



Office of the City Manager

ACTION CALENDAR

November 29, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Stephen Barton, Director, Housing Department

Subject: Near-Relative Policy for Community Agencies

RECOMMENDATION

Adopt a Resolution approving a near-relative policy applicable to community agencies and authorizing the City Manager to implement the policy through immediate voluntary compliance of community agencies; and authorizing the City Manager to include this policy in Community Agency Contract provisions.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley contracts with a multitude of community agencies that provide vital services to low-income Berkeley households and homeless people. Nepotism in hiring and promotional actions can undermine the effectiveness of an agency and the quality of their services. It is for this reason that in 2003, the City of Berkeley instituted an “Employment of Near Relatives Policy” (A.R. Number 2.12) to govern the City’s hiring and promotional practices. However, the City of Berkeley does not currently require that community agencies with whom we contract with local funds adhere to policies that prevent these types of conflicts of interest.

Programs funded with *Community Development Block Grant Program (CDBG)* funds (and other federal funds) the City of Berkeley passes through to community agencies must comply with federal regulations. Under CDBG regulations, “No person who is an employee... of [the] recipient...who exercises any function or responsibilities with respect to CDBG activities...may obtain a financial interest or benefit from a CDBG activity...for themselves or those they have business or immediate family ties.” (24 CFR §570.611) These regulations prevent the “near relatives” employment relationships that the City’s nepotism policy prohibits. However, the City of Berkeley currently does not have policies that prevent general funded agencies from engaging in such conflicted employment practices. This creates a lack of parity in conflict-of-interest standards to which the City holds similarly situated community agencies.

The proposed policy, Exhibit A of the attached resolution, would prevent community agencies contracting with the City of Berkeley from appointing, promoting, demoting, flexibly placing, or transferring to any position, permanently or temporarily, where a person's near relative already holds a position that would create a supervisory relationship. The policy also prohibits employees from interviewing, recommending, or otherwise being involved in selection or disciplinary process of an employee's near relative.

The proposed policy would grandfather in existing near-relative relationships in situations where the employee has been in the position for six months or longer as of the effective date of this policy if the community agency contracting with the City has created "firewalls"¹ sufficient to prevent actual or perceived conflict. Under the proposed policy, contracting community agencies would be required to use a form provided by the City of Berkeley to disclose the near relative relationship in writing to the City's contract monitor in the Housing Department. In addition, the near relative would be prohibited from providing direct supervision, signing time cards, and participating in any way in decisions affecting hiring, promotion, demotion, discipline, or salary rates.

Implementation of this Near Relatives Policy would occur in two phases. In the first phase, starting upon adoption of this Near Relatives Policy, the City will request contractors (i.e., community agencies contracting with the City) to voluntarily comply with the policy and disclose any near relative relationships. Those agencies with supervisory relationships that violate this policy will be requested to create firewalls. For those agencies that refuse to voluntarily comply with the policy in this phase, the City would seek to amend their contracts to compel compliance with the policy. Continued non-compliance with this term of the contract would be grounds for terminating the contract with the community agency.

In the second phase of implementation, this policy would be incorporated into contractual agreements community agencies enter into with the City. This phase would be completed concurrent with normal contracting cycles.

BACKGROUND

Conflict of interest laws were enacted to prevent public officials from obtaining financial gain from public actions deriving from deliberate actions they take in the course of carrying out their duties on behalf of the public. Many of these laws have been expanded to community agencies who are the recipients of public funds to ensure their appropriate and effective use.

RATIONALE FOR RECOMMENDATION

The City Manager has adopted a Near Relatives Policy administrative regulation that applies to hiring and allocation of assignments involving near relatives employed by the City of Berkeley. Federal conflict of interest regulations extend these prohibitions to community agencies to whom

¹ "Firewalls" is defined in the proposed policy document to mean "accounting devices, procedures, practices, and relationships that prevent and negate the appearance or actuality of conflicts of interest in Contractor's personnel decisions and operations in fulfillment of the Contract's scope of services."

the City of Berkeley passes federal funds. There is currently no policy in place to hold community agencies receiving City of Berkeley General Funds to these same standards.

By adopting a Near Relatives Policy for community agencies that contract with the City of Berkeley, the City Council would be aligning its internal conflict of interest policies and federal policies with its treatment of potential conflicts of interest within community agencies. A consistent approach in this area of contracting policy may help prevent instances of conflicts of interest subject to investigation or concern by HUD, while ensuring fair employment practices and appropriate ethical conduct by community agencies contracting with the City of Berkeley.

