

CITY OF LOS ANGELES
CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
200 N. SPRING STREET
CITY HALL - 24TH FLOOR
LOS ANGELES, CA 90012

September 24, 2008

Mr. Rafique Khan

Re: CEC Advice No. 2008-07

Dear Mr. Khan:

This letter is a response to your request for formal advice dated August 27, 2008, regarding restrictions that will apply to you after retiring from the Community Redevelopment Agency of the City of Los Angeles (CRA). Your question and the Commission's advice are based on the facts that you provided.

Section 705 of the Los Angeles City Charter (Charter) authorizes the Ethics Commission to provide formal advice regarding the City's campaign finance, ethics, and lobbying laws. When applicable, and with the concurrence of the City Attorney's office, the Commission's written advice may also include an analysis of related provisions of the California Political Reform Act of 1974, when terms used in City law are defined there. However, the Commission does not advise about other City, state, or federal laws that do not fall within the Commission's jurisdiction.

Formal written advice provides the requestor with the immunity in Charter § 705(b). However, the immunity does not address or apply to any past actions by the requestor. Under Los Angeles Administrative Code (LAAC) § 24.1.1(f)(2)(K), immunity is limited to the requestor and to the specific facts contained in this advice.

QUESTION

What restrictions would apply to me, as a former community development planner for the CRA, if I were to work as a consultant for a company that is pursuing a contract with the Los Angeles Housing Authority (Housing Authority)?

CONCLUSION

You may not receive compensation to lobby the CRA until October 4, 2009. You are subject to a permanent ban on receiving compensation to lobby any City agency regarding



matters in which you were personally and substantially involved. You are also prohibited from disclosing any confidential information that you acquired during City service for personal gain.

RELEVANT FACTS

You have provided the following facts, which we have determined are relevant to your request:

1. You are currently a community development planner with the CRA. In that role, you are required to file statements of economic interests pursuant to the CRA's conflict of interests code.
2. You will be retiring from the CRA on October 4, 2008.
3. As a community development planner for the CRA's Harbor Region, your duties include the following: helping to create standards and guidelines for redevelopment within the Harbor Region; interpreting the redevelopment plan ordinance rules for regulating new developments; and reviewing building permit applications for conformance with the Harbor Region's redevelopment plans. Your work includes conducting research and making recommendations for Harbor planning matters. However, you do not have the authority to grant entitlements or to make policy decisions for the CRA.
4. The Housing Authority has issued a request for qualifications (RFQ) for a master plan for the Nickerson Garden Housing Project in Watts. The Nickerson project is adjacent to but is not part of the CRA's redevelopment project area in Watts, which is in the CRA's South Los Angeles Region.
5. Gafcon, Inc. is a construction firm that is responding to the RFQ for the Nickerson project. If selected, the Gafcon consulting team will begin work in early 2009.
6. In July 2008, Gafcon asked you to join the consulting team for the Nickerson project. Your work with Gafcon would involve identifying land redevelopment opportunities, analyzing development alternatives, and identifying preferred alternatives. Your work could involve meeting with stakeholders to gather information and explain planning issues. You do not anticipate any direct contact with the CRA through your work on the Nickerson project.
7. As a CRA employee, you have had no interaction with the Housing Authority regarding their RFQ processes, including the RFQ for the Nickerson project.

APPLICABLE LAWS

To prevent former City officials from exercising or appearing to exercise improper influence over City decisions, the Governmental Ethics Ordinance (GEO; Los Angeles Municipal Code (LAMC) §§ 49.5.1 *et seq.*) establishes certain "revolving door" limits on their

attempts to influence City decisions for compensation after they leave City service. The CRA is a state agency that operates at the local level, so the provisions of the GEO do not apply directly to CRA officials. However, in compliance with a City Council motion (Council File No. 00-2441), the CRA adopted its own code of governmental ethics (CRA Code).

