In March of 2022, you participated in a selection panel, which awarded CMAC a tentative grant of \$1,000,000 through the [Nonprofit Sustainability Initiative \(NSI\)](#) program. The NSI program is funded by the City's Office of Economic and Workforce Development (OEWD). The program is administered by a nonprofit organization, Community Vision, in partnership with the Mayor's Office of Housing and Community Development and the Arts Commission. Grants are awarded by a selection panel, which is comprised of six panelists, three of whom represent the City and three who do not represent the City. You served as one of these six panelists as a City employee. The panel met on March 16, 2022, and CMAC received

their award letter last year on March 23. As a panelist, you reviewed and scored the grant proposals. While the NSI program is City-funded, the grants are administered by Community Vision and Community Vision is the party that signs the award letters and grant agreements. As far as you know, these grant funds have not yet been disbursed, due to CMAC not having met the grant conditions and not having the staff capacity necessary to provide the required documentation.

Summary of Applicable Laws

The City has rules for all officers and employees post-employment, these rules include: 1) a permanent restriction on representing any other person (except the City) before any court or government agency in connection with particular matters in which you were personally and substantially involved, 2) a one-year restriction on communicating with your former department with the intent to influence a government decision, and 3) a prohibition on employment with parties that contract with the City. Waivers for these first two rules may be issued by the Ethics Commission if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. Waivers for the third rule may only be issued if the Commission determines that imposing the restriction would cause extreme hardship for the City officer or employee.

The City's rules regarding behested payments can be found in [Section 3.234](#) of the Campaign and Governmental Conduct Code and in [Ethics Commission Regulations](#) 3.234-1 through 3.234-5.

Application of Relevant Laws

The following applies the three relevant laws to your situation and examines if a waiver would potentially be necessary for you to accept and perform in the duties associated with the Executive Director position at CMAC.

Permanent Restriction on Representation In Particular Matters.

The City's permanent restriction on representation in particular matters prohibits former employees of the City from, with the intent to influence, representing any other person (except the City), before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance, or by making any oral, written, or other communications in connection with a particular matter. This applies to particular matters in which, 1) the City is a party or has a direct and substantial interest, 2) the former employee participated in personally and substantially as a City employee, and 3) which involved a specific party or parties at the time of such participation.

[Ethics Commission Regulation 3.234-5\(d\)](#), specifies that a "particular matter" can involve "an isolated transaction or related set of transactions between identifiable parties such as contracts, grants, [or] applications." In this situation, there are two particular matters in which you were personally and substantially involved. The first is the award of the Storm Relief Grant to CMAC and the second is the award of the NSI grant to CMAC. Note that the implementation of these grants after they are awarded would be different matters than the awarding of the grants. As such, you would be prohibited from switching sides to continue working on the awarding of the grants but would not be prohibited from working on the implementation of the grants.

You have stated that if you were to accept this position with CMAC, you would likely not need to represent CMAC before any state, federal, or local agencies regarding the award of the Storm Relief Grant. However, you have said you might need to represent CMAC before the City regarding the award of the NSI grant.

Without a waiver from the Ethics Commission, you would be prohibited from representing CMAC before any state, federal, or local agencies, regarding the awarding of either the Storm Relief Grant or the NSI grant. The Ethics Commission may issue a waiver that would allow this activity, if the Commission were to make a finding that granting such a waiver would not create the potential for undue influence or unfair advantage.

One-Year Restriction on Communicating with Former Department.

You have stated that you do not anticipate needing to communicate with your former department (the Arts Commission) in the Executive Director position with CMAC and that you are aware of the one-year restriction and would abide by it should you accept the position with CMAC. Provided that you do not need to communicate with the Arts Commission in this new position, no waiver is required for this restriction.

Employment With Parties That Contract With The City.

The City's rule against employment with parties that contract with the City prohibits current or former employees from being employed by or otherwise receiving compensation from any person or entity that has entered into a contract with the City within the preceding 12 months, where the employee personally and substantially participated in the award of the contract. This rule is intended to prevent City employees from helping award a contract to an entity, before then becoming employed by that entity within the following year.

For both the Storm Relief Grant and the NSI grant, you were personally and substantially involved in the award of the grants. For both grants, the grant agreements have been, or will be, entered into less than 12 months before the beginning of your potential employment with CMAC.

Both these grant agreements cover the disbursement of City funds to recipients who have been selected by City officials. The fact that both grants will be dispensed through intermediary organizations (IFTA and Community Vision) does not prevent CMAC from being a party that contracts with the City for the purposes of this rule.

If you were to accept the Executive Director position with CMAC, you would be employed by an entity that entered into a contract with the City, within the preceding 12 months, where you personally and substantially participated in the award of their contracts. The Ethics Commission may issue a waiver that would allow this activity, if the Commission were to make a finding that imposing this restriction would cause you extreme hardship.

Waiver Process

Given the above, both the permanent restriction on representation in particular matters ([SEC. 3.234\(a\)\(1\)](#)) and the prohibition on employment with parties that contract with the City ([SEC. 3.234\(a\)\(3\)](#)) are likely to be issues should you wish to pursue the Executive Director position at CMAC. Under Code [Section 3.234\(c\)\(1\)](#), the Commission may waive the restrictions in Section 3.234(a)(1) if the Commission makes a finding that granting a waiver would not create the potential for undue influence or unfair advantage. Under Code [Section 3.234\(c\)\(3\)](#), the Commission may waive the restrictions in Section 3.234(a)(3) if the Commission makes a finding that imposing the restriction would cause extreme hardship for the City officer or employee.

A request for a waiver must be in writing and must also certify that you have provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of your department, board, commission, office, or unit of government ([Ethics Commission Regulations. 3.234-4\(a\)\(1\) and 3.234-4\(a\)\(2\)](#)).

Waiver requests regarding the restriction on representation in particular matters must include all the following:

1. Information describing the former position held by the employee,
2. the particular matter for which the waiver is sought,
3. the individual's prior involvement in the matter, if any, and
4. reasons why granting a waiver would not create the potential for undue influence or unfair advantage. *EC Reg. 3.234-4(a)(1)*.

Waiver requests the ban on compensation from City contractors must include all the following:

1. Information describing the name and business activity of the potential new employer of the officer or employee,
2. 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,
3. the exact nature of the officer or employee's participation in awarding those contracts, and
4. reasons why imposing the restriction in subsection 3.234(a)(3) would cause extreme hardship for the City officer or employee. *EC Reg. 3.234(a)(2)*.

In making its determination whether or not to grant a waiver regarding the restriction on representation in particular matters, the Commission may consider:

1. The nature and scope of the representation,
2. the subject matter of such representation,
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.

In making its determination whether or not to grant a waiver regarding the ban on compensation from City contractors, the Commission may consider:

1. The vocation of the individual,
2. the range of employers for whom the individual could work,
3. the steps the individual has taken to find new employment, and
4. any other factors the Commission deems relevant.

The general outline of the Commission's waiver process is as follows:

1. Commission Staff receives waiver request.
2. Staff drafts memo recommending approval or denial of waiver.
3. Item agendaized for next regular meeting (if received at least two calendar weeks prior). *EC Reg. 3.234-4(a)(3)*.
4. Regular Commission meeting
 - a. Commission calls waiver agenda item in open session.
 - b. Staff will summarize the law and their recommendation.
 - c. Requestor will make their presentation.
 - i. Requestor will be given time (usually 3-5min, but the Commission may grant further time at its discretion) to present the request.

- ii. Requestor should lay out the reasons showing that *a waiver would not create the potential for undue influence or unfair advantage* and/or that *a waiver would cause extreme hardship for the requestor*, using the factors laid out in Ethics Commission Regulations 3.234-4(a)(4) and/or 3.234-4(a)(5).
 - d. A designated representative of the public agency may make a presentation to the Commission supporting or opposing the waiver request. *EC Reg. 3.234-4(a)(3)*.
 - e. The Commission may seek clarifications from requestor and ask them to address or otherwise acknowledge factors laid out in the regulations to specify approval or denial of the request.
 - f. Commission discussion of waiver request.
 - g. Commission motion on how to resolve waiver request.
 - h. Public comment on Commission motion.
 - i. Requestor may ask that supporters make presentations during this time.
 - i. Commission vote to approve or deny waiver.
5. Commission Staff will draft and submit to requestor an approval or denial of the waiver based on the Commission's motion.

Thank you again for your patience and cooperation. Please let me know if you have any questions or would like to submit a waiver request.

Best,
Michael

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pronouns: he/him

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