CONTACT PERSONS

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Attachments:

1: Resolution

Exhibit A: Adoption of a policy concerning the employment of near relatives by community agencies contracting with the City of Berkeley.

RESOLUTION NO. -N.S.

NEAR RELATIVES POLICY FOR COMMUNITY AGENCIES CONTRACTING WITH THE
CITY OF BERKELEY

WHEREAS, the City of Berkeley adopted the “Employment of Near Relatives Policy (Exhibit A)” in 2003 to govern the City’s hiring and promotional practices; and

WHEREAS, federal conflict of interest regulations prohibit the “near relatives” employment relationships similar to those found in the City of Berkeley’s internal nepotism policy; and

WHEREAS, the City of Berkeley currently does not have policies that prevent general fund agencies from engaging in such conflicted employment practices; and

WHEREAS, this creates a lack of parity in conflict-of-interest standards to which the City holds similarly situated community agencies.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves a near-relative policy applicable to community agencies and authorizes the City Manager to implement the policy through immediate voluntary compliance of community agencies.

BE IT FURTHER RESOLVED, that the Council authorizes the City Manager to include this policy in Community Agency Contract provisions.

City of Berkeley Employment of Near Relatives Policy for Community Agencies

Purpose

It is the policy of the City of Berkeley to avoid nepotism in community agencies under contract (Contractor) with the City in their hiring and promotion actions and to ensure that merit is the basis for employee selection. When employees are related, as specified below, such persons shall not engage formally or informally in supervisory relationships, except if the relationship exists prior to the effective date of this policy and sufficient firewalls can be created to prevent actual or perceived conflict, or if approved in writing by the City of Berkeley.

Policy

1. No person shall be appointed, promoted, demoted, flexibly placed, or transferred to any position, whether permanent or temporary, where such person's near relative already holds a position which would create a supervisory relationship as described herein.
2. No employee shall interview, recommend, or in any way be involved in the selection or disciplinary process of an employee's near relative.
3. Current employees of Contractor on the effective date of this policy will be allowed to remain in positions where they are in a supervisory relationship with a near relative under the following circumstances:
 - a. The employee has been in the position for six months or longer as of the effective date of this policy; and
 - b. Contractor creates sufficient firewalls to prevent actual or perceived conflict.
Contractor must:
 - i. Immediately disclose the near relative relationship in writing to the City of Berkeley Contract Monitor; and
 - ii. The near relative may not provide direct supervision; and
 - iii. The near relative may not sign time cards; and
 - iv. The near relative may not participate, in any way, in decisions that affect hiring, promotion, demotion, discipline, or salary rate.

Procedure

1. Contractor shall submit the "Near Relative Notification" form, attached to this policy, to their City of Berkeley Contract Monitor within 30 days of the effective date of this policy disclosing any near-relative relationships that exist within the community agency. Failure by a Contractor to submit the required Near Relative Disclosure may be grounds for termination of the contract.

2. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services of this contract, including but not limited to, the City of Berkeley. Contractor's employment practices must be in accordance with these laws, ordinances, codes, and regulations.

Definitions:

1. **Near Relative-** means an individual's spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, cousin, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepparent, stepsibling, stepchild, grandchild, dependent, or domestic partner.
2. **Supervisory Relationship-** means a direct supervisor-subordinate relationship between employees.
3. **Firewalls** – means accounting devices, procedures, practices, and relationships that prevent and negate the appearance or actuality of conflicts of interest in Contractor's personnel decisions and operations in fulfillment of the Contract's scope of services.

Violation of this Policy:

Any Contractor who knowingly violates this policy may be subject to termination of the contract.

Exception to Policy:

The City of Berkeley may authorize exceptions to this policy whenever the best interests of the City so require. If an exception is granted, it shall be in writing and a copy placed in the contract.

Approved by:

Effective Date of Policy: ???

Phil Kamlarz, City Manager

CITY OF BERKELEY

NEAR RELATIVE NOTIFICATION

EMPLOYEE INFORMATION
Employee Name:
Job Title:
Description of Duties:
NEAR RELATIVE INFORMATION
Near Relative Name:
Job Title:
Relationship:
Description of Duties:
Supervisory relationship: Yes <input type="checkbox"/> No <input type="checkbox"/>
Firewall – If a supervisory relationship exists between near relatives, please describe the measures your agency has taken to prevent actual or perceived conflicts of interest:

Note: Attach separate sheets for additional near relatives.

I hereby certify that this is a true and correct statement and that I have identified all of the near relatives who work for the agency in any and all capacities.

Signature: _____ Date: _____

Title: _____ Agency: _____