REPORT TO COUNCIL
City of Sacramento

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Consent
April 26, 2007

Honorable Mayor and
Members of the City Council

Title: Amend Section 2.16.010 of the Sacramento City Code Relating to Contractual Conflicts of Interest of City Employees

Location/Council District: Citywide

Recommendation: 1) Review an Ordinance amending Article 1 of Chapter 2.16 of Title 2 of the City Code relating to contractual conflicts of interest of City employees; and 2) Pass for publication the Ordinance title as required by the Sacramento City Charter 32c to be adopted May 8, 2007.

Contact: Thomas P. Friery, City Treasurer, 808-5168; Janelle Gray, Public Finance and Banking Manager, 808-8296

Presenters: NA

Department: City Treasurer's Office

Division: Finance

Organization No: 0900

Description/Analysis

Issue: The City Code currently prohibits a City employee from having a financial interest in any City contract; this provision can be construed to prohibit the City from entering into a contract in which a City employee is considered to have a financial interest by virtue of the employment of the employee's spouse or dependent by a firm seeking to contract with the City, regardless of the employee's lack of involvement in the contracting process or in the business of the firm.

The City Treasurer's Office has been precluded from entering into a contract with a company that specializes in a specific service. When addressing available options to contract for this specialized service, the City Manager's Office and the City Attorney's Office advised that this has citywide application and would best be addressed as a citywide issue versus case by case.

The proposed ordinance would amend the City Code to be consistent with state law governing state employees and state contracts. As amended, the City Code would allow for the City to enter into contracts in which a City employee has a financial interest solely by virtue of the employment or ownership interest of the

employee's spouse or dependent. However, as a safeguard to ensure compliance with State law, the City employee would be prohibited from participating in the contracting process, and the City could not enter into a contract with an entity if the City employee participates in the control or operation, or otherwise participates or engages in the business or enterprise of, the entity.

Policy Considerations: The proposed Ordinance would replace Article 1 of Chapter 2.16 of Title 2 of the City Code in its entirety. As amended, the City Code would be consistent with state law governing state contracts. As constructed by the Attorney General, state law allows for contracts between the state and a firm or entity in which a state employee's spouse or dependent has a financial interest (e.g. as employee, owner, or principal) provided that: i) the state employee does not participate in the control or operation, or otherwise participate or engage in the business or enterprise of the entity; and ii) the state employee abstains from any and all participation in the contracting process.

Environmental Considerations: The City Council's action in adopting the proposed Ordinance is not a project for purposes of the California Environmental Quality Act.

Rationale for Recommendation: The proposed City Code revision would be consistent with State law.

Financial Considerations: There is no fiscal impact associated with the approval of the proposed Ordinance.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this agreement.

Respectfully Submitted by: _____
Janelle Gray
Public Finance & Banking Manager

Approved by: _____
THOMAS P. FRIERY
City Treasurer

Recommendation Approved:

for _____
Ray Kerridge
City Manager

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Background

Section 2.16.010 of the Sacramento City Code currently states, "It is unlawful for any employee of the City to be financially interested in any contract to which the City is a party." Construed narrowly, this provision can be considered to prohibit the City from entering into a contract in which a City employee is considered to have a financial interest by virtue of the employment of the employee's spouse or dependent by a firm seeking to contract with the City, regardless of the employee's lack of environment in the contracting process or in the business of the firm.

For example, the City Treasurer's Office has been limited by this section of the City Code when contracting for services related to the issuance of land secured bonds. At this time, the City Treasurer's Office has six land secured bond issues, three which are scheduled to go to market this year. One critical aspect of issuing this type of bonds is an appraisal of the land associated with the bonds. These appraisals are very specialized and require not only local market knowledge, but certain professional certifications, as well as knowledge and adherence to California Debt and Investment Advisory Commission (CDIAC) guidelines. For several years, the City Treasurer's Office has made out reach efforts to other City departments, investment bankers, and various public agencies in an attempt to increase the pool of local firms qualified for this service. However, to date, there are only four firms locally that are qualified to perform these services for the City, each with various specialties and therefore not able to provide services for all types of appraisals needed. The spouse of a City employee is a principal in one of these firms, and due to the current language of Section 2.16.010, the City Treasurer's Office has refrained from utilizing the services of this firm.

As amended, Section 2.16.010 would expressly state that the City Code does not prohibit the City from entering into contracts with a firm in which a spouse or dependent of a City employee has a financial interest, provided that the City employee does not participate in the contracting process and does not participate in the management, control or operations of the firm.

