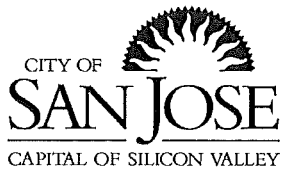
RULES COMMITTEE: 10-26-11
ITEM: H.5



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle, City Attorney

SUBJECT: **Response to Referral from Rules and Open Government Committee about Revolving Door Ordinance**

DATE: October 21, 2011

BACKGROUND

In the past several months, three former City or Redevelopment Agency employees have requested Revolving Door waivers. One of the employees had resigned from the City and was hired by a firm that performs services for the City. Two of the employees, however, had been "laid off" because of reductions in the City's budget. In considering the requests, the Council discussed possible revisions to the Revolving Door Ordinance to address employees who have been laid off. Several Councilmembers are concerned with impeding the employment of former employees who only left the City or Agency because they were laid off as a result of economic conditions. Other Councilmembers are concerned that requiring laid off employees to seek a waiver of the Revolving Door Ordinance from the Council on an individual basis may result in disparate treatment or the perception of disparate treatment.

On October 5, 2011, the Rules and Open Government Committee referred these concerns to staff and directed staff to return with potential revisions to the Revolving Door Ordinance.

ANALYSIS

The proposed ordinance provides a limited exemption to the Revolving Door Ordinance's prohibitions for former City or Agency employees who have been laid off as a result of economic conditions. The "laid off" concept is incorporated in the ordinance as: "terminated or separated from City or Agency service due to consolidation or elimination of functions or other reduction in the City or Agency work force which was based solely on economic or budgetary conditions". In addition, as suggested by the Committee on October 5, we have described what is permissible – and not permissible – to be consistent with the waiver recently granted to one of the laid off employees.

A laid off employee may:

1. Work on any legislative or administrative matter on which the employee worked on behalf of the City or Agency during the twelve (12) 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.

2. Represent, before City commissions or City staff, any business or person that within the last 12 months of the employee's employment (a) did not receive any subsidy from the City or Agency; or (2) was not involved in any project on which the employee worked.

A laid off employee may not accept any gift or payment which would be prohibited under Chapter 12.08 from any person who was in any way involved in or affected by the work of the official or employee during the twelve (12) months prior to the termination of service unless the employee is working for the person as permitted by the new section.

The proposed amendment to the Revolving Door Ordinance is attached.

RICHARD DOYLE
City Attorney

By: Lisa Herrick
LISA HERRICK
Sr. Deputy City Attorney

Please contact Lisa Herrick at 408-535-1900 with any questions.

RD:LH
10/19/11

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 12.10.035 OF CHAPTER 12.10 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO PRESCRIBE LIMITED RESTRICTIONS FOR DESIGNATED EMPLOYEES TERMINATED DUE TO REDUCTIONS IN WORK FORCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 12.10.035 of Chapter 12.10 of Title 12 of the San José Municipal Code is hereby added to read as follows:

12.10.035 Designated Employees Terminated Due to Reductions in Work Force

A. Notwithstanding the provisions in this Chapter to the contrary, a designated employee who was terminated or separated from City or Agency service due to consolidation or elimination of functions or other reduction in the City or Agency work force which was based solely on economic or budgetary conditions is permitted to:

1. Work on any legislative or administrative matter on which the employee worked on behalf of the City or Agency during the twelve (12) 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.

2. Represent, before City commissions or City staff, any business or person that within the last 12 months of the employee's employment (a) did not receive any subsidy from the City or Agency; or (2) was not involved in any project on which the employee worked.

B. Except as permitted by Subsection A.1, for two (2) years after leaving City or Agency employment, no designated employee described under this section may accept any gift or payment which would be prohibited under Chapter 12.08 from any person who was in any way involved in or affected by the work of the official or employee during the twelve (12) months prior to the termination of service.

ADOPTED this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk