



San Francisco Ethics Commission

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Date: December 6, 2021

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy and Legislative Affairs Counsel

Re: **AGENDA ITEM 8 – Discussion and possible action regarding request by former Director of the Office of Cannabis Marissa Rodriguez for waiver of post-employment restriction on communications with former department.**

Summary This memo provides background and analysis to assist the Commission in deciding whether to grant a waiver to the former Director of the Office of Cannabis Marissa Rodriguez from the post-employment restriction contained in Campaign and Governmental Conduct Code § 3.234(a)(2). For one year after leaving service, the rule prohibits former City officers and employees from communicating on behalf of any other person with the department, board, commission, office or other unit of government for which the officer or employee served with the intent to influence a government decision.

Recommendation That the Commission evaluate the waiver request as discussed below and not issue a waiver to Ms. Rodriguez.

I. Background

The facts in the section are drawn from the request for a post-employment restricting waiver received from Marissa Rodriguez (Attachment 1). Until October 11, 2021, Ms. Rodriguez was the director of the San Francisco Office of Cannabis (OOC). OOC is a division of the General Services Agency (GSA) under the City Administrator.¹ According to Ms. Rodriguez, her duties as director of OOC included overseeing the division's cannabis permitting processes, managing grants, directing enforcement and compliance, overseeing aspects of public events, facilitating the Cannabis Oversight Committee, representing the division publicly, and maintaining the division's budget. She supervised eight people, including six employees, a fellow, and an intern.

¹ See Office of the City Administrator, [Divisions](#).

After leaving City service, Ms. Rodriguez became the executive director of the Union Square Alliance, formerly known as the Union Square Business Improvement District (USBID).² Her duties include “seeking to create a high quality visitor experience, by managing and activating public spaces, maintaining a clean and safe environment, attracting new investment, and advocating for the district’s future success.”

As a former City employee, Ms. Rodriguez is subject to the City’s post-employment restrictions. Because Ms. Rodriguez terminated her service to the City within the last 12 months, she is subject to the post-employment restriction contained in Campaign and Governmental Conduct Code (“Code”) section 3.234(a)(2). Ms. Rodriguez has requested that the Commission issue a waiver exempting her from the application of the rule.

II. Applicable Law: One-Year Restriction on Communicating With Unit of City Government for which a Former Officer or Employee Served

Section 3.234(a)(2) of the Code states:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.³

The rule means that after leaving City service an official is prohibited for one year from contacting certain City officials on behalf of someone else for the purpose of influencing City decisions. This applies to communications that a former official might make on behalf of their employer, a client, or any other person. Regulation 3.234-2 clarifies that the rule “applies to attempts to influence any government decisions ..., 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.”⁴ This supports the policy behind this post-employment rule: that communications by a former City official with current City officials within their former unit of government can give rise to the danger of undue influence or unfair advantage or the appearance thereof.

² See Union Square Alliance, [About Us](#). Business Improvement Districts are also known as Community Benefit Districts. According to the Office of Economic and Workforce Development, “Community Benefit Districts (CBDs) strive to improve the overall quality of life in targeted commercial districts and mixed-use neighborhoods through a partnership between the City and local communities. In California, CBDs are also known as Business Improvement Districts. Once an area has voted to establish a CBD, local property owners are levied a special assessment to fund improvements to their neighborhood. The funds are administered by a non-profit organization established by the neighborhood.” San Francisco Office of Economic and Workforce Development, [Community Benefit Districts](#).

³ Campaign & Gov. Conduct Code § 3.234(a)(2).

⁴ Ethics Commission Regulation 3.234-2(a).

The public's trust in the integrity of City decision making is damaged insofar as former officials appear to use their recent status as a City official to secure beneficial outcomes for an employer, client, or other person. It does not matter if the former official worked on the particular decision that they now hope to influence; that issue is addressed through other post-employment rules.⁵ The one-year prohibition on communicating with one's former unit of government is a broad rule meant to prohibit a type of influence that gives rise concerns about the fairness of governmental decision making. The purpose and findings section within the ethics chapter of the Code states:

Government decisions of officers and employees of the City and County should be, and should appear to be, made on a fair and impartial basis. The practice of former officers and employees communicating with their former colleagues on behalf of private interests and the practice of current officers of the City and County communicating with other officers and employees on behalf of any other person for compensation creates the potential for, and the appearance of, undue influence, favoritism or preferential treatment. Prohibiting former officers and employees from communicating orally, in writing, or in any other manner with their former colleagues for specified periods of time and prohibiting current officers from communicating orally, in writing, or in any other manner with other officers and employees of the City and County on behalf of any other person for compensation will eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.⁶

The law explains which City officials a former official is prohibited from contacting. The Code prohibits former officials from contacting "the department, board, commission, office or other unit of government, for which the officer or employee served."⁷ Regulation 3.234-5 further clarifies that "department, board, commission, office or other unit of government for which a City officer or employee served" includes both

- 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 that the former official directly served.⁸

Thus, former officials are prohibited from contacting either the unit of City government that they directly served or another unit of City government directed and controlled by that unit of City government.

Regulation 3.234-5 also provides guidance on how to determine the scope of the unit of government that the former official directly served. The factors included in the regulation are:

⁵ See Campaign & Gov. Conduct Code §§ 3.234(a)(1)(A), (a)(3).

⁶ *Id.* at § 3.200(e).

⁷ *Id.* at § 3.234(a)(2).

⁸ Ethics Commission Regulation 3.234-5(a)(1) (emphasis added).

- 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.⁹

These factors help to clarify that the rule should not be construed too narrowly by, for example, finding that an official only served a division of a department and thus is not prohibited from contacting officials in other divisions.

III. Application of 3.234(a)(2) to Officials within the Office of Cannabis (OOC)

Because Ms. Rodriguez was the Director of the Office of Cannabis until October 11, 2021, section 3.234(a)(2) applies to Ms. Rodriguez and will continue to apply for one year after that date. She is prohibited from contacting, on behalf of another person and with the intent to influence a government decision, any official within the unit of government that she formerly served or any official within a unit of government directed and controlled by that unit of government.

The rule clearly prohibits Ms. Rodriguez from contacting officials within the Office of Cannabis. Additionally, she is prohibited from contacting officials within the City Administrator's office. This is because the City Administrator's office constitutes the unit of government that Ms. Rodriguez served under Regulation 3.234-5(a)(2). OOC does not have a budget separate from that of the City Administrator's office. The Mayor's budget for FY22 and FY23 indicates that OOC is a division of the City Administrator's Office.¹⁰ This meets the first factor in Regulation 3.234-5(a)(2). The Director of the Office of Cannabis is also listed under the City Administrator's office in the Campaign and Governmental Conduct Code for purposes of Form 700 filing obligations.¹¹ This meets the second factor in Regulation 3.234-5(a)(2). The law creating OOC clearly states that the office is a division of the City Administrator's office: "The Mayor shall establish an Office of Cannabis *under the direction of the City Administrator* to oversee the implementation of laws and regulations governing cannabis in San Francisco. The City Administrator shall appoint a Director of the Office of Cannabis."¹² This meets the third factor in Regulation 3.234-5(a)(2). The fourth factor of Regulation 3.234-5(a)(2) broadly includes any other factors the Ethics Commission deems relevant. It is relevant that the City Administrator's website lists OOC as one of its divisions.¹³ Also, Ms. Rodriguez reported to the City Administrator herself as well as two deputy City Administrators, further indicating that she directly served that office.

⁹ *Id.* at Regulation 3.234-5(a)(2).

¹⁰ Mayor's Office of Public Policy And Finance, [Proposed Budget](#), Fiscal Years 2021-2022 and 2022-2023 pp. 131, 135. "City Administrator's Office provides services through the following divisions: ... Office of Cannabis coordinates with other city departments to review cannabis business license applications and ensure compliance with all applicable laws and regulations."

¹¹ Campaign & Gov. Conduct Code § 3.1-251: General Services Agency – City Administrator.

¹² Administrative Code § 2A.420(a) (emphasis added).

¹³ See Office of the City Administrator, [Divisions](#).

On balance, the factors in Regulation 3.234-5(a)(2) indicate that the unit of government that Ms. Rodriguez served includes both the Office of Cannabis and the City Administrator's office. For purposes of the post-employment restriction in section 3.234(a)(2), she is therefore considered an employee of the City Administrator's office. Thus, section 3.234(a)(2) applies to her communications with officials in OOC, the City Administrator's office, and any unit of government subject to the direction and control of those offices.

The Office of Cannabis does not appear to direct or control any other unit of City government.

The City Administrator's office, however, oversees many City departments, offices, and programs, which are units of government that are subject to the direction and control of the City Administrator's office under Regulation 3.234-5(a)(1)(B). The regulations do not provide factors for determining when a unit of government is "subject to the direction and control" of another unit of government; Regulation 3.234-5(a)(2) only provides factors for determine the scope of the unit of government that the official in question "directly served." The only discussion of the concept of direction and control that appears in the regulation is in an example. The example states:

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.¹⁴

This example indicates that the General Services Agency (another term used for the City Administrator's office) directs and controls the Department of Technology (DT). That means that employees of the City Administrator's office would be prohibited from contacting officials within DT after leaving City service. Although the example does not explain which facts indicate that DT is under the direction and control of the City Administrator's office, it appears to conclude that because DT is placed within the City Administrator's oversight, it is subject to the direction and control of the City Administrator.

Additionally, the example states that officials within DT would not be prohibited from contacting officials within the City Administrator's office or the departments it oversees. This appears to be because the City Administrator's office is not considered the same unit of government as DT. This is in line with the factors that define what constitutes the same unit of government: DT has its own budget in the Mayor's budget proposal;¹⁵ DT officials who file the Form 700 are listed in a separate section of the Code from other GSA divisions;¹⁶ and the law that created DT appears to suggest it is a separate entity from the City Administrator's office.¹⁷ Thus, when the example says that a "former employee of DT

¹⁴ Ethics Commission Regulation 3.234-5(a)(2) (emphasis added).

¹⁵ Mayor's Office of Public Policy And Finance, [Proposed Budget](#), Fiscal Years 2021-2022 and 2022-2023 p. 143.

¹⁶ Campaign & Gov. Conduct Code § 3.1-253, General Services Agency – Technology, Department Of.

¹⁷ San Francisco Board of Supervisors, [File 080886](#) § 11.86.

would be considered a former employee of the DT and not of GSA or the other departments under GSA's control," that seems to be based on the fact that DT, unlike most City Administrator divisions, is not considered part of the same unit of government under Regulation 3.234-5(a)(2). This is different from the Office of Cannabis: OOC is clearly part of the same unit of government as the City Administrator's office under the factors in Regulation 3.234-5(a)(2), and OOC employees are thus considered employees of the City Administrator's office for purposes of this rule.

Based on the regulations, Ms. Rodriguez directly served a unit of government that includes OOC and the City Administrator's office. The regulations indicate that all divisions of the City Administrator's office are "subject to the direction and control" of the City Administrator's office. Thus, the rule in section 3.234(a)(2) prohibits Ms. Rodriguez from communicating with any officials within OOC, the Administrator's office, or any division of the City Administrator's office on behalf of any other person with the intent to influence a government decision. As Regulation 3.234-5 states, "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."¹⁸ This would prohibit her from communicating with the Department of Public Works and the Entertainment Commission, both of which are divisions of the City Administrator's office.

In her waiver request, Ms. Rodriguez indicates that she anticipates communicating with the Police Department, the Recreation and Park Department, and the Department of Homelessness and Supportive Housing. Ms. Rodriguez does not report to have directly served any of these departments in the last twelve months, nor are any of these departments subject to the direction and control of the City Administrator's office. Thus, the rule in section 3.234(a)(2) does not prohibit Ms. Rodriguez from communicating with official in these departments, and no waiver is necessary regarding these departments.

IV. Waiver

Notwithstanding the prohibition in section 3.234(a)(2), the Code enables the Commission to grant a waiver allowing an individual to engage in communications with City officials that would otherwise be prohibited "if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage."¹⁹ Regulation 3.234-5 further states that "the Commission shall not approve any request for a waiver from the permanent or one-year bans ... unless the Commission makes a finding that granting such a waiver would not create the potential for undue influence or unfair advantage."²⁰

This standard for assessing when a waiver can be issued is a strict test: it envisions that waivers will be issued when there is no danger for undue influence or unfair advantage. This is different from post-employment waivers that can be granted to commissioners who by law must be appointed to represent certain professions, trades, businesses, unions or associations.²¹ Because these types of required appointments carry an inherent level of crossover between the individual's profession and the

¹⁸ Ethics Commission Regulation 3.234-5(a)(2).

¹⁹ Campaign & Gov. Conduct Code § 3.234(c)(1).

²⁰ Ethics Commission Regulation 3.234-4(a)(4).

²¹ See *id.* at Regulation 3.234-4(b)(1).

jurisdiction of their former commission, the standard for when a waiver can be issued is more generous. In April 2021, for example, the Commission considered a request from a former Historic Preservation Commissioner regarding the rule in section 3.234(a)(2). Because this individual was appointed to represent a particular profession, the Commission considered the request by balancing the need for the waiver (on the part of the individual and the appointing authority) against any potential for undue influence or unfair advantage.²² By contrast, Ms. Rodriguez was not a member of City board or commission who was appointed to represent a profession, trade, business union or association. Thus, her waiver request must be considered under the stricter, narrower rule that the waiver must not create any potential for undue influence or unfair advantage.

In determining whether the requestor's anticipated conduct would create any potential for undue influence or unfair advantage, 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.²³

A. City Administrator's Office

In her waiver request, Ms. Rodriguez asks for a waiver that would allow her to engage in communications with the City Administrator's office that would otherwise be prohibited under section 3.234(a)(2). Under the factors described above, this kind of waiver is not appropriate. First, Ms. Rodriguez was the director of an office within the City Administrator's office. She reported to the City Administrator and to two deputy City Administrators. Ms. Rodriguez provided monthly memoranda to the City Administrator, and the City Administrator had appointment authority for her position. In addition, Ms. Rodriguez worked with the City Admonitor's office on press inquiries and legislative matters, and budget matter, and drafted the racial equity report for the City Administrator's office. Her role thus entailed direct contact with various officials within the City Administrator's office, including the City Administrator and other high level officials within the office. This increases the potential for undue influence and unfair advantage if she were to then contact officials within the City Administrator's office on behalf of private parties; whether she intended it or not, her recent professional relationship with the office would have the potential of her receiving preferential treatment if she were to seek to influence officials within that office.

Additionally, the subject matter of Ms. Rodriguez's anticipated communications with the City Administrator's office raise concerns about undue influence and unfair advantage. She would contact the City Administrator's office "to seek recourse and/or accountability regarding any delays or

²² See San Francisco Ethics Commission, April 9, 2021 Regular Meeting, [Agenda Item 6 – Discussion and possible action regarding request for waiver of post-employment restriction for Aaron Hyland](#).

²³ *Id.* (formatting added).

challenges that might arise in connection with my interactions with the Entertainment Commission or DPW.” This type of communication raises the potential for undue influence or unfair advantage. By contacting the City Administrator’s office, Ms. Rodriguez would seek to have City Administrator officials intervene in matters that involved her new employer and were not resolved in the preferred way or within the preferred timeframe. Her recent service to that office raises the danger that she may receive preferential treatment and would be able to seek better outcomes than are available to others because of her prior role with the office.

The fact that Ms. Rodriguez would not be communicating with the City Administrator’s office on matters related to cannabis permitting or racial equity, subject matters on which she worked as a City employee, does not overcome the danger for undue influence and unfair advantage described above. Crossover in the subject matter of one’s prior City work and one’s new private employment is not required for the rule to apply; Regulation 3.234-2(a) states that the rule prohibits communications regarding “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.”²⁴ Although crossover in subject matter would make the potential for undue influence and unfair advantage greater, a lack of such crossover does not remove that danger. It is primarily the relationship the former official recently had with the City that gives rise to the ethical dangers addressed by section 3.234(a)(2), not the former official’s involvement in any particular project or subject matter area.

On balance, a waiver should not be granted that would permit Ms. Rodriguez to engage in communications with the City Administrator’s office that would otherwise be prohibited under section 3.234(a)(2). Such communications are clearly within the scope of what that code section seeks to prevent.

B. Entertainment Commission

In her waiver request, Ms. Rodriguez asks for a waiver to allow her to engage in communications with the Entertainment Commission that would otherwise be prohibited under section 3.234(a)(2). The nature of her anticipated communications would be “to obtain street closure permits and amplified sound permits.” Such a waiver should not be granted.

The Entertainment Commission is closely tied to the City Administrator’s office, which is the unit of government that Ms. Rodriguez served, as that term is defined in Regulation 3.234-5(a)(2). The Entertainment Commission does not have a budget separate and apart from the City Administrator’s budget.²⁵ The Entertainment Commission is a very small office, with only 5.8 full-time employees and \$1.2 million allocated to its operations in fiscal year 2020-21.²⁶

Ms. Rodriguez indicates that she interacted with the Entertainment Commission during her work for the City, which heightens the potential that any communications she might have with the office now would

²⁴ Ethics Commission Regulation 3.234-2(a).

²⁵ Mayor’s Office of Public Policy And Finance, [Proposed Budget](#), Fiscal Years 2021-2022 and 2022-2023 pp. 132—36.

²⁶ City and County of San Francisco Board of Supervisors, Budget and Legislative Analyst, [Policy Analysis Report: Analysis of the City Administrator’s Office](#) p. 8.

result in some degree of undue influence and unfair advantage. First, Ms. Rodriguez indicates that the Entertainment Commission participated in scoring cannabis grant applications. Second, one of the Entertainment Commission's five employees is a member of the Cannabis Oversight Committee, with which Ms. Rodriguez worked in her role as OOC director.²⁷ Although these prior contacts with the Entertainment Commission are not necessary in order for section 3.234(a)(2) to apply, they indicate a clear potential for undue influence and unfair advantage if Ms. Rodriguez were to contact the office now.

On balance, it cannot be said that a waiver allowing Ms. Rodriguez to communicate with Entertainment Commission officials with the intent to influence government decisions "would not create the potential for undue influence or unfair advantage," which is the high bar set for waivers under section 3.234(c)(1).²⁸ Thus, no waiver should be granted to allow for communications with the Entertainment Commission.

C. Department of Public Works

In her waiver request, Ms. Rodriguez asks for a waiver to allow her to engage in communications with the Department of Public Works (DPW) that would otherwise be prohibited under section 3.234(a)(2). The nature of her communications would be related to "cleanliness issues, ... streetscapes and public realm projects." Such a waiver should not be granted.

Ms. Rodriguez indicates that she did not interact with DPW officials during her time at OOC. Her waiver request states, "I did not work with DPW at all because it is not involved in cannabis-related work." However, neither prior contacts with certain officials nor prior work on certain types of matters are required in order for section 3.234(a)(2) to apply. In fact, the regulations specify that the rule prohibits attempts to influence government decisions, "including decisions in which the officer or employee had no prior involvement"²⁹ Section 3.234(a)(2) clearly envisions that the rule will prohibit communications with City officials that the former official had not directly worked with during City service.

Likewise, a lack of prior contacts with DPW does not indicate that there is no potential for undue influence or unfair advantage if Ms. Rodriguez contacted the office now. For one, because of her recent high level position as director of an office within the same broader organization as DPW (the City Administrator's office), DPW officials may consider Ms. Rodriguez to be a former colleague and may be inclined to treat her in a preferential manner. This may happen even if Ms. Rodriguez had not worked directly with a given DPW official and even if she does not solicit or expect preferential treatment. Department heads are among the highest level officials in City government. They are widely known throughout the City organization and are often treated deferentially by other City officers and employees. Additionally, the appearance of undue influence and unfair advantage in the eyes of the

²⁷ Dylan Rice, the Senior Analyst with the Entertainment Commission, is a member of the Cannabis Oversight Committee. See San Francisco Cannabis Oversight Committee Regular Meeting, October 6, 2021, [Minutes](#); San Francisco Entertainment Commission, [Contact Us](#).

²⁸ Campaign & Gov. Conduct Code § 3.234(c)(1).

²⁹ Ethics Commission Regulation 3.234-2(a).

public is still present regardless of whether prior contacts with certain officials took place during the individual's time in City service.

On balance, it cannot be said that a waiver allowing Ms. Rodriguez to communicate with DPW officials with the intent to influence government decisions "would not create the potential for undue influence or unfair advantage," which is the high bar set for waivers under section 3.234(c)(1).³⁰ Thus, no waiver should be granted to allow for communications with DPW.

V. Conclusion

Ms. Rodriguez anticipates contacting the City Administrator's office, DPW, and the Entertainment Commission in ways that would violate section 3.234(a)(2), and she requests a waiver to allow these communications. Communications with the Office of Cannabis would also be prohibited, but Ms. Rodriguez has not requested a waiver to communicate with that office.

This memorandum recommends that no waiver be granted to permit otherwise prohibited communications with the City Administrator's office, the Entertainment Commission, or DPW because it is not the case that such communications would not create the potential for undue influence or unfair advantage, which is the standard under the law for granting a waiver.

Ms. Rodriguez also anticipates communicating with the Police Department, the Recreation and Park Department, and the Department of Homelessness and Supportive Housing, which would not be prohibited under section 3.234(a)(2) and therefore does not require a waiver.

³⁰ Campaign & Gov. Conduct Code § 3.234(c)(1).

November 11, 2021

VIA EMAIL

LeeAnn Pelham, Executive Director
San Francisco Ethics Commission
25 Van Ness Ave, Suite 220
San Francisco, CA 94102

**Re: Waiver Request - One-Year Revolving Door Rule
Campaign & Governmental Conduct Code § 3.234(a)(2), (c)(1)**

Dear Director Pelham,

I am the Executive Director of the Union Square Alliance (“Alliance”) and I am writing to request a waiver of the one-year ban set forth in San Francisco Campaign and Governmental Conduct Code section 3.234(a)(2).

The Commission may grant such a waiver if it “would not create the potential for undue influence or unfair advantage.” (Section 3.234(c)(1).) The reasons why granting my request would not create such potential, as well as the relevant factual background, are set forth below.

1. Scope of Waiver Request.

For the sake of clarity, my request for a waiver is with respect to communications with following: (1) the City Administrator’s Office (“CAO”); and (2) any department or division overseen by the CAO, other than the Office of Cannabis (“OOC”) where I worked.

To the extent the Commission denies my request with respect to the CAO or any of its divisions and departments, I ask that it grant it with respect to the other(s).

In this regard, please note that I believe that it is – at best – unclear that the one-year ban even applies to my communications with other departments or divisions overseen by the CAO given that they mostly operate separately with little to no budgetary, personnel or operational overlap. (See SFEC Reg. 3.234-5(a).)

Indeed, the first example in Regulation 3.234-5(a) suggests that I was not an “employee” of these other divisions and departments for purposes of the one-year ban:

“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.” (Emphasis added.)

Nevertheless, in the spirit of good faith and full disclosure, I am requesting that the Commission explicitly recognize that there is also no potential for undue influence or unfair advantage, and grant a waiver with respect to these other CAO departments and divisions.

2. My Former Position for the City.

Until October 11, 2021, I was the Director of the OOC, which oversees the implementation of laws and regulations governing cannabis in San Francisco. The OOC duties and functions are set forth in Administrative Code Section 2A.420. I was the OOC Director for about 2.5 years.

As the Director of the OOC, my primary responsibilities included:

- Overseeing the permitting process for the cultivation, manufacture, retail, and delivery of cannabis in San Francisco, prioritizing the interests of individuals negatively impacted by the war on drugs;
- Managing the division's grant program;
- Directing all of its enforcement and compliance efforts;
- Overseeing certain aspects of various public events (e.g., Grass Lands stage at Outside Lands);
- Facilitating the work of the Cannabis Oversight Committee, which is tasked with making recommendations to the Board of Supervisors and Mayor on the effectiveness of City cannabis laws and regulations, and the overall health and stability of the cannabis industry in San Francisco; and
- Representing the division publicly, managing staff, and maintaining the division's budget.

In order to accomplish the above duties, I managed a team of about eight people: a deputy director, associate director of grants, associate director of compliance and enforcement, associate director of oversight, two permit analysts, one fellow, and an intern.

3. My Former Position's Relationship with the CAO.

Pursuant to Administrative Code Section 2A.420(a), the OOC is under the direction of the City Administrator, who appoints its director.

In this regard, I reported to Deputy Directors Ken Bukowski and Rachel Cukierman in the CAO. I reported to the City Administrator herself through monthly memoranda; if additional briefing was needed, I would meet with her with respect to those specific, reported items. Most of the matters I discussed with the City Administrator and her deputies were related to cannabis permitting issues, dispensary problems and/or controversial locations. We did not discuss in any substantial way other City-related issues such as street closure or amplified sound permits, or streetscape issues.

I also worked on some press inquiries and legislative matters with the City Administrator's team, and I worked with the CAO's Office of Finance on OOC budget issues. Finally, I consulted with the City Administrator's team with respect to the racial equity report I drafted for the entire CAO. (See below for more information regarding this report.)

4. The CAO's Oversight Structure.

The CAO's oversight responsibilities encompass at least twenty-six (26) disparate departments and/or divisions, ranging from Animal Care & Control and the Chief Medical Examiner to the County Clerk and the Department of Real Estate.

An October 22, 2021 report by the Budget and Legislative Analyst sets out a comprehensive discussion of the CAO's structure. (See page 8 for a full division list.) As that report states:

"The City Administrator's Office groups its functions by internal services, programs, and six stand-alone departments, including the Department of Public Works and Department of Technology. For City budgeting purposes, these latter two departments have their own budgets whereas the other departments, programs, and services are grouped into a single City Administrator's Office budget unit."

Indeed, although the Department of Public Works ("DPW") and Department of Technology ("DT") report to the City Administrator, they are organized and managed separately from the CAO.

All of the CAO's divisions and departments are headed by a City Administrator appointee, but in most cases, the City Administrator is not in charge of the division or department.

5. My Interaction with Other CAO Divisions/Departments.

The OOC does not typically work with other CAO divisions or departments at all with respect to its day-to-day functions. However, there have been a few very specific and discrete exceptions.

First, I worked with Digital Services, which provided support for OOC's digital permit function and its website.

Second, I worked to support the Cannabis Oversight Committee, which was created to make recommendations to the Board of Supervisors and Mayor about the cannabis industry and related City laws and regulations. There is a seat on the Committee for the following City departments, each of which can be involved in the permitting process: Entertainment Commission, Planning Department, Department of Public Health, Fire Department, Police Department, and the Department of Building Inspection. The City department representatives that served on this committee did so in a non-voting advisory capacity. The representatives of these City departments do not have any say with respect to the operations of the OOC.

Finally, the OOC was tasked with writing the first phase of the Racial Equity Report for the CAO, part of a Mayor-led initiative requiring all City departments to draft a racial equity report. In that very specific capacity, we worked with other CAO divisions to write the report.

6. My Current Position.

I am currently the Executive Director of the Union Square Alliance, a nonprofit entity that manages the Union Square Business Improvement District in order to improve the overall quality of life for residents and visitors. The Alliance provides these services pursuant to a contract with the City¹ and with funds obtained through self-imposed assessments on properties within the district, pursuant to state and local law.

¹ I was not involved in the negotiation or making of this contract, or of any City contract with the Alliance, in any way and thus the prohibition set forth in Section 3.234(a)(3) is not applicable.

My responsibilities as the Alliance's Executive Director are wide ranging, and include seeking to create a high-quality visitor experience, by managing and activating public spaces, maintaining a clean and safe environment, attracting new investment, and advocating for the district's future success. This work helps to support the economic and cultural vitality of Union Square.

To do this, I must represent the Alliance in public forums, manage staff, craft messaging, organize various events and initiatives, and work with City officials and employees. This latter responsibility is integral to my role as the Alliance Executive Director.

