

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: DENNIS HAWKINS, CMC

**SUBJECT: WAIVER OF REVOLVING DOOR
RESTRICTIONS**

DATE: August 19, 2011

RECOMMENDATION:

The City Council considers requests for Waivers of the Revolving Door Restrictions under Municipal Code Section 12.10.070 for:

- a. Salvador C. Alvarez, former Redevelopment Agency employee, finding that such a waiver is in the best interest of the City.
- b. Michael Moehle, former Retirement Services Department employee, finding that such a waiver is in the best interest of the City.

BACKGROUND:

The City Council adopted Ordinance 28074 on June 26, 2007 which revised San Jose Municipal Code Chapter 12.10 – Revolving Door Restrictions. As defined in SJMC 12.10.010, the purpose of the revolving door restrictions is to:

- A. To assure the independence, impartiality and integrity of city and agency officials and designated employees in making governmental decisions and taking governmental actions.*
- B. To prevent such former officials and designated employees from using their positions with the city or agency for personal gain.*
- C. To prevent private for-profit business entities from obtaining a real or perceived unfair advantage in dealing with the city or agency by hiring former officials and designated employees.*

Under Municipal Code Section 12.10.030, former officials and designated employees are prohibited for two years after terminating City or Redevelopment Agency employment from pursuing:

- A. Work on any legislative or administrative matter on which the official or employee worked on behalf of the city or agency during the twelve months prior to termination of service, or which was within the former city or agency official's or designated employee's area of job responsibility. "Work on any legislative or*

administrative matter" includes, but is not limited to, providing advice or recommending any action with regard to a city or agency legislative or administrative matter such as a project involving land use, development, or public works. Legislative matters include city council, agency board and city board or commission actions related to ordinances, resolutions, agreements, permits or licenses.

B. Represent anyone else on any matter, whether or not for compensation, before the city council, redevelopment agency board, any commission thereof, any individual member of the city council, redevelopment agency board, or commission, or any staff of the city or agency.

The ordinance has exceptions to the prohibitions for (a) employees or volunteers of specified nonprofit organizations; (b) an employee or official of a government entity; or (c) an independent contractor who provides transitional services where it has been determined to be in the best interest of the City or Agency.

The most recent Council action regarding the City's revolving door restrictions took place on December 15, 2009. While considering the Mayor's Biennial Ethics Review, the Council approved a streamlined approach to respond to requests for waivers from former employees. The new process contemplates a review of the request by and a recommendation from the Rules and Open Government Committee to the full Council.

ANALYSIS:

Two former employees have requested approval of a waiver of the revolving door requirements by the Council. In order to expedite the Council's hearing of the requests; the Rules Committee did approve the addition of the requests to the City Council's August 23 Agenda. The Committee did not consider the facts or merits in either situation and did not have an opportunity to make a recommendation. In both cases, the former employees have requested a waiver of the revolving door so that they may pursue employment with firms contracted by the City to perform specific work.

In Mr. Moehle's case, the private employer, Cheiron, Inc., was selected through a competitive process to provide actuarial and related consulting services to the City's Retirement Boards. Russell Crosby, Director of Retirement Services, is in support of the request to waive the restrictions. Mr. Moehle may be assigned by Cheiron to perform work requested by the Retirement Boards and the City Administration.

Mr. Alvarez has been retained by Morley Brothers, which was selected by the City as consultants to prepare the City-owned Rancho del Pueblo Golf Course for sale. Mr. Alvarez has been hired to assist in the community and stakeholder outreach process. The Office of Economic Development supports Mr. Alvarez's request for the waiver.

In both cases, the former employees will be performing work that the City has contracted for through an independent third party following competitive processes. The specific tasks or services which each individual provides does fulfill a governmental purpose and need. The City Council may waive the Revolving Door Ordinance

prohibitions if the Council finds that such a waiver is in the best interest of the City and is consistent with the purposes of the ordinance.

PUBLIC OUTREACH

This item does not meet any of the criteria outlined below. However, the memo has been posted on the City Clerk's website as a part of the August 23, 2011 Council Meeting Agenda.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)

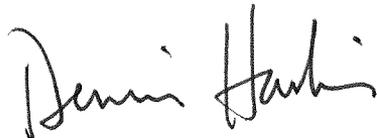
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, , or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

COORDINATION

This memorandum has been coordinated with the Office of the City Attorney, the Office of the City Manager/Economic Development and the Retirement Services Department.

CEQA

Not a project



DENNIS D. HAWKINS, CMC
City Clerk

For questions, please contact Dennis Hawkins, City Clerk, at 408-535-1275.



August 15, 2011

Subject: Request for Waiver of the Revolving Door Prohibitions Policy

San Jose City Council
200 E. Santa Clara Street, 18th Floor
San Jose, CA 95113

Honorable Mayor and Council,

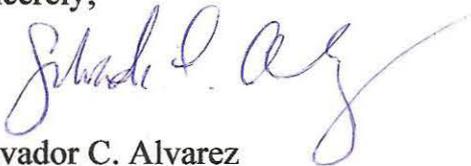
As a former Redevelopment Agency employee, I am requesting a waiver of the Revolving Door Prohibitions policy as provided under Chapter 12.10.070 to provide community outreach, administrative and project management services.

I was released from the agency by lay-off on September 23, 2010 and was recently offered employment with The Morley Bros., whom was selected as consultants to the City of San Jose to prepare the City-owned, Rancho del Pueblo Golf Course for sale. I was recommended by the City to the Morley's to assist them and the City to conduct outreach to the surrounding neighborhoods and/or community stakeholders effective August 1, 2011.

While at the Redevelopment Agency under the City of San Jose's Strong Neighborhoods Initiative, I provided and managed outreach efforts in the Strong Neighborhoods Redevelopment Project Area in coordination with nearly every City department.

Given the current economic conditions any comparable work has been extremely difficult to secure and this waiver will allow me a better chance to provide for my family. Thank you for your consideration.

Sincerely,



Salvador C. Alvarez

cc: Nanci Klein, OED
Sean Morley, The Morley Bros.

August 16, 2011

Dennis Hawkins
City Clerk
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Re: Request Submitted by Michael Moehle Pursuant to Municipal Code Section 12.10.070 for Waiver From the Provisions of the City of San Jose's Revolving Door Restrictions

Dear Mr. Hawkins:

I hereby request a waiver from the City Council pursuant to Municipal Code section 12.10.070 from the provisions of the City of San Jose's Revolving Door Restrictions so that I can perform general actuarial and investment work for the Boards of Administration of the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System while employed at Cheiron, Inc. I believe that granting my request is in the best interests of the City in that it will result in cost savings of approximately \$180,000. I further believe that granting my request is consistent with the purposes of Municipal Code section 12.10.010. It is my understanding that both the City Manager's Office and the Department of Retirement Services are in support of this request.

I am a licensed and experienced actuary and was employed with the City of San Jose in the Department of Retirement Services as an investment officer with an additional focus on actuarial matters from March 2010 until I resigned in July 2011 to accept an offer of employment with the actuarial firm of Cheiron, Inc. Cheiron is presently under contract to provide actuarial services to both the Board of Administration of the Police and Fire Department Retirement Plan and to the Board of Administration of the Federated City Employees' Retirement System. I would like to point out that many months prior to my employment with the firm, Cheiron had already participated in RFP processes, been interviewed by both Boards, and completed contract negotiations with both Boards for multi-year contracts.

Under Municipal Code section 12.10.070, the Council possesses the discretion to grant my request for a waiver, provided that the Council determines that granting the waiver request is in the best interest of the City and that granting the waiver request is consistent with the purposes of the revolving door restrictions as set forth in Municipal Code section 12.10.010.

Looking to the first requirement, granting this request is in the best interests of the City in that it will result in significant cost savings to the Boards of Administration. For instance, in terms of the asset-liability study alone, having me through Cheiron perform this work will result in billings of approximately \$10,000 per plan whereas an outside vendor would likely charge \$100,000 per plan resulting in immediate savings of at least \$180,000 for both plans. It is also in the City's interest to use

my services on other actuarial projects as my familiarity with the Retirement Plans liability modeling would allow me to perform other projects at a significantly lower cost as well.

Looking to the second requirement, granting my waiver request would not result in Cheiron obtaining an unfair advantage over other actuarial firms. The Boards of Administration have already entered into multi-year contracts with Cheiron. The due diligence processes that culminated in these multi-year contracts occurred many months before I applied for employment with Cheiron in response to a public advertisement. The Federated Board of Administration contracted with Cheiron in August 2010, and the Police & Fire Board in May 2011. These contracts will not be up for reconsideration for several years. Accordingly, Cheiron will not receive an unfair advantage from the granting of my waiver request.

Based on the foregoing, I respectfully request that the Council grant my request for a waiver under Municipal Code section 12.10.070 from the provisions of the revolving door restrictions to permit me to do general actuarial and investment work for the Boards of Administration while employed at Cheiron on the ground that doing so will be in the best interests of the City. Thank you very much for your consideration.

Sincerely,



Michael Moehle

cc: Russell Crosby (via email)
Carmen Racy Choy (via email)
Alex Gurza (via email)