

ORDINANCE NUMBER O- 21045 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 07 2019

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 35 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.3550, RELATING TO LOBBYING ACTIVITIES OF FORMER CITY OFFICIALS.

WHEREAS, at the November 6, 2018, Municipal General Election, City of San Diego (City) voters approved Measure L, which amended the San Diego City Charter (Charter) to, among other things, expand restrictions on lobbying by former elective officers of the City; and

WHEREAS, the provisions of Measure L, which lengthen the cooling off period for former elective officers of the City, took effect on December 24, 2018, when the Secretary of State chaptered the amendments; and

WHEREAS, the Charter amendments require the City Council to amend the City's Ethics Ordinance, which is codified in the San Diego Municipal Code (Municipal Code), to conform to the amendments set forth in Measure L; and

WHEREAS, this ordinance is intended to conform to Measure L and to California Government Code section 87406.3, which was amended by the California Legislature's and Governor's approval of Assembly Bill 551; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Chapter 2, Article 7, Division 35 of the San Diego Municipal Code is amended by amending Section 27.3550 to read as follows:

§27.3550 Lobbying Activities of Former City Officials

- (a) It is unlawful for any former *City Official* who received *compensation* from the *City* to work on a particular project during his or her *City* service to engage in *direct communication* with the *City*, for *compensation*, with

regard to any pending application for discretionary funding or discretionary entitlements before the *City* relating to that particular project on behalf of any *person* for a one-year period immediately following termination of service with the *City* or for a two-year period if he or she is a former elected *City Official*.

(1) For purposes of this section, “work on a particular project” means to take part personally and substantially in the project by rendering a decision, approval, or disapproval; by making a formal written recommendation; by conducting an investigation; by rendering advice on a significant basis; or by using *confidential information*.

(2) For purposes of this section, “project” means any matter where a *private business* has made an application to the *City* for discretionary funding or discretionary entitlements, or where the *City* exercises discretion to enter into a lease, agreement, or contract with a *private business*.

(b) It is unlawful for any former *City Official*, for *compensation*, to knowingly counsel or assist any *person* in connection with an appearance or communication in which the former *City Official* is prohibited from engaging pursuant to subsection (a) for a one-year period immediately following termination of service with the *City*, or for a two-year period if he or she is a former elected *City Official*.

(c) As a means of facilitating compliance with subsections (a) and (b) in instances where long-term projects may change in character and scope

over time and where large projects have discrete components or phases, any former *City Official* may seek a written determination from the *Ethics Commission* regarding whether prospective *direct communication* on a particular project would constitute a violation of this section.

- (d) It is unlawful for any former *City Official* to engage in *direct communication* for the purpose of *lobbying* the *City* if all of the following circumstances apply:
- (1) the former *City Official* served as a *City Official* within the previous year, or within the previous two years if he or she is a former elected *City Official*; and
 - (2) the former *City Official* received *compensation* from the *City* for his or her service as a *City Official*; and
 - (3) the former *City Official* is receiving *compensation* to engage in the *direct communication* with the *City*.
- (e) Except as set forth in subsection (f), which governs former elected *City Officials* and former Chief Operating Officers, the prohibitions contained in subsections (a), (b), and (d) do not apply:
- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;

- (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
 - (3) to the activities of any former *City Official* who is an officer, employee, or independent contractor of any *Public Agency* when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or independent contractor of the agency;
 - (4) to any *ministerial act*;
 - (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or
 - (6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.
- (f) Former elected *City Officials* and former Chief Operating Officers are subject to the provisions of California Government Code section 87406.3 and any amendments thereto, which is hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein. Accordingly:
- (1) the exceptions in subsections (e)(1), (e)(5), and (e)(6) do not apply to a former elected *City Official* or to a former Chief Operating Officer; and


- (2) the exception in subsection (e)(3) does not apply to a former elected *City Official* for a period of two years after leaving *City* service, or to a former Chief Operating Officer for a period of one year after leaving *City* service, when such individuals are communicating on behalf of a *Public Agency* as an independent contractor.

Section 2. A full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Joan F. Dawson
Deputy City Attorney

JFD:jvg
January 10, 2019
Or.Dept:Ethics Commission
Doc. No.: 1886331_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 25 2019.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3/7/19
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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AMENDING SECTION 27.3550, RELATING TO LOBBYING
ACTIVITIES OF FORMER CITY OFFICIALS.

