



STAFF REPORT

Meeting Date: October 6, 2015

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

Subject: CHANGES TO THE MUNICIPAL CODE REGARDING OUTSIDE EMPLOYMENT

Attachments: 1. Ordinance
2. April 7 Staff Report

INTRODUCTION

In recent years, several Beverly Hills executive level employees have been approved to engage in outside employment. In light of recent experience, the City Council, during the April 7 study session, directed that the City's municipal code be amended to require approval by the Council before any department head level employee engages in outside employment. The Council also directed certain clarifications to the Municipal Code's restrictions regarding outside employment. The Council requested that the City Attorney's Office prepare a draft ordinance based on the City Council's comments for discussion at a future study session.

BACKGROUND

BHMC Outside Employment Provisions

Section 2-5-212 of the City's Municipal Code currently regulates outside employment of city employees. The City's Municipal Code makes no distinction between department heads and other employees, and provides as follows:

"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;

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 rules governing outside employment reflect the policy concerns that can arise from outside employment. Such 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.

Another policy concern that may arise from outside employment 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.

City Council members have expressed concern that they are not made aware of, and are not involved in, any decisions regarding outside employment of department head level employees. Therefore, the Council has directed that the City's municipal code be amended regarding outside employment.

DISCUSSION

This proposed ordinance amends the municipal code to require the approval of the City Council if a Department Head, the City Manager, the Assistant City Manager or any Deputy City Manager desires to engage in outside employment for compensation or operate a business for compensation; or invest or participate in any business venture that conducts business in the City (except for stock ownership in any company whose capital stock is publicly held and regularly traded). All other employees will need to obtain the approval of both the Director of Human Resources and the applicable department head prior to engaging in outside employment. In addition, the City Council must be notified of any such approval involving any member of the Executive Management Group. Approval cannot be granted if the outside employment, business or investment potentially conflicts with or is incompatible with the employees' duties or responsibilities as a City employee.

The ordinance would require employees who seek approval for outside employment to describe the outside employment or business, including the employer, the types of duties or activities involved, the location, hours and duration of employment.

Approvals cannot exceed a period of one year. However, further extensions of one year each may be granted if such extension request is filed not later than two months prior to the expiration of the one year term.

The ordinance excludes from the definition of "compensation" any cash payment or exchange of non-cash goods or services of less than \$50 in any one year. Additionally, free admission and refreshments and similar non-cash nominal benefits provided to an employee during an event at which an employee gives a speech, participates in a panel or seminar, or provides a service, and actual transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, will not be considered compensation.

The ordinance requires employees to report to their Department Head the purchase or investment in any real estate or real property improvements in the City of Beverly Hills, except that the City Manager, Assistant and Deputy City Managers, and Department Heads are required to report to the City Council.

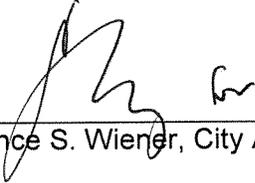
Although there are significant policy concerns with certain types of outside employment, it should be noted that other types of outside employment may sometimes generate benefits to the City. For example, the City may realize some reputational benefit from activities such as teaching in the employee's 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. If the Council decides that the potential employment is not in conflict with or inconsistent with such city employee's duties as a city employee, then the Council may approve such outside employment.

FISCAL IMPACT

There will be minimal increased staff time required if either a Department Head, the City Manager, the Assistant City Manager or a Deputy City Manager submits a request for outside employment because the request will need to be placed on a City Council agenda for consideration at a City Council meeting. However, it is expected that outside employment requests will continue to be infrequent, thus resulting in minimal fiscal impact to the City.

RECOMMENDATION

The City Attorney's Office seeks guidance on whether the draft ordinance amending the Municipal Code's restrictions regarding outside employment by City employees appropriately reflects the City Council's desired amendments to the restrictions or whether further refinement is necessary. If the draft ordinance is acceptable to the City Council, it will be placed on a future agenda for introduction and then adoption.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 15-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL
CODE REGARDING OUTSIDE EMPLOYMENT

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. The City Council hereby amends Section 2-5-212 (“OUTSIDE EMPLOYMENT”) of Article 2 (“Personnel Procedures”) to Chapter 5 (“CIVIL SERVICE, PERSONNEL PROCEDURES, AND EMPLOYEE REGULATIONS”) of Title 2 (“ADMINISTRATION, PERSONNEL, AND PROCEDURES”) of the Beverly Hills Municipal Code to read as follows:

“2-5-212: OUTSIDE EMPLOYMENT:

A. Prohibition. A City employee shall not accept, participate, or engage in any outside employment or business, whether or not compensated, which is inconsistent, incompatible, or conflicts with the employees’ duties, functions, or responsibilities as a City employee. Inconsistent or incompatible employment or business includes, but is not limited to, the following situations:

1. Employment or business 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;

2. Employment or business 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;

3. Employment or business 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;

4. Employment or business 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; or

5. Employment or business which causes the employee to become financially interested in any contract, sale, or transaction to which the City is a party.

B. Authorization.

1. Full-time employees who desire to (a) engage in outside employment for compensation or operate a business for compensation; or (b) invest or participate in any business venture conducting business in the City of Beverly Hills (except for stock

ownership in any company whose capital stock is publicly held and regularly traded), shall first obtain the written approval of the applicable Department Head and the Director of Human Resources, except that the City Manager, Assistant and Deputy City Managers, and all Department Heads, shall first obtain the approval of the City Council. In addition, the City Council shall be notified of any such approval involving any member of the Executive Management Group.

Approval shall not be granted if the employment or business or investment would violate the prohibition set forth in subsection A.

2. Employees who seek approval for compensated outside employment or to engage or invest in a business must describe the outside employment or business, including the employer, the types of duties or activities involved, the location, hours and duration of employment.

3. The Human Resources Department shall maintain a copy of all written approvals for outside employment, business or investment. Approvals shall not exceed a period of one year; provided, however, further extensions of one year each may be granted if such extension request is filed not later than two months prior to the expiration of the one year term. The employee shall immediately notify the City of any change in the extent or character of the outside employment.

C. For the purposes of this Section, compensation shall not include any cash payment or exchange of non-cash goods or services of less than fifty dollars (\$50) in any one year. Additionally, free admission and refreshments and similar non-cash nominal benefits provided to an employee during an event at which an employee gives a speech, participates in a panel or seminar, or provides a service, and actual transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, shall not be considered compensation for the purposes of this Section.

D. Employees shall also report to their Department Head the purchase or investment in any real estate or real property improvements in the City of Beverly Hills, except that the City Manager, Assistant and Deputy City Managers, and Department Heads shall make such report to the City Council.

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 3. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and the City Clerk's certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 4. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

MAHDI ALUZRI
Interim City Manager

Attachment 2



STAFF REPORT

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

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