

Copy of Informal Advice Provide to Joanne Lee via Email

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 (GFTA), 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 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, 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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