The CRA Code was adopted by the City Council pursuant to its oversight ordinance (LAAC §§ 8.99.01 *et seq.*) and is consistent with the GEO. The Ethics Commission has oversight over the provisions of the CRA Code, including the authority to investigate and enforce the provisions of the CRA Code. LAMC § 49.5.19(G)(2); CRA Code § XV(E). Because the “revolving door” provisions in the CRA Code are comparable to those in the GEO, the Ethics Commission’s advice regarding post-employment restrictions that apply to former CRA officials is consistent with the advice the Commission has historically given regarding post-employment restrictions that apply to former City officials.

The CRA has “revolving door” provisions that are very similar to those in the GEO. An “agency official” is defined as a CRA officer, member, employee, commissioner, or consultant who is required to file statements of economic interests¹ pursuant to the CRA’s conflict of interests code.² CRA Code § II.

There are two types of restrictions that apply to former CRA officials: 1) a time-based ban on attempting to influence matters for compensation; and 2) a permanent ban on attempting to influence, for compensation, a matter in which the official was personally and substantially involved. CRA Code § XI.

For a former agency official who was not a high level official³, the first restriction prohibits direct communications with an agency if all of the following apply:

1. The purpose of the communication is to attempt to influence an action or decision on a matter pending before the agency;
2. The communication is made on behalf of a person other than a governmental agency; and
3. The communication is compensated.

CRA Code § XI(E). The ban applies to any agency in which the official served in the 12 months prior to leaving CRA service and lasts for one year afterward. *Id.*

The second restriction applies to all former CRA officials who personally and substantially participated during their CRA tenures in a decision, proceeding, claim, contract,

¹ The California Political Reform Act (Government Code §§ 81000 *et seq.*) requires certain local public officials to file personal financial disclosure reports known as statements of economic interests (also known as the California Form 700). See also CRA Code § VI.

² The Political Reform Act also requires agencies to adopt and implement conflict of interests codes, to identify which officials must file statements of economic interests.

³ High level officials are identified in CRA Code § II. The term includes CRA commissioners, the CRA’s administrator, general counsel, controller, and any other member of the staff who has “significant decision making responsibilities relative to governmental policy as may be designated in writing to the City Ethics Commission....”

piece of legislation, or other specific matter. It prohibits them from attempting to influence any action on that matter if all of the following apply:

1. The matter is still pending with the CRA, the CRA is a party to the matter, or the CRA has a direct or substantial interest in the matter;
2. The attempt is made on behalf of a person other than a governmental agency; and
3. The attempt is compensated.

CRA Code § XI(A). A CRA official “personally and substantially” participates in a matter by, among other things, making or voting on a decision, making a recommendation, investigating, conducting research, or rendering advice. *Id.* In addition, former CRA officials are prohibited from receiving compensation to advise or assist others who are attempting to influence action on those matters for compensation. CRA Code § XI(B).

The “personal and substantial” ban does not apply in limited circumstances. For example, it does not prohibit a former CRA official from making a statement based on the official’s own special knowledge, as long as the official does not receive compensation other than what is required by law or regulation for witnesses. CRA Code § XI(C)(1). Additionally, it does not apply if a court or agency makes written findings that the former CRA official has “outstanding and otherwise unavailable qualifications” necessary in a particular matter and that the public interest would be served by the former official’s participation. CRA Code § XI(C)(2). Finally, the ban does not apply to a former official’s communication in a proceeding before a court or agency when at least five years have passed since the former official left service and the former agency determines that the public interest would not be harmed. CRA Code § XI(C)(3).

“Attempting to influence” means “promoting, supporting, opposing or seeking to modify or delay any Agency action by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies.” CRA Code § II. “Agency action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat of any matter and includes development agreements, plan adoptions, plan amendments, rules, regulations, and proceedings involving contracts, licenses, permits, franchises, or entitlements for use. *Id.* “Direct communication” means “appearing as a witness before, talking to (either by telephone or in person), corresponding with (including sending electronic mail to), or answering questions or inquiries from, any City official or employee, either personally or through an agent.” *Id.*

Neither the time-based ban nor the “personal and substantial” ban applies to former CRA officials who represent themselves or their immediate family members, in their individual capacities, in connection with any matter pending before an agency. CRA Code § XI(H). Similarly, the bans do not apply when a former CRA official is acting in an official capacity as an officer or employee of another government agency. CRA Code § XI(I).

All current and former CRA officials are prohibited from receiving “pecuniary gain or personal advantage or privilege” by using or disclosing confidential information that they acquire in the course of their official duties. CRA Code § III.

ANALYSIS & CONCLUSION

Because you are required to file statements of economic interests under the CRA's conflict of interests code, you are a CRA official. You are not a high level official, because your position and duties are not identified in the definition of "high level official" in CRA Code § II and because the CRA has not designated you as a high level official.

The CRA Code does not restrict the type of employment in which you may engage after leaving CRA service. However, once you leave CRA service, the CRA Code will restrict your compensated attempts to influence action or decisions on matters that are pending before certain agencies.

One-Year Ban

As a potential Gafcon consultant on the Nickerson Garden Housing Project, you would identify land redevelopment opportunities, analyze development alternatives, and identify preferred alternatives. Your work could involve meeting with stakeholders to gather information and explain planning issues.

In any future employment, including as a Gafcon consultant, you may not receive compensation to communicate (either directly or through an agent) with any agency on behalf of another person for the purpose of promoting, supporting, opposing, or seeking to modify or delay action on a matter that is pending before the CRA or another agency in which you served during the 12 months prior to your separation from CRA service. This ban is in effect for one year following your separation from service. You may receive compensation to assist and advise others who are attempting to influence matters before that agency, except as discussed below. In addition, you may represent yourself or a member of your immediate family, as individuals, in connection with a matter pending before that agency.

Beginning October 4, 2009 (one year after the date you retire from CRA service), you may engage in compensated attempts to influence and directly communicate with the CRA—and any other agency in which you served during the 12 months prior to leaving CRA service—on behalf of others. However, those attempts remain subject to the "personal and substantial" ban discussed below.

"Personal and Substantial" Ban

As a CRA planner, you conduct research, analyze City ordinances, create standards, and make recommendations regarding permits. By engaging in these activities, you have "personally and substantially" participated in substantive matters during your CRA tenure. Accordingly, you are prohibited from receiving compensation to lobby regarding matters in which you were personally and substantially involved. Furthermore, you may not receive compensation to assist or advise another person who is attempting to influence action on those matters.

This ban lasts as long as the matter is pending with the CRA or the CRA is a party to or has a substantial interest in the matter. However, the ban would not apply if you were an uncompensated witness making a statement based on your own special knowledge; if a court or agency made written findings that you have "outstanding and otherwise unavailable qualifications" that are necessary to the matter and the public interest would be served by your participation; or if the CRA determines, after October 4, 2013, that the public interest would not be harmed by your communication in a proceeding before a court or agency.

As an additional note, if the matter at issue involves a contract in which you participated while working for the CRA, other laws could also apply, including state laws. For example, California Government Code § 1090 relates to a public official's financial interest in government contracts. The City Attorney's office can provide additional advice regarding the laws that may apply in this situation.

Confidential Information

In addition to the lobbying prohibitions identified above, you may not disclose any confidential information that you acquired in the course of your CRA employment for pecuniary or personal gain or advantage. This is a permanent ban, and it applies to any current or future business endeavors.

Lobbying Regulations

Finally, the Municipal Lobbying Ordinance requires certain individuals to register with the Ethics Commission and report on activities within the City. Depending on your circumstances, you could be a lobbyist who is required to register and report. We encourage you to seek additional advice regarding the lobbying laws and whether they apply to you.

Thank you for requesting advice from the Ethics Commission. If you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,



LeeAnn M. Pelham
Executive Director