This amendment to the City Code is intended to establish a restriction similar to that imposed on state employees by Section 10410 of the Public Contracts Code. The California Attorney General has stated that this provision does not prohibit the state from entering into a contract with an entity in which an employee's spouse may have a financial interest, provided that the employee does not play an active role in the business of the entity and abstains from and all participation in the contracting process.

Amending the City Code will allow the City to better meet its objectives by being consistent with State law and allowing for greater flexibility in contracting with businesses, while maintaining controls to ensure there is no conflict of interest present.

Attachment 2

Proposed City Code

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 2.16 OF TITLE 2 OF THE CITY CODE RELATING TO CONTRACTUAL CONFLICTS OF INTEREST OF CITY EMPLOYEES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1

Article I of Chapter 2.16 of Title 2 of the Sacramento City Code is amended to read as follows:

2.16.010 Prohibition on City employee interest in City contract

No City employee shall engage in any employment, activity, or enterprise from which the employee receives compensation or in which the employee has a financial interest and which is funded, all or in part, by the City or any City department through or by a City contract unless the employment, activity, or enterprise is required as a condition of the employee's regular City employment. No City employee shall contract on his or her own individual behalf as an independent contractor with the City or any City department to provide services or goods.

This section shall not prohibit the City from entering into contracts with an entity in which a City employee has a financial interest because of his or her spouse's or dependent's employment with the entity, ownership or control of the entity or other financial interest in the entity, provided that the employee: i) does not participate in the control or operation, or otherwise participate or engage in the business or enterprise of, the entity; ii) abstains from all participation in the making of the contract, pursuant to Government Code Secs. 1090 et seq.; and iii) if required by subsection G-2 of Section 2.16.030 below, provides the notice required by that section.

2.16.020 Employees defined.

For purposes of this article, a person shall be deemed to be an employee of the city only if, during the previous twelve (12) month period, the employee has worked one thousand forty (1,040) hours or more for the city.

2.16.030 Exception--Party to employment and other specified contracts.

Section 2.16.010 shall not prohibit the following contracts:

A. A contract of employment in which the employee agrees to perform services for the City as an employee of the City;

B. A contract in which the employee is a third-party beneficiary of an agreement executed pursuant to the Meyers-Milias-Brown Act;

C. A contract in which the employee is to be reimbursed for actual and necessary expenses incurred in the performance of an official duty as an employee of the City;

D. A contract affecting retirement benefits paid or to be payable to an employee as a present or future retired employee of the City;

E. A contract with the City for the off-duty employment of peace officers;

F. A contract with the City pursuant to which the employee pays for and receives public services generally provided by the City to the public at large if the terms and conditions of said contract are the same as if the employee were not an employee of the City;

G. A contract in which the employee has only a remote financial interest.

1. Definition: For purposes of this provision, an employee has a remote financial interest in a contract if the employee's interest is one of the following:

   a. That of a non-salaried officer of a nonprofit corporation or association;

   b. That of the owner of real property who enters into any agreement with the city concerning that property pursuant to state or local land use regulations;

   c. That of the owner of real property whose interest is being acquired by the city under the threat of or pursuant to the exercise of the power of eminent domain.

2. The interest of an employee in any contract described in subsection G-1 above shall be considered as being other than a remote interest if the contract is one in which the employee has a supervisory interest. An employee has a supervisory interest in a contract if the employee is directly involved as an employee of the City in any of the following activities in reference to said contract:

   a. The preparation of contract plans or specifications;

   b. The solicitation of bids for or the award of the contract;

   c. The supervision or monitoring of performance under the contract.

3. Exception: Notice and Abstention: An employee of the City shall not be considered as having a supervisory interest in a contract if, prior to engaging in any of the activities described in subsection 2 above, the employee has notified his or her immediate city supervisor of the interest in the contract and thereafter abstains from performance of these duties in reference to the contract.

2.16.040 Exception: Contract for public services.

The provisions of this article shall not apply to any contract with the city wherein any employee pays for and receives public services generally provided by the city to the public at large if the terms and conditions of said contract are the same as if the employee were not an employee of the city.

2.16.050: Violation-Penalty.

Any employee who violates this article shall be guilty of a misdemeanor and shall be subject to discipline by the city manager or other official in whom is vested the disciplinary power.

2.16.060 Contracts voidable.

Any contract entered into in violation of this article shall be voidable at the option of the City.

