

From: Canning, Michael (ETH)
Sent: Monday, October 31, 2022 10:47 AM
To: Wong, Phillip (ECN) <phillip.c.wong@sfgov.org>
Subject: RE: Help Request re: Post-employment Restrictions

Hello Phillip,

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.

Background

You have stated that since August 2016 you have served as a project manager with the Office of Economic and Workforce Development (OEWD). You work on the implementation of mixed-use housing projects that received Board of Supervisors and Mayoral discretionary approvals via ordinances to enact development agreements between the City and private/non-profit developers. One of the development agreement projects you work on is the Potrero HOPE SF project ([BOS File No. 161161](#)), which is being developed by [Bridge Housing](#) in partnership with the City and the SF Housing Authority. You have stated that there is a potential opportunity for you to fill the now vacant Director of Potrero HOPE SF position at Bridge Housing, which you are exploring.

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 Director position with Potrero HOPE SF.

Permanent Restriction on Representation In Particular Matters.

You have communicated that as Bridge Housing's Director of Potrero HOPE SF you would, from time to time, represent Bridge Housing on the Potrero HOPE SF project before courts and government agencies, specifically the San Francisco Housing Authority and various City agencies, including the Planning Commission and the Board of Supervisors. You have stated that Potrero HOPE SF is a City-funded project and City Policy Initiative (HOPE SF), the City is a legal party in the project's approvals (which occurred in March 2017), and that the City would continue to have a direct and substantial interest in the successful completion of the project.

In your current role with the City, you work to enact and implement the development agreement for the Potrero HOPE SF project. This work involves coordinating with City Departments to work on the design and permitting of required public improvements that includes Board of Supervisor's legislation to accept these public improvements (e.g., new streets, sidewalks, streetlights, water/sewer utilities, storm water systems) for City ownership, liability, and maintenance.

You have been personally and substantially involved in work on the implementation of the Potrero HOPE SF project and the Potrero HOPE SF project is a particular matter for the purposes of SEC. 3.234(a)(1). Given this, SEC. 3.234(a)(1) would prohibit you from representing Bridge Housing (or any other person, except the City) before any courts or government agencies, with the intent to influence, regarding the Potrero HOPE SF project. In order to represent Bridge Housing in the matter of the Potrero HOPE SF project, a waiver would need to be approved by the Ethics Commission, following the Commission 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 Office of Economic and Workforce Development) in this position with Bridge Housing. If this is correct and remains true for the twelve months following the termination of your employment with the City, this rule should not be an issue for your potential employment with Bridge Housing.

Employment With Parties That Contract With The City.

You have stated that Bridge Housing has not entered into any contracts with the City during the last twelve months (Bridge Housing does have [a contract](#) with the City, but it was entered into in 2017). As long as Bridge Housing has not entered into a contract with the City during the twelve months prior to your accepting this position, this rule will not be an issue for your potential employment with Bridge Housing.

Waiver Process

Given the above, only the permanent restriction on representation in particular matters ([SEC. 3.234\(a\)\(1\)](#)) is likely to be an issue should you wish to pursue the position as Bridge Housing's Director of Potrero HOPE SF. Under Code section [3.234\(c\)](#), 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. 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\(a\)\(1\)](#)).

The waiver request 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)*.

In making its determination whether or not to grant a waiver, 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.

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. 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* using the factors laid out in Ethics Commission regulation 3.234-4(a)(4).
 - 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. Commission will 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.

Please let me know if you have any questions or would like to submit a waiver request.

Best,
Michael

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