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## MEMORANDUM

TO: Mayor Gavin Newsom  
President Aaron Peskin, and Members, Board of Supervisors

FROM: Dennis J. Herrera  
City Attorney

DATE: April 11, 2007

RE: Report on Legal Issues Involving City Payments to Former Mayor Staff Member  
Ruby Rippey-Tourk

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Please find attached the report that my Office completed on legal issues involving City payments made to former Mayor's Office staff member Ruby Rippey-Tourk.

I have reviewed the report and concur with it, including its conclusions.

Please contact me if you have any questions regarding the report or if my Office may be of further assistance regarding any of the matters raised in the report.

cc: Ed Harrington, Controller  
Dr. Mitch Katz, Director of Public Health  
Philip Ginsburg, Chief of Staff, Mayor's Office



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## MEMORANDUM

TO: Dennis J. Herrera  
City Attorney

FROM: Thomas Boyd  
Chief of Investigations  
Peter Keith  
Deputy City Attorney

DATE: April 11, 2007

RE: Legal Issues Involving City Payments to Former Mayor Staff Member Ruby Rippey-Tourk

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### I. INTRODUCTION

On February 1, 2007, various City departments received the first of a number of requests under the California Public Records Act and the San Francisco Sunshine Ordinance for records ("Sunshine requests") regarding compensation and other employment information for Ruby Rippey-Tourk, who formerly served as the Commission Liaison in the Mayor's Office. Based on the records that the City departments produced in response to the Sunshine requests and other information described in the press, public news media reports and City officials raised questions regarding certain payments Ms. Rippey-Tourk received from the City, especially her receipt of a one-time, retroactive payment under the City's Catastrophic Illness Program (the "CIP") shortly after she separated from City employment. In particular, they asked questions about whether Ms. Rippey-Tourk was legally entitled to those payments or received special treatment because of her senior staff status in the Mayor's Office or the personal relationship that Mayor Newsom had with her.

The Charter for the City and County of San Francisco vests the City Attorney with the responsibility to provide legal advice to the City and its officers and employees, including advice relating to compliance with City laws. The Charter also provides for the City Attorney to pursue legal actions on behalf of the City, including claims against persons receiving payments from the City to which they are not entitled. That responsibility encompasses the power to conduct investigations necessary to determine the legality of payments made by the City. The Charter makes the City Attorney directly accountable to the public for performing these functions. In discharging these responsibilities, the City Attorney's Office independently reviewed legal questions raised in connection with the payments to Ms. Rippey-Tourk. During the course of our review, additional information came to our attention that presented legal questions regarding the authorization for Ms. Rippey-Tourk's payroll time sheets, her use of paid and unpaid leave, and

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her possible work for a private entity while she was on paid leave from the City. The purpose of this report is to provide the City's policy-makers and the public with the results of this Office's review of these matters.

**II. SCOPE OF REVIEW**

During the course of this review, we focused on legal issues arising in connection with the following five matters:

1. Whether the City's handling of Ms. Rippey-Tourk's CIP application in 2006 was consistent with the standards for qualification and procedures and practices that govern employees who seek to participate in the CIP;
2. Whether the one-time retroactive payment Ms. Rippey-Tourk received in September 2006 under the CIP, just after she left the City's employ, was legally permissible;
3. Whether Ms. Rippey-Tourk's use of City paid and unpaid leave from the commencement of her City employment in January 2004 through her date of separation from City employment in August 2006 exceeded that to which she was entitled;
4. Whether the submittal and authorization of payroll time sheets for Ms. Rippey-Tourk from the commencement of her City employment in January 2004 through her date of separation from City employment in August 2006 was consistent with City policies and practices and whether payments made to her in connection with those times sheets were lawful; and
5. Whether Ms. Rippey-Tourk worked as a paid employee or unpaid volunteer for a private entity, Benefit Magazine, while she was on leave from the City in 2006; and, if so, whether any such work created a legal conflict with her receipt of paid leave or otherwise violated City laws.

In conducting this review, we examined public and confidential City records, including the files that the Department of Public Health ("DPH") maintains for the CIP and Ms. Rippey-Tourk's payroll records, and interviewed City officials involved in the CIP and payroll processes, including the Director of Public Health, the former Director of Human Resources and the Mayor's current Chief of Staff, the Mayor's former Chief of Staff, the Controller, the Deputy Director of the Controller's Office, the head of the payroll division under the Controller, and the employee in charge of human resources for the Mayor's Office. We also reviewed records from Benefit Magazine that we obtained through a City administrative subpoena.

While we are confident of the accuracy of the conclusions we set forth below, we note four serious limitations on the scope of our review. First, under the City's CIP ordinance, participation in the program and related medical information is confidential owing to employee privacy issues. Certain assertions regarding Ms. Rippey-Tourk's CIP application and her medical condition have been widely reported in the press. These assertions include statements made by Ms. Rippey-Tourk's own public relations spokesperson, Sam Singer, that she participated in the CIP and attended an alcohol rehabilitation program while on leave from the Mayor's Office. (See, e.g., "More on Tourk Payments, Steven T. Jones, *The Bay Guardian*, February 15, 2007; "Did Tourk Receive Special Treatment," Dan Noyes, *ABC 7 I-Team*,

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February 16, 2007; "City Attorney Launches Investigation," Joshua Sabatini, *The Examiner*, February 16, 2007; "SF Reviews Back Pay to Newsom Aide," *San Francisco Chronicle*, February 16, 2007; "Sick Leave Pay Isn't for Rehab," Cecilia M. Vega, Charlie Goodyear, *San Francisco Chronicle*, February 17, 2007.)

Based on these reports, Ms. Rippey-Tourk has waived any confidentiality protection under the CIP ordinance as to her participation in the program. But despite our requests that Ms. Rippey-Tourk consent to allow the City Attorney's Office to discuss in this report the medical information at issue, even if limited to a general description of the basis for her application, she has declined to do so. Accordingly, because of laws protecting the privacy of medical information that may apply, in this report we do not comment on the accuracy of the statements of Ms. Rippey-Tourk's spokesperson or other press accounts regarding her participation in a substance abuse rehabilitation program, nor discuss the medical reasons for Ms. Rippey-Tourk's participation in the CIP or other medical information relating to Ms. Rippey-Tourk.

Second, our review is based on the information we were able to obtain through review of public and confidential documents and interviews as described generally above. We were unable to verify certain information. For example, despite repeated requests, both Ms. Rippey-Tourk and Alex Tourk declined through their lawyers to be interviewed as part of this report. Where we were not able to verify information, we identify that limitation in the discussion section of this report.

Third, we did not conduct this review as part of a performance audit of the CIP, the payroll practices of the Mayor's Office, or any other relevant City programs or procedures. Such an audit is typically under the purview of the City's Controller. Instead, our review is limited to whether the City's laws and procedures were followed in connection with the five matters described above.

Fourth, we did not review the issue that has been raised in certain press reports about whether Ms. Rippey-Tourk's attendance at work comported with her time sheets. Again, such matters are not within the scope of questions the City Attorney ordinarily reviews and would usually be under the auspices of the Department of Human Resources, the City Controller and the Mayor's Office. In addition, because of the passage of time and the lack of definitive data regarding this question, we believe it would be difficult, if not impossible, to answer with any reasonable certainty.

While this report focuses on legal issues, to the extent our review revealed broader questions of City policy, we identify those matters in our findings below for the benefit of the City's policy-makers, in the event they may wish to consider possible changes to the City's laws or policies going forward.

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**III. EXECUTIVE SUMMARY**

Based on the scope of our review and the information available to us as described in the preceding section of this report, we reach the following conclusions. We discuss in more detail the law, facts and our conclusions in the next section of this report.