Section 2

The purpose and intent of this ordinance is to clarify that, while Article 1 of Chapter 2.16 of the City Code should be construed to prohibit an employee from personally engaging in any employment, activity or enterprise from which the employee will receive compensation or in which the employee has a financial interest and which is funded by the City through a

City contract, it should not be construed to prohibit the City from entering into contracts with entities in which the spouse or dependents of an employee may have a financial interest, provided that the employee does not participate in the contracting process and does not participate in the management, control or operations of the entity contracting with the City. Article 1 of Chapter 2.16 is intended to establish for City employees a restriction similar to that imposed on state employees by Section 10410 of the Public Contracts Code. The California Attorney General has opined that this provision does not prohibit the state from entering into a contract with an entity in which an employee's spouse may have a financial interest, provided that the employee does not play an active role in the business or enterprise of the entity, and abstains from any and all participation in the contracting process. 84 Ops. Cal. Atty Gen. 131 (2002). It is the intent of the Council that Article 1 of Chapter 2.16 should be construed in a manner consistent with the opinion of the Attorney General.

Attachment 3
Current City Code

Sacramento City Code
Article I, Section 2
City Employee—Interests in Contract

2.16.010 Financial interest prohibited.

It is unlawful for any employee of the city to be financially interested in any contract to which the city is a party. (Prior code § 53.01.001)

2.16.020 Employees defined.

For purposes of this article, a person shall be deemed to be an employee of the city only if, during the previous twelve (12) month period, the employee has worked one thousand forty (1,040) hours or more for the city. (Prior code § 53.01.002)

2.16.030 Exception—Party to employment contract.

For purposes of this article, an employee shall not be considered as being financially interested in a contract with the city if the interest of the employee in the contract is:

A. That of a party to any contract of employment with the city wherein said employee agrees to perform services for the city as an employee of said city; or

B. That of an employee third-party beneficiary of an agreement executed pursuant to the Meyers-Milias-Brown Act; or

C. That of a party to any contract with the city wherein the employee is to be reimbursed for actual and necessary expenses incurred in the performance of official duty as an employee of the city; or

D. That of a party to any contract with the city affecting retirement benefits paid or to be payable to said person as a present or future retired employee of the city. (Prior code § 53.01.003)

2.16.040 Exception—Remote interest in contract.

A. For purposes of this article, an employee shall not be considered as being financially interested in a contract to which the city is a party if the interest of the employee in the contract is only a remote interest.

B. As used in this article, an employee is deemed to have a remote interest in a contract if the employee's interest therein is:

1. That of a nonsalaried officer of a nonprofit corporation or association;

2. That of a purchaser, by reason of being the high bidder, at a sale of surplus city personal property;

3. That of an owner of property in an assessment district formed by the city;

4. That of the owner of property who enters into any agreement with the city concerning said property pursuant to state or local land use regulations;

5. That of the owner of less than three percent of any class of stock or shares of a corporation for profits, provided that the total annual income of said persons from said corporation, including dividends of all kinds, does not exceed five percent of his or her total annual

(gross) income (from all sources) earned as an employee of the city;

6. That of the owner of real property whose interest therein, or a portion thereof, is being acquired by the city under the threat of or pursuant to the exercise of the power of eminent domain.

C. The interest of an employee in any contract described in subsections (B)(1) through (B)(6) of this section shall be considered as being other than a remote interest if the contract is one in which said employee has a supervisory interest. An employee has a supervisory interest in a contract if the employee is directly involved as an employee of the city in any of the following activities in reference to said contract:

1. The preparation of contract plans or specifications;

2. The solicitation of bids for or the award of the contract;

3. The supervision or monitoring of performance under the contract.

An employee of the city shall not be considered as having a supervisory interest in a contract if, prior to engaging in any of the activities described in subsections (B)(1) through (B)(6) of this section, the employee has notified his or her immediate city supervisor, in writing, of the interest in the contract and has requested that the employee be relieved of performance of duties in reference to said contract. (Prior code § 53.01.004)

2.16.050 Prior contracts.

The restrictions of this chapter shall not apply to any contract executed prior to the effective date of Ordinance No. 4040 (April 13, 1978), but shall apply to any amendment of such a contract made on or after that date. (Prior code § 53.01.005)

2.16.060 Contract for public services—Excepted.

The provisions of this article shall not apply to any contract with the city wherein any employee pays for and receives public services generally provided by the city to the public at large if the terms and conditions of said contract are the same as if the employee were not an employee of the city. (Prior code § 53.01.006)