7. My Anticipated Work with City.

By way of example, some of the ways that I anticipate communicating with City employees include working with:

- The Department of Homelessness and Supportive Housing to identify resources for homeless individuals in our district; and
- The Police Department on crime issues;
- Recreation and Parks Department in connection with the activation of Union Square (which is a park) for certain events; and
- DPW on certain cleanliness issues, as well as on streetscapes and public realm projects (e.g., the holiday walk, etc.); and
- The Entertainment Commission to obtain street closure permits and amplified sound permits from for various Union Square events.

Indeed, while it is always possible that I could work with other CAO departments, I anticipate that working with DPW and the Entertainment Commission will be most essential to my position and that my effectiveness as the Alliance's Executive Director will be severely hindered if I cannot do so. In fact, without a waiver, I may not be able to fully perform my new job.

8. A Waiver With Respect to other CAO Departments Would Not Create the Potential for Undue Influence or Unfair Advantage.

No undue influence or unfair advantage would result from a waiver with respect to CAO divisions and departments, other than the OOC.

My primary focus at the OOC was on the permitting of cannabis businesses and on racial equity. Because of this niche focus, we had no need to really engage with other CAO divisions and departments on that work (other than the very discrete matters explained above). For example, I did not work with DPW at all because it is not involved in cannabis-related work. In any case, I was certainly not privy to any inside knowledge or contacts with respect to the other CAO divisions and departments that might benefit me as the Alliance's Executive Director.

Indeed, none of my prior contacts with the other CAO divisions and departments – again, which were mostly concerning the equity report – would assist me in my work for the Alliance or lead to any preferential treatment of me. For example, while the Entertainment Commission has a seat on the Cannabis Oversight Committee and will score cannabis grant applications as an uninterested third party, this limited involvement of an Entertainment Commission representative has nothing to do with street closure permits or amplified noise permits, which will be a large part of my new job (and with which I have no prior experience).

In short, I will not benefit from my prior position at the OOC in my communications with the other CAO divisions and departments.

9. A Waiver With Respect to the CAO Would Not Create the Potential for Undue Influence or Unfair Advantage.

No undue influence or unfair advantage would result from a waiver with respect to the CAO.

Again, I have no experience working with the City Administrator or her office on any matter that would be beneficial to me in my new capacity. As stated above, cannabis permitting and racial equity are not at all similar or related to my current work. Moreover, I would not contact the City Administrator on any matter I had previously worked on while at the CAO.

The only contacts I could anticipate having with the CAO would be to seek recourse and/or accountability regarding any delays or challenges that might arise in connection with my interactions with the Entertainment Commission or DPW. For example, if Entertainment Commission approval for an important public event was delayed, I could envision contacting the CAO to inform them of the delay (after exhausting any avenues with the Commission). In this way, I would be acting on behalf of the Alliance just like anyone else would, and I would not expect any preferential treatment or to otherwise benefit from my prior position at the OOC.

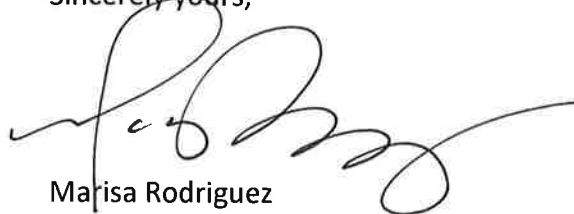
10. Conclusion.

For the reasons above, I request that the Ethics Commission grant my waiver request with respect to the one-year ban found in Section 3.234. Given that I have already started my work for the Alliance, I also request that the Ethics Commission hear my matter at its meeting of Friday, December 10, 2021, pursuant to Ethics Commission Regulation 3.234-4(a)(3). I ask that you include this letter as part of each Commissioner's packet for this item. I intend to make a presentation in support of my waiver request.

Finally, I certify that I have sent a copy of this waiver request to City Administrator Carmen Chu, CAO Deputy City Administrators Ken Bukowski and Rachel Cukierman, and Acting OOC Director John Pierce.

Thank you for your time and consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Marisa Rodriguez', with a long, sweeping horizontal stroke at the end.

Marisa Rodriguez

cc: City Administrator Carmen Chu
Deputy City Administrator Ken Bukowski
Deputy City Administrator Rachel Cukierman
Acting Office of Cannabis Director John Pierce
Patrick Ford, Ethics Commission Senior Policy and Legislative Affairs Counsel