§27.3550 Lobbying Activities of Former City Officials

(a) It is unlawful for any former *City Official* who received *compensation* from the *City* to work on a particular project during his or her *City* service to engage in *direct communication* with the *City*, for *compensation*, with regard to any pending application for discretionary funding or discretionary entitlements before the *City* relating to that particular project on behalf of any *person* ~~other than a *Public Agency*~~ for a one-year period immediately following termination of service with the *City* or for a two-year period if he or she is a former elected *City Official*.

(1) For purposes of this section, “work on a particular project” means to take part personally and substantially in the project by rendering a decision, approval, or disapproval; by making a formal written recommendation; by conducting an investigation; by rendering advice on a significant basis; or by using *confidential information*.

(2) For purposes of this section, “project” means any matter where a *private business* has made an application to the *City* for

discretionary funding or discretionary entitlements, or where the *City* exercises discretion to enter into a lease, agreement, or contract with a *-private business*.

- (b) It is unlawful for any former *City Official*, for *compensation*, to knowingly counsel or assist any *person* ~~other than a *Public Agency*~~ in connection with an appearance or communication in which the former *City Official* is prohibited from engaging pursuant to subsection (a) for a one-year period immediately following termination of service with the *City*, or for a two-year period if he or she is a former elected *City Official*.
- (c) As a means of facilitating compliance with subsections (a) and (b) in instances where long-term projects may change in character and scope over time and where large projects have discrete components or phases, any former *City Official* may seek a written determination from the *Ethics Commission* regarding whether prospective *direct communication* on a particular project would constitute a violation of this section.
- (d) It is unlawful for any former *City Official* to engage in *direct communication* for the purpose of *lobbying* the *City* if all of the following circumstances apply:
- (1) the former *City Official* served as a *City Official* within the previous ~~twelve months~~ year, or within the previous two years if he or she is a former elected *City Official*; and
 - (2) the former *City Official* received *compensation* from the *City* for his or her service as a *City Official*; and

- (3) the former *City Official* is receiving *compensation* ~~from a private business~~ to engage in the *direct communication* with the *City*.
- (e) The Except as set forth in subsection (f), which governs former elected *City Officials* and former Chief Operating Officers, the prohibitions contained in subsections (a), (b), and (d) shall do not apply:
- (1) to prevent a former *City Official* from making or providing a statement, based on the former *City Official's* own special knowledge in the particular area that is the subject of the statement, provided that no *compensation* is thereby received other than that regularly provided for by law or regulation for witnesses;
- (2) to prevent any former *City Official* from representing himself or herself, or any member of his or her *immediate family*, in their individual capacities, in connection with any matter pending before the *City*;
- (3) to the activities of any former *City Official* who is an ~~elected or appointed~~ officer, or employee, or independent contractor of any *Public Agency*, ~~or a consultant of any *Public Agency*~~, when that former *City Official* is solely representing that agency in his or her official capacity as an officer, employee, or ~~consultant~~ independent contractor of the agency;
- (4) to any *ministerial act*;
- (5) to any individual appearing as a speaker at, or providing written statements that become part of the record of a *Public Hearing*; or

(6) to any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the *City* or *City* agent, officer, or employee.

(f) ~~The exceptions in subsections (e)(1), (5), and (6) do not apply to any former *City Official* who, within one year of terminating *City* employment, was an elected *City Official* or served as the *City's* City Manager (Chief Operating Officer).~~ Former elected *City Officials* and former Chief Operating Officers are subject to the provisions of California Government Code section 87406.3 and any amendments thereto, which is hereby adopted by reference and incorporated into the City of San Diego Ethics Ordinance as if fully set forth herein. Accordingly:

(1) the exceptions in subsections (e)(1), (e)(5), and (e)(6) do not apply to a former elected *City Official* or to a former Chief Operating Officer; and

(2) the exception in subsection (e)(3) does not apply to a former elected *City Official* for a period of two years after leaving *City* service, or to a former Chief Operating Officer for a period of one year after leaving *City* service, when such individuals are communicating on behalf of a *Public Agency* as an independent contractor.

JFD:jvg
January 10, 2019
Or.Dept: Ethics Commission
Doc. No.: 1886438_3

Passed by the Council of The City of San Diego on FEB 25 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 07 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Brady*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 04 2019, and on MAR 07 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Brady*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21045</u>