

CITY OF LOS ANGELES  
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CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION  
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LOS ANGELES, CA 90012

March 25, 2009

Mr. George I. Gonzalez  
Project Manager  
Consensus Planning Group, Inc.  
626 Wilshire Boulevard, Suite 1000  
Los Angeles, CA 90017

**Re: CEC Advice No. 2009-03**

Dear Mr. Gonzalez:

This letter is a response to your request for formal advice dated February 24, 2009, regarding restrictions that may apply to you as a former City official. 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, because those laws 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 apply to me, as a former press deputy for City Council District (CD) 14 who left City service in May 2008, when working as a project manager for a community relations firm?*



## CONCLUSION

You may not receive compensation to attempt to influence the City Council until May 23, 2009. You are subject to a permanent ban on receiving compensation to attempt to influence 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 served as a press deputy for CD 14 from May 21, 2007, to May 23, 2008.
2. In September 2008, you were hired by Consensus Planning Group, Inc. (CPG), a public affairs and public relations firm, where you work as a project manager.
3. One of CPG's clients is a developer known as the 15 Group. The 15 Group is proposing the redevelopment of the Wyvernwood Garden Apartments Complex (the project), which is located within the boundaries of CD 14.
4. While serving as press deputy for CD 14, you were aware of but did not have a significant role in the project. You did not make any policy recommendations, conduct research, or provide substantive input regarding the project.
5. You recall only four instances in which you had any involvement with the project during your tenure with CD 14:
  - a. You first learned about the project at a mandatory CD 14 staff meeting at which the 15 Group made a presentation. You were not assigned any tasks related to the project as a result of that meeting.
  - b. You drafted a statement in response to a media inquiry from the *Los Angeles Times* regarding the project. You did not develop, suggest, or approve the substantive content of the media response.
  - c. You drafted a statement in response to a media inquiry from the *La Opinion* regarding the project. You did not develop, suggest, or approve the substantive content of the media response.
  - d. You monitored press attendance at a community rally organized by persons opposed to the project. You did not speak with any members of the press or the

community at the meeting. Instead, you observed what occurred and reported back to the council member.

6. CPG has asked you to take the formal lead on community outreach and communications strategy for the project. In that position, you would be responsible for creating and implementing a comprehensive outreach plan designed to earn community support for the project. Your duties would include developing messaging, analyzing the Boyle Heights community, providing advice regarding important community leaders, creating and distributing press releases, and securing positive media coverage. None of your anticipated responsibilities would require interaction with CD 14 or any other City agency.

### 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. A “City official” is defined as a person who is required to file statements of economic interests<sup>1</sup> pursuant to a City agency’s conflict of interests code. LAMC § 49.5.2. A City “agency” is defined as an office that is required to adopt a conflict of interests code<sup>2</sup> subject to City Council approval. *Id.* For a councilmember’s staff and for employees of the chief legislative analyst’s office, “agency” means the City Council. *Id.*

There are two types of restrictions that apply to former City officials: 1) a time-based ban on attempting to influence decisions for compensation; and 2) a permanent ban on attempting to influence, for compensation, a matter in which the City official was personally and substantially involved. LAMC § 49.5.11.

For City officials who were not high-level officials<sup>1</sup>, 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 that agency;
2. The communication is made on behalf of a person other than an agency; and
3. The communication is compensated.

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<sup>1</sup> 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 LAMC §§ 49.5.6 and 49.5.7.

<sup>2</sup> 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.

<sup>1</sup> High-level officials are identified in LAMC § 49.5.2. The term includes elected officials, certain members of their staffs, and some enumerated departmental executives.

LAMC § 49.5.11(D). The ban applies to any agency in which the official served in the 12 months prior to leaving City service and lasts for one year afterward. *Id.*

The second restriction applies to all former City officials who personally and substantially participated during their City tenures in a decision, proceeding, claim, 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 City, the City is a party to the matter, or the City has a direct or substantial interest in the matter;
2. The attempt is made on behalf of a person other than an agency; and
3. The attempt is compensated.

LAMC § 49.5.11(A). A City official “personally and substantially” participates in a matter by, among other things, making a decision, making a recommendation, conducting research, investigating, or rendering advice. *Id.* In addition, former City officials are prohibited from receiving compensation to advise or assist others who are attempting to influence action on those matters for compensation. LAMC § 49.5.11(B).

The “personal and substantial” ban does not apply in limited circumstances. For example, it does not prohibit a former City 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. LAMC § 49.5.11(C)(1). It also does not apply if a court or agency makes written findings that the former City 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. LAMC § 49.5.11(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 City service and the former agency determines that the public interest would not be harmed. LAMC § 49.5.11(C)(3).

“Attempting to influence” means “promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation . . . by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies.” LAMC § 49.5.2. “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.* “Municipal legislation” is any legislative or administrative matter pending before an agency but does not include a request for advice, a direct response to an enforcement proceeding with the Ethics Commission, a ministerial action, an action relating to a collective bargaining agreement or memorandum of understanding, a proceeding before the Civil Service Commission, or the preparation of items that must be submitted to the City’s planning department. LAMC § 48.02.

Neither the time-based ban nor the “personal and substantial” ban applies to former City officials who represent themselves or their immediate family members, in their individual capacities, in connection with any matter pending before a City agency. LAMC § 49.5.11(H).

All current and former City 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 with the City. LAMC § 49.5.3.

## ANALYSIS & CONCLUSION

Because you were required, as a press deputy for CD 14, to file statements of economic interests under the City Council’s conflict of interests code, you were a City official. You were not a high-level official, because your position is not identified in LAMC § 49.5.2 and because you were not designated as a council staff member who possessed significant decision-making responsibilities.

City law does not restrict the type of employment in which you may engage after leaving City service. However, your status as a former City official does restrict your compensated attempts to influence action or decisions on matters that pending before City officials under certain circumstances.

### One-Year Ban

You served as the press deputy for CD 14 from May 21, 2007 to May 23, 2008. For one year following your separation from City service, you may not receive compensation to communicate (either directly or through an agent) with City Council offices 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 City Council. One such matter is the project. The ban does not prohibit you from communicating with other City agencies. Additionally, you may represent yourself or a member of your immediate family, as individuals, in connection with a matter pending before any City agency.

Beginning May 23, 2009 (one year after the date you left City service), you may engage in compensated attempts to influence and communicate with City Council offices on behalf of others, but those attempts remain subject to the “personal and substantial” ban discussed below.

### “Personal and Substantial” Ban

City officials are prohibited from receiving compensation to influence matters in which they were personally and substantially involved while in City service. In addition, they 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 City or the City is a party to or has a substantial interest in the matter, except for a few very narrow circumstances in which the ban does not apply.

A City official personally and substantially participates in a matter by, among other things, making a decision, making a recommendation, conducting research, investigating, or

rendering advice. It does not appear that you personally and substantially participated in the project during your tenure with CD 14. You did not perform research or investigations, you did not make a decision or a recommendation regarding the project, and you did not provide advice regarding the project. Your role was simply to observe and report on a community event and to draft responses to media inquiries, based on substantive content provided by other personnel. As a result, this ban does not apply to work on the project that you perform for CPG.

However, you may have personally and substantially participated in other matters while working for the City. Please contact us in the future if you have questions regarding whether the lifetime ban applies to other specific matters.

Confidential Information

Finally, as a reminder, you may not disclose any confidential information that you acquired in the course of your City employment for pecuniary or personal gain or advantage. This applies to any current or future business endeavors.

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,

A handwritten signature in cursive script, appearing to read "LeeAnn M. Pelham", followed by a horizontal line extending to the right.

LeeAnn M. Pelham  
Executive Director