

MEMORANDUM OF LAW

DATE: February 9, 1996

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Applicability of Council Policy 300-11 to Contracts with
Persons who Hire Former City Councilmember Staff

BACKGROUND

Your opinion request of December 18, 1995, about the applicability of Council Policy ("CP") 300-11 has been referred to me for response. CP 300-11 governs "City Contract Provisions with Respect to Hiring City Employees."²

QUESTIONS PRESENTED

You ask two questions, which I have rephrased in order to address them:

- (1) Does the "exemption" for City Councilmembers from the Council Policy include City Councilmembers' staff?
- (2) If not, would automatic termination of a contract be required if the former City Councilmember's staff person hired by the contractor only represented the Councilmember and did nothing to personally influence a decision?

SHORT ANSWERS

- (1) No.
- (2) A contract will be terminated automatically only if the former City Council staff member participated in negotiations on that contract or otherwise had an influence on the recommendation made to the City Council in connection with the selection of the contractor or lessee.

ANALYSIS

CP 300-11 is very brief. It states in full:

It is the policy of the City that all City contracts, agreements or leases with consultants, vendors or lessees shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by the City if the contractor or lessee employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a City officer or employee participate in

negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or lessee. It is not the intent of this policy that these provisions apply to members of the City Council.

CP 300-11 (emphasis added).

The policy basically requires City contract negotiators to include in certain types of contracts a clause that triggers automatic termination of those contracts upon the occurrence of two conditions:

- (1) if the contractor hires former City officers or employees within twelve (12) months after they leave the City; and,
- (2) if those former City officers or employees had something to do with negotiating the particular contract.

Condition No. 1: CP 300-11 covers all City officers and employees except Councilmembers.

Your first question assumes that the City's contract negotiators have followed CP 300-11 and have included in a particular contract an "automatic termination" clause. Assuming that is so, the contract's termination will not be triggered automatically if the contractor hires a former City Councilmember. But it will be triggered automatically if the contractor hires a former City Councilmember staff and if the second condition, discussed below, is also met. In other words, there is no broad brush exemption for former City Councilmember staff members as there is for former City Councilmembers themselves. The only exception to CP 300-11 requiring immediate termination of contracts for hiring former City officers or employees is for former City Councilmembers.

Condition No. 2: CP 300-11 requires participation in negotiation or other influence to automatically trigger contract termination.

Under the terms of the second condition, a contractor's merely hiring a former City Council staff member does not require automatic termination of the contract. Automatic termination is required only if that former Council staff member participated in negotiations with or otherwise had an influence on the recommendation made to the City Council in connection with the selection of the contractor (or lessee). We cannot determine from the facts presented whether this occurred.

CONCLUSION

CP 300-11 requires automatic termination of City contracts if former City employees are hired by the contractor and if the former City employees participated in negotiating that contract or influenced the decision to select the contractor. The policy specifically exempts former Councilmembers, but not former Council staff members, from triggering automatic termination. Mere hiring of former City Council staff members does not trigger automatic termination of City contracts. The former Council staff members must have either participated in

negotiating the contract or influenced selecting the contractor.

JOHN W. WITT, City Attorney

By

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