



AGENDA REPORT

Meeting Date: October 20, 2015

Item Number: E-5

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

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

Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE REGARDING OUTSIDE EMPLOYMENT" be introduced and read by title only.

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 and October 6 study sessions, 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 ordinance presented reflects the City Council's direction.

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 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), to first obtain the written approval of the applicable Department Head and the Assistant Director of Administrative Services – Human Resources, except that the City Manager, Assistant and Deputy City Managers, and all Department Heads (including the Chief of Police and Fire Chief), must first obtain the approval of the City Council.

The Assistant Administrative Services Director -- Human Resources must send written notice to the City Council and City Manager within two business days from the date on which any approval is granted relating to a member of the Executive Management Group, other than a Department Head. Any such approval relating to any member of the Executive Management Group will not become effective until the expiration of 10 business days after dispatch of notice to the City Council and City Manager. The Council may order a review of any approval relating to a member of the Executive Management Group. Such review may be ordered by motion of the Council duly adopted within 10 business days after dispatch of notice to the City Council. If the Council orders a review of a decision to approve outside employment, the effectiveness of such decision will be stayed until Council review is final.

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.

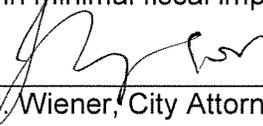
The ordinance requires employees to report to their Department Head the purchase or investment in any real estate or real property improvements in the City of Beverly Hills, except that the City Manager, Assistant and Deputy City Managers, and Department Heads are required to report to the City Council.

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.



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 Assistant Administrative Services Director/Human Resources, except that the City Manager, Assistant and Deputy City Managers, and all Department Heads (including the Chief of Police and Fire Chief), shall first obtain the approval of the City Council.

The Assistant Administrative Services Director/Human Resources shall send written notice to the City Council and City Manager within two business days from the date on which any approval is granted relating to a member of the Executive Management Group, other than a Department Head. Any such approval relating to any member of the Executive Management Group shall not become effective until the expiration of 10 business days after dispatch of notice to the City Council and City Manager. The Council may order a review of any approval relating to a member of the Executive Management Group. Such review may be ordered by motion of the Council duly adopted within 10 business days after dispatch of notice to the City Council. If the Council orders a review of a decision approving outside employment or engagement or investment in a business venture, the effectiveness of such decision shall be stayed until Council review is final.

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 Division 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:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

Laurence S. Wiener (LSW)
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager