



## STAFF REPORT

**Meeting Date:** April 7, 2015  
**To:** Honorable Mayor & City Council  
**From:** Laurence S. Wiener, City Attorney  
**Subject:** Executive Employee Outside Employment Policy

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### INTRODUCTION

Mayor Gold, Vice Mayor Mirisch and Councilmember Bosse have requested that the City Council discuss the City's policy concerning outside employment by executive employees.

### BACKGROUND

California Government Code Sections 1126 and 1127 address outside employment by city employees and read as follows:

**"1126.**

*(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).*

*(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or*

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*employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.*

*(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1 [relating to political activity].*

*(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.*

**1127.**

*It is not the intent of this article to prevent the employment by private business of a public employee, such as a peace officer, fireman, forestry service employee, among other public employees, who is off duty to do work related to and compatible with his regular employment, or past employment, provided the person or persons to be employed have the approval of their agency supervisor and are certified as qualified by the appropriate agency."*

Section 2-5-212 of the City's Municipal Code currently implements the above provisions of the Government Code and provides as follows concerning outside employment by City employees:

**"2-5-212: OUTSIDE EMPLOYMENT:**

*A full time city employee shall be prohibited from employment or engaging in business outside of their regular city employment, unless approval has been granted by the employees' department head and the director of human services. Approval shall not exceed a period of one year; however, further extensions of one year each may be granted provided that such extension request is filed not later than July 1 of each subsequent year. The employee shall immediately notify the city of any change in the extent or character of the outside employment. The employee shall not accept, participate, or engage in any outside employment or business which is incompatible with, or conflicts with the employees' city employment. Incompatible employment includes, but is not limited to, the following situations:*

*A. Employment which involves hours of work or physical effort which could be reasonably expected to reduce the quality or quantity of the employee's services to the city;*

*B. Employment which involves hours or locations of work which could be reasonably expected to interfere with the employee's availability for overtime emergency services to the city, particularly when the employee is on call for emergency services;*

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*C. Employment which is directly or indirectly connected with the employee's duties in the city, such as dealing in merchandise or services with persons contacted in the course of city employment;*

*D. Employment which involves services of the employee in a capacity of advisor, consultant, or witness which could reasonably be expected to conflict with the interests of the city;*

*E. Employment which causes the employee to become financially interested in any contract, sale, or transaction to which the city is a party.”*

The Municipal Code makes no distinction between executive and non-executive employees.

### **DISCUSSION**

City staff conducted an informal survey of other cities concerning outside employment policies and received responses from 15 different cities, primarily in Southern California. Not surprisingly, of those cities that reported any policy, all of the responding cities had policies that generally followed the format of the City of Beverly Hills ordinance and Government Code Section 1126. The policies permitted outside employment by employees, but such employment required prior approval by a supervisor and could not interfere with city employment. Staff found no city ordinances or regulations that distinguished between executive employees and non-executive employees.

In recent years, several Beverly Hills executive level employees have been approved to engage in outside employment. One example that has received recent attention involved the Police Chief consulting for a business that, subsequent to engaging the Police Chief, provided security services to the Beverly Hills Unified School District. Other examples include scuba diving instruction; teaching, including online course instruction to graduate students at local universities; and real estate broker.

The rules governing outside employment set forth in the Government Code reflect the policy concerns that can arise from outside employment. Those policy concerns generally involve: diverting attention or energy from an employee's primary employment with the City, potential conflicts of interest, and the potential for appearance of a conflict of interest.

One policy concern that may arise from outside employment, and is not addressed by the Government Code or the City's ordinance, is transparency. Outside employment would likely be reflected on the Form 700 financial disclosure statement annually filed by executive employees. However, there can be a substantial time lag between the time that employment commences and the time of filing of the annual Form 700. Therefore, the City Council may wish to be notified whenever an executive employee is authorized to engage in outside employment. That notice could include a description of the type of work, the location where the work would be performed, and, if relevant, the clients or type of clients for whom work would be performed. Such disclosure would also allow the City Council to monitor whether the criteria set forth in the City's outside employment ordinance are being implemented in a manner satisfactory to the City Council.

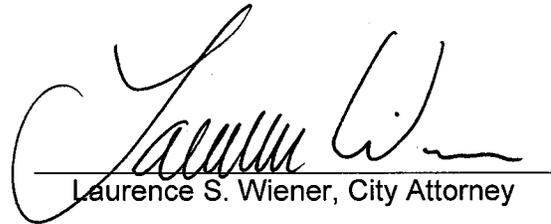
Although there are significant policy concerns with certain types of outside employment, it should be noted that other types of outside employment may sometimes generate benefits to the City. For example, the City may realize some reputational benefit from

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activities such as teaching in the employee's area of professional expertise. This type of employment may also assist employees in staying current in their profession and recruiting talented young professionals to the City. Of course, many types of limited outside employment would have neither a positive nor negative impact on the City.

**RECOMMENDATION**

Following City Council discussion, staff seeks direction regarding whether the City Council would like to make any changes to the City's policy regarding outside employment for executive employees.



Laurence S. Wiener, City Attorney