**1. Qualification to Participate in the CIP**

The CIP ordinance defines a catastrophic illness as "a life-threatening illness or injury, as determined by the Department of Public Health." A City employee seeking approval to participate in the CIP must submit a physician's certification that the employee has a catastrophic illness. (See Exhibit B attached to this report for a copy of this form currently used by DPH.) As required by the CIP ordinance, Ms. Rippey-Tourk submitted a completed written application to DPH, together with the necessary certification from her attending physician. Dr. Katz, Director of Public Health, reviewed her application, and determined that she qualified for the CIP. He did not personally contact the attending physician, and it is not the general practice of DPH to do so in reviewing CIP applications. Because Ms. Rippey-Tourk would not agree to authorize the release of medical information, we could not confirm the facts set forth in her attending physician's certification or authenticate the physician's submittal of the certification to the City. Based on the face of the CIP application and the information available to us, Dr. Katz' determination appears to be consistent with the broad discretion that the CIP ordinance grants to DPH to decide what illnesses and injuries qualify as life-threatening.

As mentioned above in the discussion of the scope of our review, because Ms. Rippey-Tourk would not consent to allow the City Attorney's Office to address in this report the medical information at issue, in this report we do not comment on the accuracy of reports that Ms. Rippey-Tourk participated in the CIP because of alcohol or substance abuse or otherwise discuss details of her medical condition.

Based on the information we reviewed as further described in this report, we found no evidence of undue influence by Mayor Newsom regarding the City's authorization of the CIP payment or granting of leave relating to Ms. Rippey-Tourk. It is difficult for us to assess in this report whether other City officials treated her application more favorably than other City employees owing to her senior staff status in the Mayor's Office or otherwise, in large part because of her refusal to grant us authorization to discuss here how the basis for her application compares to the grounds for other CIP applications.

In light of news media reports questioning the appropriate criteria for employee participation in the CIP, particularly for substance abuse, we did conduct a general review of DPH's files of all CIP applications since the program's inception. The results of that review (excluding Ms. Rippey-Tourk's application) follow:

- We found that the vast majority of CIP applications are for chronic illnesses that are commonly considered by laypersons to be life-threatening, such as metastatic cancer, AIDS and end-stage organ disease, as well as severe physical traumas, such as a heart attack, stroke or serious accident.
- We found fewer than a dozen CIP applications based solely on conditions that could cause life-threatening behavior, such as substance abuse or mental illness.

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- We did not find any case in which DPH certified eligibility for the CIP based solely on substance abuse. We found at least one approval for liver disease that resulted from alcohol abuse; there were other instances where DPH approved CIP applications for life-threatening physical illnesses, such as liver disease, that could have been caused by alcohol or substance abuse, but the cause was not stated on the face of the application or accompanying doctor's certification.
- We did find a few denials by DPH of applications where the catastrophic illness was substance abuse, but apparently unaccompanied by any life-threatening physical condition or behavior. We did not discover any DPH approval of a CIP application based solely on alcohol or substance abuse, including attending a treatment program.

The CIP ordinance expressly grants broad discretion to DPH to make the determination as to what is a life-threatening illness or injury for purposes of participation in the program. Whether there should be amendments to the CIP ordinance to set forth additional direction or criteria for making future determinations about what qualifies as a life-threatening illness or injury, and what any such criteria ought to be, are policy matters for the Board of Supervisors and the Mayor.

**2. Receipt of One-Time Retroactive Payment Under the CIP Shortly After Ms. Rippey-Tourk Separated from City Employment**

The CIP ordinance allows for the transfer to a CIP employee of donated sick or vacation hours retroactively "from the date of eligibility back to the date of [the CIP] application." Ms. Rippey-Tourk received a CIP payment for a period that began before the date she submitted her application to participate in the program. The ordinance grants broad discretion to the Controller, in consultation with DPH, to administer the CIP. We understand that Ms. Rippey-Tourk did not become aware that she was potentially eligible to participate in the CIP until late July or early August 2006. Upon examining Ms. Rippey-Tourk's CIP application, Dr. Katz determined that she was eligible to participate in the CIP beginning before the date she submitted her CIP application, based on the earlier onset of her illness as certified by her attending physician.

While neither the Controller nor DPH have written rules or procedures regarding their roles in implementing the CIP, they have interpreted the CIP ordinance to allow retroactive participation before the date of CIP application, due to an earlier onset of a qualifying illness or injury as determined by the employee's attending physician. Based on our general review of DPH records of CIP applications and the Controller's payroll information, there have been a number of occasions since the inception of the CIP in which the Controller has approved payment under the CIP retroactive to the date of onset of illness or injury as approved by DPH, even if the illness predated the submittal of the CIP application. One can imagine a situation in which a City employee may have metastatic cancer and not even know she is catastrophically ill until many months after she begins experiencing symptoms that make her unable to work. We also understand that eligibility for other employee benefits depends on the onset of the illness or injury, not on the date of application for the benefit.

While the CIP ordinance could be interpreted more literally to allow payment only for leave taken after the date the CIP application is submitted, the interpretation that DPH and the Controller have consistently given appears to be consistent with the purpose of the ordinance, which is to reduce hardship and suffering of catastrophically ill City employees. It is a policy

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matter for the Board of Supervisors and the Mayor whether to clarify the ordinance to reflect this interpretation given by the Controller and DPH, or to change the CIP ordinance to make it clear that the donation of sick and vacation hours retroactively is limited by the actual date of the CIP application instead of the onset of the catastrophic illness.

Based on the information available to us, Ms. Rippey-Tourk was a City employee eligible for the CIP payment when DPH certified the CIP application and the Controller authorized the retroactive payment. But we could find no other instance where, as here, an employee received approval by the Controller for payment under the CIP after she indicated her intent to resign from City employment and received the payment just as she was starting a new job. There is nothing in the ordinance, nor are there any City policies or procedures, that preclude CIP payments under such circumstances. Whether the City should have policies or procedures for the processing of CIP applications where City employees are separating from City employment, including circumstances where they are capable of working or have accepted new employment, is a policy question for the City's Board of Supervisors and the Mayor.

**3. Use and Authorization of Leave**

At our request, the Controller's Office prepared a report setting forth the dates of Ms. Rippey-Tourk's use of various types of paid and unpaid leave and calculating her leave accrual from the beginning of her employment with the City as Commission Liaison on January 9, 2004 until she separated from City employment on August 31, 2006. This report, which contains information that must be kept confidential under privacy laws, establishes that Ms. Rippey-Tourk's paid and unpaid leave did not exceed the maximum amounts she was entitled to take for each type of leave or compensation under applicable City laws, based on her term of service.

**4. Submittal and Authorization of Payroll Time Sheets**

We did not find evidence that any payments the City made to Ms. Rippey-Tourk based on her payroll time sheets violated any City law or procedure. During the time she served in the Mayor's Office, there was no written City-wide or Mayor's Office policy regarding the submission or approval of time sheets. During most of the time Ms. Rippey-Tourk worked for the City, the practice in the Mayor's Office was that senior staff members such as Ms. Rippey-Tourk did not need to obtain a supervisor's signature on their time sheets. This practice changed around the end of 2005, when the Mayor's Chief of Staff during that period, Steve Kawa, began signing the time sheets of senior staff members. Under this practice, when Mr. Kawa was absent, the Mayor's Deputy Chief of Staff, Alex Tourk, signed time sheets. In several instances during this period, Mr. Tourk signed off on his wife's time sheets. Some other time sheets for Ms. Rippey-Tourk were unsigned, or appear to have been signed for Ms. Rippey-Tourk by others in the Mayor's Office.

Under the City's Charter, City employment is a public trust and employees are required to exercise their public duties in a manner consistent with that public trust. (S.F. Charter, § 15.103.) Even though Mayor's Office approval of senior staff time sheets was merely an internal departmental control and was not legally required for salary payments by the Controller, authorization of a spouse's times sheets is not appropriate in light of this public trust. But the City's anti-nepotism law prohibiting participation by an employee "in employment actions" involving that employee's relatives does not appear to extend to this situation; it covers only hiring, promotion and discipline. (S.F. Campaign and Governmental Interest Code, § 3.212.)

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Although the Controller's Office and others have since questioned some of the practices by which Ms. Rippey-Tourk's times sheets were submitted or approved, and while in some cases the authorization of her times sheets by her husband was not appropriate as described above, the payments made to her reflected by those time sheets did not violate City law or policy. We understand that the Mayor's Office recently changed the prior practice and instituted a new internal policy that requires approval of an employee's time sheets by the employee's supervisor. It is a policy matter for the Board of Supervisors and the Mayor whether to amend the City's anti-nepotism law to cover this type of situation going forward, and a policy matter for the Board of Supervisors, the Mayor, the Controller, the Department of Human Resources and the Ethics Commission whether to institute a formal City policy requiring approval of employee time sheets in a particular manner, or not at all.

**5. Outside Employment**

In response to a City administrative subpoena that we served during the course of this review, Benefit Magazine produced several pages of employment records relating to Ms. Rippey-Tourk. According to these records, Ms. Rippey-Tourk was formally engaged as a host for the Benefit Radio show on October 4, 2006. She first received an advance payment from Benefit Magazine on September 19, 2006, after she had separated from City employment on August 31, 2006. Those records also show her participation as an unpaid co-host for a charitable event in April 2006; they do not indicate any other work as an intern or volunteer in 2006 before she separated from City employment. Based on these records, Ms. Rippey-Tourk's work for Benefit Magazine does not appear to violate any City law or rule.

**IV. DISCUSSION****A. CATASTROPHIC ILLNESS LEAVE PROGRAM****1. City Law and Procedure.**

The Catastrophic Illness Program (CIP) is set forth in Section 16.9-29A of the San Francisco Administrative Code (the "Ordinance"). A copy of the Ordinance is attached as Exhibit A to this report. The Ordinance, entitled the "T.J. Anthony Employee Catastrophic Illness Program—Transfer of Sick Leave and Vacation Credits to Individual Catastrophically Ill Employees or a Pool of Catastrophically Ill Employees," was adopted by the City in 2001. The stated purpose of the Ordinance is to "enable catastrophically ill employees to continue to be paid through donations of sick leave and vacation hours from other employees." (S.F. Admin. Code, §16.9-29A(a).)

There are four criteria an employee must meet to qualify for participation in the CIP. The employee must: (1) be eligible to accumulate and use sick leave and vacation credits; (2) be catastrophically ill, meaning that the employee has "a life-threatening illness or injury, as determined by the Department of Public Health"; (3) have exhausted all of his/her available paid leave; and (4) not be receiving short or long-term disability payments for which the City pays directly or indirectly, subject to certain exceptions. (§ 16.9-29A(d)(1)-(4).) The employee must submit a written application, which includes a medical documentation. (§ 16.9-29A(c)(1).) The Director of Public Health may use this information to make a determination or may ask for more information from the employee's submitting physician and/or require the employee to submit to a doctor's examination. (§ 16.9-29A(e)(2).)

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The Ordinance does not specifically address whether any particular illness or injury, including addiction or substance abuse, may be considered a life-threatening illness and, if so, under what circumstances. Notably, another City law does address the issue of whether addiction or substance abuse may justify the use of sick leave. Civil Service Rule 120.7.1 provides, in relevant part, that "[a]bsence because of illness, including alcoholism" qualifies as a basis for sick leave, including paid sick leave.

The Ordinance provides a number of confidentiality protections for participants in the program and donors of sick and vacation leave. For example, it provides: "In all cases, the Department of Public Health and its designees shall shield and protect the true identities of CIP employees" (§ 16.9-29A(f)(4)) [as noted elsewhere in this report, based on the many statements made by Ms. Rippey-Tourk's spokesperson in press reports this protection has been waived]; "All medical records submitted by an employee pursuant to this statute are to be kept confidential by the Department of Public Health or its designee" (§ 16.9-29A(j)(1)); "The names of employees donating hours pursuant to this provision are to remain confidential" (§ 16.9-29A(j)(3)); and "Violation of the provisions of this subsection or any provision relating to confidentiality protections shall be grounds for disciplinary action" (§ 16.9-29A(j)(4).)

The Ordinance grants the City's Controller authority to administer this program, including the authority to make and enforce rules for the CIP under the Ordinance, in consultation with the Director of Public Health. (§ 16.9-29A(b).) While neither the Controller nor DPH have adopted any written rules or procedures to implement the CIP, we understand based on interviews with their offices that their practice is as follows.

Typically, an employee begins the process by submitting an application to human resources personnel in the employee's department. DPH has prepared a four-page form application, a copy of which is attached as Exhibit B to this report. The application includes two parts. The first part of the form is to be filled out by the City employee, including an authorization for the City to contact the employee's short-term and long-term disability providers as part of the evaluation of the employee's qualifications for the program. The second part is to be completed by the applicant's physician, certifying that the patient has a life-threatening illness or injury and specifically providing for the physician to describe the "onset of catastrophic illness."

After receiving the completed CIP application, the human resources employee then sends it to DPH. Most of the time, Dr. Katz reviews the CIP applications himself. In some instances, Dr. Rajiv Bhatia reviews the applications. Dr. Katz has been reviewing CIP applications since the inception of the program. When Dr. Katz reviews an application, he checks to ensure that the form is signed, that the physician's diagnosis matches the applicant's description of the illness or injury, and that the time-period for which leave is sought is consistent with the physician's diagnosis. As described above, the CIP ordinance gives DPH broad discretion to make medical judgments on the applications.

Dr. Katz informed us that in determining whether an employee's illness or injury qualifies for the CIP, he relies largely on the certifying physician's diagnosis and does not question that diagnosis. He considers whether the illness or injury places the applicant in jeopardy of dying in the near future. He approves a request only if he concludes that there is a reasonable chance that the employee is at risk of dying. He approves a term for participation in the CIP of one week to six months, depending on the circumstances of the applicant. He does not approve CIP leave for more than six months, thus ensuring that the applicant's status, if prolonged, will be periodically

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reviewed through renewal applications. He uses the end of the month as an ending date for leave to standardize administration. He consistently encourages employees who may be qualified to apply for the program. Dr. Katz believes the CIP is a compassionate program designed to help employees who are in dire need. He makes his decisions with the applicant's best interest as his prime concern.

If Dr. Katz denies an application, the applicant may appeal the denial to the Public Health Commission. (§ 16.9-29A(c)(4).) About 10% of the CIP applications are denied. If Dr. Katz approves an application, he forwards it to DPH records personnel to process administratively. Among other things, DPH staff evaluate whether the employee is eligible for long-term or short-term disability. Under the Ordinance, an employee does not qualify for CIP payments until she has exhausted disability benefits, subject to certain exceptions. Once the final review is complete, DPH then informs the Controller of the approval. City employees are notified that they may donate their sick or vacation leave to an individual designated employee, using a confidential number, or to the general leave pool for the CIP.

**2. Facts.**

While there were a number of press reports, including statements by her own spokesperson, that she attended an alcohol and substance treatment program, Ms. Rippey-Tourk has refused to authorize the City Attorney's Office to disclose medical details regarding the basis for her receipt of payments under the CIP. Accordingly, because of potentially applicable medical privacy laws, in this report we do not confirm or deny information in the press reports regarding her medical condition or discuss the specific medical reasons for Ms. Rippey-Tourk's CIP application. But in the course of performing this review, we did review and consider available documents in the City's records supporting the basis for Ms. Rippey-Tourk's receipt of payment under the CIP.

On May 17, 18, and 19, 2006, Ms. Rippey-Tourk took paid leave from her assignment in the Mayor's Office. On May 22 and 23 she took a combination of paid leave and unpaid leave, and in doing so exhausted her available paid leave time. Beginning on May 24, and continuing to her separation date of August 31, 2006, Ms. Rippey-Tourk took leave that was unpaid, except to the extent it was later covered by the CIP. At about this time Steve Kawa, then Chief of Staff, was contacted by Alex Tourk, then Deputy Chief of Staff. We understand that Mr. Tourk told Mr. Kawa that his wife, Ms. Rippey-Tourk, wanted to go on unpaid leave. (Because Mr. Tourk would not consent to our interview, we were unable to confirm Mr. Kawa's account of his discussions with Mr. Tourk.)

Mr. Kawa approved the leave and notified Shalonda Baldwin, Director of Operations for the Mayor's Office, that Ms. Rippey-Tourk would not be coming to work and that her status on the time sheets should be unpaid leave. Mr. Kawa was not sure how long Ms. Rippey-Tourk would be on leave. Ms. Baldwin understood that after Ms. Rippey-Tourk had exhausted her sick, vacation, and holiday leave banks, she would be designated as an employee on unpaid leave on the payroll. Ms. Baldwin gave standard leave request forms to Mr. Tourk and asked that Ms. Rippey-Tourk complete and return them to her to verify her leave request. This form would normally be placed in an employee's personnel file. These standard leave request forms were not returned.

According to reports published by newspapers, broadcast media, and websites, after leaving the Mayor's Office Ms. Rippey-Tourk "went on unpaid sick leave from her job as

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Newsom's appointments secretary to attend alcohol rehab, according to her spokesman." (See, e.g., "More on Tourk Payments, Steven T. Jones, *The Bay Guardian*, February 15, 2007; "Did Tourk Receive Special Treatment," Dan Noyes, *ABC 7 I-Team*, February 16, 2007; "City Attorney Launches Investigation," Joshua Sabatini, *The Examiner*, February 16, 2007; "SF Reviews Back Pay to Newsom Aide," *San Francisco Chronicle*, February 16, 2007; "Sick Leave Pay Isn't for Rehab," Cecilia M. Vega, Charlie Goodyear, *San Francisco Chronicle*, February 17, 2007.) Again, due to Ms. Rippey-Tourk's refusal to consent to allow the City Attorney's Office to discuss in this report the medical information at issue, in light of potentially applicable medical privacy laws we do not comment here on the accuracy of these published reports.

In mid-July, 2006, Mr. Kawa received a call from Ms. Rippey-Tourk in which she notified him that she had decided to resign and that she would be sending him her resignation letter. Soon after, he received her unsigned resignation letter, dated July 21, 2006 and addressed to Mayor Newsom and Mr. Kawa. The letter noted her intention to resign, but did not cite a date of resignation. Mr. Kawa gave a copy of this letter to Ms. Baldwin.

Some time at the end of July or beginning of August 2006, Alex Tourk, then Deputy Chief-of-Staff in the Mayor's Office, contacted Phil Ginsburg, then Director of Human Resources for the City. (Again, because Mr. Tourk would not agree to be interviewed by us, we could not confirm with him Mr. Ginsburg's account of their conversations.) Mr. Tourk told Mr. Ginsburg that his wife, Ms. Rippey-Tourk, was on unpaid leave and described the reason for the leave. He asked Mr. Ginsburg if there were any City benefits still available to his wife. As Human Resources Director, Mr. Ginsburg was charged with interpreting and implementing policy issues relating to human resources. Mr. Ginsburg told Mr. Tourk that he would look into the matter.

Based on information provided by Mr. Tourk during their conversation, Mr. Ginsburg called Dr. Katz to discuss options. One option discussed was the CIP. Dr. Katz advised Mr. Ginsburg that an employee seeking to participate in this program would have to submit an application on approved forms, including a certification by an attending physician that the employee is catastrophically ill. Mr. Ginsburg informed Mr. Tourk of the CIP and described the process. He forwarded the CIP application forms to Mr. Tourk, in or about early August. Mr. Ginsburg received a CIP application several days later from Mr. Tourk and forwarded it to DPH.

Ms. Rippey-Tourk's application was stamped received by the Human Resources Office of DPH on Friday, August 18, 2006. When Dr. Katz received the CIP application and the accompanying physician's certification, he reviewed these materials. (The application and physician's certification were on DPH's earlier form, which is formatted slightly differently from the current form attached as Exhibit B but is substantively nearly identical.) Dr. Katz noted that the attending physician had made the required certification. Dr. Katz approved Ms. Rippey-Tourk's application to participate in the CIP. By letter dated August 21, 2006, DPH notified Ms. Rippey-Tourk that she qualified to participate in the CIP.

As we have discussed, the attending physician's certification is the most critical factor in DPH's determination of eligibility for the CIP. Here Dr. Katz relied on it in approving Ms. Rippey-Tourk's application. He did not personally contact her attending physician, and he does not usually do so in reviewing CIP applications because he says it is not DPH's role to second-guess the diagnosis of the attending physician. The certification form that is attached to her application on file with DPH looks like a faxed copy and upon close examination appears to

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show different handwriting for a portion of the information under "Course of Treatment(s) and Date(s)," although Dr. Katz informed us that he did not consider the difference relevant to his decision-making regarding her application. The physician's signature appears to correspond to the handwriting on all of the rest of the completed application except the patient's name. We understand that it is common for nurses and other employees of a medical office to fill in information on the form and for the attending physician to approve the completed form.

We were unable to confirm the facts set forth in the physician's certification or verify that the certificate attached to Ms. Rippey-Tourk's CIP application was actually signed and submitted by her physician because the attending physician and medical office not provide this information to us without an authorization from Ms. Rippey-Tourk, which she declined to provide. Subject to that limitation and based on the information that was available to us, Ms. Rippey-Tourk's CIP application and physician's certification appear on their face sufficient to support Dr. Katz's determination that Ms. Rippey-Tourk was eligible for the CIP.

We asked Dr. Katz if he had ever had a conversation with the Mayor regarding Ms. Rippey-Tourk's CIP application. Dr. Katz stated that he has never had a conversation with the Mayor about the CIP in general and that he never had a conversation with the Mayor about Ms. Rippey-Tourk. We also asked the Controller, the Deputy Controller and Mr. Ginsburg if the Mayor had talked with any of them about Ms. Rippey-Tourk or her eligibility for participation in the CIP. They each told us that the Mayor did not directly or indirectly make any inquiry about this issue at the time and that they did not discuss these matters with him until after reports became public in February 2007 about Ms. Rippey-Tourk's relationship with the Mayor and her receipt of a payment under the CIP.

As we mentioned above, the procedure for processing a CIP application after DPH determines that the employee has a life-threatening injury or illness, is for DPH personnel to complete the review and forward the approved application to the Controller. Here, DPH personnel evaluated whether Ms. Rippey-Tourk was eligible for short-term or long-term disability paid for by the City and determined that she was not. They then forwarded the approved application to the Controller and sent out a letter dated August 21, 2006 to Ms. Rippey-Tourk confirming approval.

In light of the public media reports about substance abuse and the questions those reports and City officials raised about substance abuse as a basis for participation in the CIP, we asked Dr. Katz to describe in general terms—and unrelated to any particular CIP application—his opinions about substance abuse being a factor in qualifying applicants for the CIP. He explained that substance abuse alone was not sufficient to qualify. He believed that substance abuse, coupled with other concerns or manifestations of life-threatening behavior, could qualify an applicant. Dr. Katz said that substance abuse is one of the top ten causes of death in San Francisco—"people die from alcohol over a long time."

In explaining his decision-making regarding illnesses that may be life-threatening for a relatively short period of time under the CIP, Dr. Katz used the analogy of a stroke victim. He said that he would approve a short-term request for the initial medical treatment to stabilize the patient, but would not be as willing to continue qualification after the applicant was in rehabilitation and not in a life-threatening situation. He sees the danger in the actual stroke, not in recovery. Although the person recovering from the stroke may be seriously disabled, he views the CIP as not a benefit for disability but only for life-threatening illness or injury. Dr. Katz

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noted that there are other programs that provide benefits to persons with disabilities who are no longer in a life-threatening situation.

As part of this review, we reviewed the CIP files in DPH. Generally, each application is given a confidential number. The application forms and all attendant documents are kept together in a file cabinet. At the time of our review, there were 1,297 application numbers issued. We could not locate files for all of the assigned numbers. There is a separate file for denied applications. Most of these files had numbers assigned to them and many of these accounted for the missing numbers in the regular files, but there were also unnumbered denied applications.

In view of the questions raised in public reports and by City officials about whether alcoholism or substance abuse is a basis for participation in the CIP, we reviewed these files (excluding Ms. Rippey-Tourk's application) for approvals or denials relating to alcoholism or substance abuse. We found that the vast majority of CIP applications involved medical conditions commonly understood by laypersons to be life-threatening, such as cancer, AIDS, heart attacks, and serious accidents. We found fewer than a dozen applications based on conditions that could cause life-threatening behavior, such as alcoholism or substance abuse.

We did not find any DPH approvals based solely on alcoholism or substance abuse, including attending a treatment program. A few applications involving alcoholism or substance abuse were denied on the ground that the condition was not life-threatening at the time. For example, we found the following written reasons for denial of particular applications: "Alcoholism may be disabling but not life threatening" (2002); "Receiving treatment for a panic attack and substance use cannot be considered a life threatening illness" (2003). These comments were made in response to the medical information provided under particular CIP applications, and may not necessarily reflect DPH policy on CIP applications generally. We could not determine whether from the face of the applications whether Dr. Katz reviewed them for DPH; in at least one instance it appeared that Dr. Bhatia was the DPH reviewer. We also found a number of approved applications involving physical illnesses, such as liver disease, that could have been caused by substance abuse. On one such application, alcoholism was explicitly listed by the attending physician as a contributing factor.

**3. Conclusion.**

Based on the information we reviewed, Ms. Rippey-Tourk's CIP application was sufficient to support a determination that she was eligible to participate in the CIP. She submitted the proper application form to DPH, including a physician's certification. Dr. Katz, Director of Public Health, reviewed her application and made a determination that she qualified for the CIP. Dr. Katz exercised his medical discretion in making this decision, as granted under the CIP ordinance.

In light of public media reports, questions have been raised as to whether the CIP was intended to extend to certain employee illnesses or injuries that relate to substance abuse, and whether employees with such illnesses or injuries should qualify for participation in the CIP. The Ordinance expressly grants broad discretion to the DPH to make the determination about what is a life-threatening illness or injury for purposes of participation in the program. Whether there should be amendments to the Ordinance to set forth additional direction or criteria for making this determination is a policy matter for the Board of Supervisors and the Mayor.

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**B. RETROACTIVE PAYMENT TO SEPARATING EMPLOYEE****1. City Law and Procedure.**

As discussed above, once the Director of Public Health has determined that an employee is eligible to participate in the CIP, DPH notifies the Controller's Office of that determination. The Controller's Office then sets up a manual tracking system for each approved application. When an employee is eligible to participate in the CIP, any employee who has accumulated sick or vacation time may donate credits to the CIP employee, subject to certain conditions and limits on the amount of transferred credits. (S.F. Admin. Code, § 16.9-29A(g).) The Controller's Office does not question the validity of the qualification to participate in the CIP once DPH has approved the application. It simply tracks the donations, administers the donation of sick and vacation time, and issues paychecks to the CIP employee.

The Ordinance provides that "a CIP employee may use transferred hours retroactively *from the date of certification of eligibility back to the date of application.*" [Emphasis added.] (§ 16.9-29A(h)(2).) This provision explicitly authorizes retroactive pay under the CIP back to the date of the CIP application. Read literally, one could view this provision of the ordinance as an implied prohibition against any retroactive pay for periods prior to the date of application. But as discussed further below, our review determined that in practice, it is not unusual for the City to award pay under the CIP for periods before the date of the CIP application based on an earlier onset of a catastrophic illness, and DPH and the Controller interpreted this section to mean that CIP payments could go back to the date of onset of the illness as established by the attending physician.

**2. Facts.**

Under the Ordinance, DPH certifies eligibility for participation in the CIP and establishes the dates for participation. As noted above, the CIP application form includes a space for the physician to describe the onset of the catastrophic illness. In the case of Ms. Rippey-Tourk's CIP application, Dr. Katz certified a date for commencement that preceded the date on which she applied for the CIP. Dr. Katz explained that in establishing the commencement date, he relied solely on the date of onset of the illness noted by Ms. Rippey-Tourk's doctor on the physician's certification sheet. He reasoned that standard qualification for social security, state disability, and workers compensation all use the date of onset of illness or injury as the beginning date of qualification for those programs, and he believed that the CIP was a similar benefit. Dr. Katz had treated other applications in a similar fashion where the attending physician certified that an employee's illness began before the date of the CIP application.

Once DPH approves a CIP application, under the Ordinance it is then the Controller's responsibility to calculate the payment due under the CIP. Here, the Controller's approval came after Ms. Rippey-Tourk had tendered her resignation letter on July 21, 2006. Ms. Rippey-Tourk signed her separation report on August 22, 2006. Her resignation date was set in that report for August 31, 2006. In light of her resignation, when processing the CIP payment for Ms. Rippey-Tourk the Controller's Office specifically considered how to credit her with the time and eventually pay her under the program.

Monique Zmuda, Deputy Director of the Controller's Office, made the decisions regarding Ms. Rippey-Tourk's CIP application because Ed Harrington, the Controller, was out of the office during this period. (Mr. Harrington was on vacation from August 15 to

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September 8, 2006, and he informed us he did not learn about this matter until Ms. Zmuda briefed him after he returned to the office.) Ms. Zmuda told us that she considered this question about how to credit time and make CIP payments in late August after DPH forwarded the approved application. Ms. Zmuda believed that this situation was unusual in that the CIP payment would be made retroactively to an employee who was separating from City employment. Ms. Zmuda said that she considered advice from Mr. Ginsburg, Dr. Katz, and Sandra Holmes, Director of Payroll for the Controller, regarding the procedure that the Controller's Office should follow.

Mr. Ginsburg informed Ms. Zmuda that he was not aware of any City law or rule that prevented the retroactive payment for the CIP to the date of onset of the illness. Therefore, he believed that the City should apply donated sick leave and make payment to cover leave that qualified under the CIP even if the leave period occurred before the date of the application. Ms. Zmuda conducted her own research and reached the same conclusion that the Ordinance did not prohibit this practice. Ms. Zmuda talked with Ms. Holmes, who told her that while it was not unusual for the City to make lump sum payments retroactive to the date of the qualifying illness or injury even if before the date of a CIP application, she was not aware of any prior lump sum payments being made to a separating employee.

Ms. Zmuda also consulted with Dr. Katz about this issue. Dr. Katz told her of his view that the beginning date for the CIP approval should begin on a medically established date for onset of illness. In the case of Ms. Rippey-Tourk, this was set by Ms. Rippey-Tourk's attending physician who completed the CIP certification. Both Dr. Katz and Mr. Ginsburg expressed their view that questions about availability of the CIP benefit should generally be decided in favor of the employee, because not doing so would deprive the employee of this benefit.

Ms. Holmes told us that she first became aware of this issue when Ms. Zmuda called her and asked if the Controller ever made a lump sum retroactive payment to a departing employee. She told Ms. Zmuda that, to her knowledge, a similar payment had not been made. Ms. Holmes told us that she and other employees track CIP participant payments manually. Each pay period, after being notified by the CIP participant's human resources office to make payment, they check that leave balances and donated leave balances are appropriate and then issue pay warrants accordingly.

Ms. Holmes explained to us that the Controller has made a number of retroactive lump-sum payments to CIP participants in the past. Retroactive payments are inherent in the program, since many participants apply for CIP after they recover and return to work. Approval of the CIP application after the fact requires the payroll staff to calculate how much time a participant will be credited and how much they will be paid. These payments have been made in retroactive lump sums. But she told us that Ms. Rippey-Tourk's payment was different. Ms. Holmes said that, to her knowledge, the Controller had never been presented with a situation where a pay warrant under the CIP was issued to an employee who was leaving City employment.

Once the CIP payment was approved, Controller's Office personnel calculated the amount of City paid leave Ms. Rippey-Tourk was due, based on the amount of donated leave time she had in her CIP leave bank. From May 22 through August 31, 2006, Ms. Rippey-Tourk took 521 hours of unpaid leave. Employee leave donations totaling 264 hours were submitted for Ms. Rippey-Tourk under the CIP. The amount of donated time compensated Ms. Rippey-Tourk for about one-half of the unpaid leave time she took in 2006. The compensation in her

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last paycheck consisted of amounts due under the CIP as calculated by the Controller's Office and the final holiday pay balance that she had properly accrued.

**3. Conclusion.**

The fact that Ms. Rippey-Tourk was credited for donated time under the CIP for periods predating her CIP application is not unusual. There have been a number of instances in which the CIP program has been administered in this way. Under many circumstances, an employee who otherwise qualifies for the CIP will exhaust her paid leave before filing a CIP application. For example, the employee may not have very much paid leave banked, or the employee may not be aware that her condition qualifies for the CIP, or even that the CIP exists, until long after the onset of illness.

This practice raises a policy issue. The Ordinance states that payments may be made retroactively from the "date of certification of eligibility back to the date of the application." The Board of Supervisors and the Mayor may wish to amend the Ordinance either to conform to practice by clarifying that payments may be made retroactive to the onset of illness, even if before the date the application is submitted, or to state more precisely a rule allowing payments retroactively only to the date of the CIP application.

The unique aspect of this situation is the fact that Ms. Rippey-Tourk had given notice that she intended to leave City employment and was seeking other work at the time her CIP application was approved. While payment in these circumstances was unusual, the Ordinance does not prohibit it. Consistent with the Ordinance, her CIP application was approved and the retroactive payment authorized while she was still a City employee eligible for these payments. A similar situation could arise in the future, and current City policy and practice would allow a CIP payment to be approved or processed after an employee has left City employment, whether through voluntary separation, permanent disability, or death. Depending on the circumstances, such payments may be consistent with the goals of the CIP. Again, if as a policy matter the Board of Supervisors and the Mayor would prefer a rule prohibiting payments to employees who are separating from City employment, including circumstances where they have accepted a new job, they could amend the CIP ordinance to incorporate such a limitation.

**C. LEAVE USE****1. City Law and Procedure.**

City employment rules specify the amount of leave time—including paid vacation and paid sick leave—earned by employees based on their service. The Charter establishes vacation and certain other special forms of leave; Civil Service rules cover sick leave and other leaves of absence (see [Exhibit C](#) for a web link to the City's Civil Service rules); memoranda of understanding (MOUs) between the City and employee bargaining units cover floating holidays, administrative leave and the like. Questions have been raised concerning whether Ms. Rippey-Tourk took more leave than she was entitled to.

**2. Facts.**

This issue arose after City departments responded to Sunshine requests for Ms. Rippey-Tourk's payroll records. To protect her privacy, and consistent with past City practice in responding to Sunshine requests regarding employee time sheets, the nature of the leaves taken were redacted to show only "leave taken" and not the specific type of leave. In some news

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accounts reporters attempted to tally these leave numbers and claimed that they did not appear to correspond with the leave amounts Ms. Rippey-Tourk was due as a City employee.

We requested a report from the Controller's Office regarding the leave that Ms. Rippey-Tourk accrued and the leave she took from 2004 through 2006. This report establishes that Ms. Rippey-Tourk accrued leave consistent with her employment contract and City regulations. She took only what she had a right to take in paid sick leave, vacation leave, holiday leave, floating holiday leave, and compensatory leave. Since the report from the Controller's Office specifies the dates and types of all leaves taken by Ms. Rippey-Tourk, it is subject to the same privacy protections as her time sheets, discussed above.

In 2004, Ms. Rippey-Tourk took 341 hours of unpaid leave. Based on a properly submitted and approved unpaid leave request form, present in her personnel file, this leave was her right to take and was taken appropriately. She used less than the original amount of leave approved in this instance.

In 2006, Ms. Rippey-Tourk took unpaid leave beginning in mid-May. This leave was discussed above in the Retroactive Payment section of this report.

**3. Conclusion.**

Based on the report from the Controller's Office, Ms. Rippey-Tourk's use of paid leave (which may include sick leave, vacation leave, holiday leave, and administrative leave), and unpaid leave as a City employee was consistent with City law and rules.

**D. PAYROLL TIME SHEET APPROVAL****1. City Law and Procedure.**

Questions have been raised about whether City law and procedures were followed with respect to Ms. Rippey-Tourk's time sheet approval. Our review indicates that during the majority of time that Ms. Rippey-Tourk was employed by the Mayor's Office, senior staff members were not required by any policy or practice of the City or the Mayor's Office to have a supervisor approve their time sheets. Ms. Rippey-Tourk was considered senior staff. Therefore, Ms. Rippey-Tourk was not required to have a supervisor sign her time sheets. The Mayor's Office changed its policy sometime around the end of 2005, and Steve Kawa, then Chief of Staff, began signing time sheets for senior staff.

**2. Facts.**

Redacted versions of Ms. Rippey-Tourk's time sheets have been produced pursuant to Public Records Act requests. The time sheets are all in a similar format, and have signature blocks for the employee and for an "authorized signature." No redactions were made regarding these signature blocks. On many of Ms. Rippey-Tourk's time sheets, there are no signatures on one or both of these signature blocks.

All departments, including the Mayor's Office, now use the payroll "roster" to inform the Controller who to pay and the amount to pay. The human resources unit of each office inputs payroll data directly into the automated roster program in the City's payroll system. This system completes an automated review of leave balances and other factors to ensure that the data are accurate for payroll purposes. Only the employee in charge of human resources for each department needs to certify the data for all employees in their specific department. Employees

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begin the process by inputting their own data into the roster and are responsible for its accuracy. But, signatures generally are not required. According to Ms. Holmes, there are many ways that individual departments collect data to put into the payroll roster.

According to Monique Zmuda of the Controller's Office, the Mayor's Office is one of the last offices in the City to use time sheets. Shalonda Baldwin explained how the Mayor's Office payroll system works. The individual employee provides individual input into a computerized time sheet. At the end of the payroll cycle, the employee prints the sheet and submits it to Human Resources. Human Resources then reviews the employee input. At times an employee enters incorrect data or draws from a leave bank that does not have sufficient time in it. In these cases the payroll clerks make corrections by hand. This accounts for the many marks one would see on a seemingly automated time sheet, and this is a common payroll practice.

As mentioned above, before the end of 2005 there was no requirement that senior staff in the Mayor's Office obtain a supervisor's signature on their time sheets. The absence of such signatures before that time, therefore, is not surprising. Similarly, the fact that Ms. Rippey-Tourk occasionally signed as her own "authorized signature" during this period was not legally improper, as no such signature was required. The fact that Ms. Rippey-Tourk occasionally did not sign her own time sheets did violate the practice in place at the Mayor's Office during this time. Most of these unsigned time sheets were submitted in 2004 and 2006, during periods in which Ms. Rippey-Tourk was absent from the office on unpaid leave.

In late 2005, the Mayor's Office policy changed. Under the new policy, then Chief of Staff Steve Kawa would sign off on the time sheets of senior staff members. In his absence, Deputy Chief of Staff Alex Tourk would sign off on the time sheets. Because of this policy, Mr. Tourk signed off as "authorized signature" for several of his wife's time sheets. Because Mr. Tourk approved his wife's time sheets, this practice was inappropriate and at least created the appearance of impropriety though it does not appear to have violated City laws. Ms. Baldwin told us that she noticed that Mr. Tourk was signing Ms. Rippey-Tourk's time sheets and discussed the practice with Mr. Kawa. Ms. Baldwin said that this practice was then stopped. Review of the time sheets confirms that, with two exceptions, a supervisor did sign off on Ms. Rippey-Tourk's time sheets from November 2005 through April 2006. Mr. Tourk did not sign any of his wife's time sheets after January 2006.

As discussed above, Ms. Rippey-Tourk was absent from the Mayor's Office on unpaid leave from May 24, 2006 forward. Ms. Baldwin told us that once Ms. Rippey-Tourk left on unpaid leave, Ms. Baldwin or her staff began to complete her time sheets and place them in the file as a record of what was happening with Ms. Rippey-Tourk. A review of the time sheets confirms that Ms. Rippey-Tourk did not sign any time sheets from the time she left in May 2006.

We understand that after Mr. Ginsburg became Chief of Staff and became aware of the past practices involved here that he changed the Mayor's Office internal policy in March 2007 to require approval of an employee's time sheets by the employee's supervisor.

**3. Conclusion.**

As stated above, there was a great deal of inconsistency in the manner in which Ms. Rippey-Tourk's time sheets were signed and approved. Before the end of 2005, the policy of the Mayor's Office did not require any supervisor to sign off on the time sheets of senior staff. After that time, the Mayor's Office changed the policy to require a signature for time sheets for senior staff and in most cases after this change Ms. Rippey-Tourk's time sheets were approved.

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In several instances during this period Mr. Tourk signed his wife's time sheets and such approval was inappropriate. But there is no indication that any unlawful payments were made to Ms. Rippey-Tourk in connection with the completion and approval of her time sheets during her tenure in the Mayor's Office. Nor did our review demonstrate that the practices of the Mayor's Office involving her time sheets violated established City policies or procedures.

As mentioned above, we understand that the Mayor's Office recently adopted a new policy requiring the time sheets for a Mayor's Office employee to be signed and approved by the employee's supervisor. It is a policy matter for the Board of Supervisors and the Mayor whether to amend the City's anti-nepotism law to cover the sort of situation that occurred here regarding approval of Ms. Rippey-Tourk's time sheets by her husband, and a policy matter for the Board of Supervisors, the Mayor, the Controller, the Department of Human Resources and the Ethics Commission whether to institute a formal City policy requiring approval of employee time sheets in a particular manner, or not at all.

**E. OUTSIDE EMPLOYMENT****1. City Law and Procedure.**

Under Civil Service rules, City employees are generally prohibited from being paid by another employer while on sick leave from the City. (Civil Service Rules, §§ 120.11, 120.21.) Published information indicates that Ms. Rippey-Tourk was working for Benefit Magazine by September 2006, and has raised questions concerning whether she may have been working (or volunteering) for Benefit Magazine before that time, and whether she may have violated Civil Service rules.

**2. Facts.**

According to an article published in the Focus section of the November/December 2006 edition of Benefit Magazine, Ms. Rippey-Tourk began hosting a weekly, hour-long radio show (Benefit Radio) on September 9, 2006. The show debuted a little over a week after Ms. Rippey-Tourk formally separated from City employment. Other published accounts suggest that Ms. Rippey-Tourk may have begun working for Benefit Magazine, on either a paid or an unpaid basis, before September 2006.

During the course of this review, the Controller and the City Attorney's Office issued an administrative subpoena to Benefit Magazine seeking certain records relating to this issue. In a verified response to that subpoena, Benefit Magazine produced several pages of records relating to Ms. Rippey-Tourk. Based on these records, it appears that Ms. Rippey-Tourk was not formally engaged as a host and producer of Benefit Radio until October 4, 2006. Payment records indicate that Ms. Rippey-Tourk received an "advance" from Benefit Magazine on September 19, 2006. There is no indication of any payment before that time.

There is also a statement in the records that Benefit Magazine produced indicating that Ms. Rippey-Tourk served as an unpaid co-host for a charitable event held in April 2006. Other than that, there is no indication in these records of work performed by Ms. Rippey-Tourk, on either a paid or unpaid basis, before September 1, 2006. Because Ms. Rippey-Tourk would not consent to be interviewed by us, we could not verify with her the information contained in the records produced by Benefit Magazine, including the information regarding her date of hire as a

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paid employee or determine whether she worked as an unpaid intern or volunteer during times when she was on leave from her job with the City.

**3. Conclusion.**

Our review, including our review of the records discussed above, has not uncovered evidence that Ms. Rippey-Tourk's work for Benefit Magazine violated City law, including Civil Service rules.

## **LIST OF EXHIBITS**

- Exhibit A: CIP Ordinance
- Exhibit B: CIP Application Form
- Exhibit C: Civil Service Rules

**EXHIBIT A**  
**CIP ORDINANCE**

The City's CIP ordinance is set forth in Section 16.9-29A of the City's Administrative Code. This ordinance and any other City code provisions may be searched on-line at [http://www.municode.com/resources/ClientCode\\_List.asp?cn=San%20Francisco&sid=5&cid=4201](http://www.municode.com/resources/ClientCode_List.asp?cn=San%20Francisco&sid=5&cid=4201).

The text of the CIP ordinance reads as follows:

**SEC. 16.9-29A. T. J. ANTHONY EMPLOYEE CATASTROPHIC ILLNESS PROGRAM - TRANSFER OF SICK LEAVE AND VACATION CREDITS TO INDIVIDUAL CATASTROPHICALLY ILL EMPLOYEES OR TO A POOL OF CATASTROPHICALLY ILL EMPLOYEES.**

(a) Purpose. To enable catastrophically-ill employees to continue to be paid through donations of sick leave and vacation hours from other employees, as authorized by Charter Sections A8.364 and A8.441. This program shall be known as the Catastrophically Ill Program, or "CIP." This Section only provides for receipt of such credits as are donated and does not provide for an absolute right of continued paid leave.

(b) Establishment of Pool; Administration and Rule-Making Authority. There is hereby established a pool into which employees may donate sick leave and/or vacation credits to benefit catastrophically-ill employees. The Controller shall have authority to administer the CIP program, including the authority to make and enforce rules not inconsistent with this Section, with consultation from the Director of Health.

(c) Definitions.

(1) A "catastrophic illness" shall mean a life-threatening illness or injury, as determined by the Department of Public Health.

(2) An "active participant" in the CIP is defined as a City employee who has applied for Catastrophic Illness Status and been notified of his or her acceptance in the CIP by the Department of Public Health or its designee and whose participation in the CIP has not terminated, regardless of whether or not the employee has actually received or used any donated sick leave and/or vacation credits.

(d) Eligibility of Employees To Participate in CIP. Any employee of the City and County of San Francisco may participate in the CIP if the employee meets all of the following conditions:

(1) The employee is eligible to accumulate and use sick leave and vacation credits;

(2) The employee is catastrophically ill;

(3) The employee has exhausted all of his/her available paid leave; and

(4) The employee does not participate in a short or long-term disability program for which the City pays in whole, directly or indirectly, or if the employee participates in such a program, the employee agrees to, and does, apply for disability benefits immediately upon becoming eligible for such benefits. Any employee who participates in a short or long-term disability program for which the City pays in whole, directly or indirectly, may participate in the CIP program until the employee receives or is qualified to receive benefits under the terms of a short or long-term disability program for which the City pays in whole, directly or indirectly. Any employee who is receiving or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, may not participate in the CIP program until and unless the employee's disability benefits terminate. Any employee who, while or after participating in the CIP program, retroactively receives or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, must reimburse the City for the CIP payments received during the period which the short or long term

disability program applies. Failure to do so will result in the City's placing a lien for the unreimbursed amount on the employee's future wages and benefits (not including workers' compensation or retirement.) This paragraph does not apply to employees who are active participants in the CIP as of the effective date of this Amendment and have been active participants since March 29, 2002.

(e) Procedure for Applying for Catastrophic Illness Status.

(1) An employee must complete a prescribed application form and return it to the Department of Public Health, together with supporting medical documentation. The Department of Public Health shall produce and maintain sufficient quantities of the prescribed application for employee access and distribution.

(2) The Department of Public Health or its designee shall examine the documentation supporting the application. The Department of Public Health or its designee may ask the applicant to submit further documentation and/or to submit to examination by a physician that it designates to determine in fact that the applicant does suffer from a catastrophic illness within the meaning of this Section. An applicant's failure to comply with these requirements may be grounds for rejection of the application.

(3) In order to continue to qualify as catastrophically ill, a CIP employee may from time to time be required to submit to specified examination, or to supply further documentation of current medical status, as is necessary in the opinion of the Department of Public Health or its designee; provided, however, that such requests shall not be made for the purpose of harassing said employee. In addition, an employee may be required to submit documentation of application for and/or status of disability benefits.

(4) If the Department of Public Health determines that an employee is not catastrophically ill, the employee shall have a right to appeal the decision through an administrative appeal process to be established by the Health Commission, which shall include the right to a review by the Director of Health and, finally, a hearing before the Health Commission. The Department of Public Health shall provide the employee with a written letter setting forth the reasons for denial and the procedure for filing an administrative appeal. The Health Commission shall promulgate and post the administrative appeal rules within 60 days of the effective date of this ordinance. The administrative appeal process in its entirety shall not exceed 60 days. An employee whose application has been disapproved is not obligated to exhaust the administrative appeals process before reapplying. Instead, the employee may reapply after observing a 30-day waiting period from the date of the initial denial.

(f) Posting of Eligible Recipients.

(1) The Department of Public Health shall assign an exclusive number to each catastrophically ill employee deemed eligible to participate in the CIP.

(2) The Department of Public Health shall maintain, reproduce and post a running list of CIP employees, to be identified only by their exclusive numbers, in order to let transferring employees designate a recipient.

(3) The list may include the amounts of sick leave and vacation credits already transferred or on reserve to each CIP employee.

(4) In all cases, the Department of Public Health and its designees shall shield and protect the true identities of CIP employees.

(g) Eligibility to Transfer Sick Leave and/or Vacation Credits. Any employee of the City and County of San Francisco who is eligible to accumulate and use vacation credits and sick leave may transfer sick leave and/or vacation credits to the CIP pool or to an individual CIP employee, subject to the following conditions:

(1) The transferring employee must retain a minimum sick leave balance of 64 hours.

(2) Transfers must be in units of eight hours.

(3) All transfers are irrevocable.

(4) The transferring employee may transfer hours to the CIP (pool or individual) only once per pay period.

(5) The transferring employee may transfer a maximum of 160 hours per pay period, of which no more than 80 hours may be to individual CIP employees.

(6) The transferring employee may transfer a maximum of 480 hours per fiscal year to the pool and to individual CIP employees combined.

(7) Neither a transferring employee nor a CIP employee may be in violation of Subsection (k).

(h) Use of Transferred Sick Leave and Vacation Credits.

(1) All hours transferred shall be credited as sick leave for the CIP employee. As they are used, they shall be treated as the employee's own sick leave for all purposes, including for continued accrual of vacation credits, sick leave, and retirement service; service for pay increments; and eligibility for holiday pay.

(2) At the beginning of each pay period, a CIP employee must use all sick leave and vacation credits accrued during the previous pay period before using any transferred hours.

(3) A CIP employee may use transferred hours retroactively from the date of certification of eligibility back to the date of application.

(4) A CIP employee may use transferred credits in a pay period to the extent that when combined with other compensation from the City and County and all other benefits from public sources, the total does not exceed the pay for 100 percent of the employee's regularly scheduled hours for such pay period (excluding regularly scheduled overtime and premium pay). A CIP employee may be required to provide financial records to prove compliance with this subsection. Failure to provide such records is grounds for exclusion from the CIP.

(i) Redistribution of Transferred Hours Upon Termination of Participation In CIP. If a CIP employee dies, retires, resigns or begins receiving disability benefits before having used all hours transferred pursuant to this Section, the unused hours shall be transferred to the CIP pool. If a CIP employee's participation in the CIP expires or is terminated before the employee has used all hours transferred pursuant to this Section, all unused hours in excess of 64 hours shall be transferred to the CIP pool.

(j) Confidentiality.

(1) All medical records submitted by an employee pursuant to this statute are to be kept confidential by the Department of Public Health or its designee.

(2) Until the Department of Public Health has rendered its opinion pursuant to Subsection (d) that the employee is catastrophically ill, the fact of an employee's application is to be kept confidential by the parties processing the application and not shared with the employee's department head.

(3) The names of employees donating hours pursuant to this provision are to remain confidential.

(4) Violation of the provisions of this subsection or any other provision relating to confidentiality protections shall be grounds for disciplinary action.

(k) No Selling or Coercion.

(1) No individual shall directly or indirectly solicit the receipt of, or accept, any compensation in full or partial exchange, directly or indirectly, for sick leave or vacation credits to be transferred pursuant to this Section.

(2) No individual shall solicit the receipt of, or accept, the transfer of any sick leave or vacation credits pursuant to this Section in full or partial exchange, directly or indirectly, for any compensation.

(3) No individual shall threaten or in any way attempt to coerce an employee with respect to transfer of sick leave or vacation credits pursuant to this Section.

(4) Violation of the provisions of this subsection shall be grounds for termination of participation in the CIP and for disciplinary action.

(l) Notices. The Civil Service Commission shall develop notices with relevant information about the CIP. These notices shall be distributed to all appointing officers who shall then post them in public places where other notices advising employees of rights and benefits are posted.

(m) Termination of this Provision. Unless otherwise specified by ordinance or Charter provision, the provisions of this Section shall expire upon the effective date of an ordinance or Charter section instituting, or upon the effective date of the last MOU through which all City employees are covered by, a long-term disability program.

(n) Limitation. In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 175-01, File No. 010059, App. 8/17/2001; amended by Ord. 34-02, File No. 011741, App. 3/29/2002; ; Ord. 84-04, File No. 040194, App. 5/20/2004

**EXHIBIT B**

**BLANK FORM OF CIP APPLICATION**



APPLICATION FOR CATASTROPHIC ILLNESS PROGRAM (CIP)
(Administrative Code Section 16.9 – 29A)

INSTRUCTIONS: Applicant must complete Section I; Sections II, III & IV are completed by Department of Public Health; Employee's Physician must complete the entire page 3; Mail complete form to: Catastrophic Illness Program – Department of Public Health (DPH), Human Resources Services/Personnel, 101 Grove Street, Room 212, San Francisco, CA 94102.

I. Application [ ] New [ ] Extension

Employee Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DATE: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

Department: \_\_\_\_\_ Class: \_\_\_\_\_

Applicants are required to disclose all benefits received from public sources. These benefits include but are not limited to payment for unemployment, disability, workers compensation and social security. Applicant may be required to provide financial to prove compliance to this policy.

Are you covered by a City paid long or short term disability (premiums paid by the City) Specify: \_\_\_\_\_

Eligibility of Employee to Participate in CIP Program:

Any employee of the City and County of San Francisco may participate in the CIP if the employee meets all of the following conditions: 1) the employee is eligible to accumulate and use sick leave and vacation credits; 2) the employee is catastrophically ill; 3) the employee has exhausted all of his/her available paid leave; and 4) the employee does not participate in a short or long-term disability program for which the City pays in whole, directly or indirectly, or if the employee participates in such a program, the employee agrees to, and does, apply for disability benefits immediately upon becoming eligible for such benefits. Any employee who participates in a short or long-term disability program for which the City pays in whole, directly or indirectly, may participate in the CIP program until the employee receives or is qualified to receive benefits under the terms of a short or long-term disability program for which the City pays in whole, directly or indirectly. Any employee who is receiving or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, may not participate in the CIP program until and unless the employee's disability benefits terminate. Any employee who, while or after participating in the CIP program, retroactively receives or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, must reimburse the City for the CIP payments received during the period which the short or long term disability program applies. Failure to do so will result in the City's placing a lien for the unreimbursed amount on the employee's future wages and benefits (not including worker's compensation or retirement). This paragraph does not apply to employees who are active participants in the CIP as of the effective date of this Amendment and have been active participants since March 29, 2002.

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS/NOTIFICATION TO SHORT TERM DISABILITY (STD)/LONG TERM DISABILITY (LTD) PROVIDER:

I hereby authorize my physician to release my medical records to the San Francisco Department of Public Health for its evaluation of my application for Catastrophic Illness Status. I also authorize the DPH to contact my physician as part of its evaluation. I authorize the City and County of San Francisco to contact my STD and LTD providers, notify them of approval of my application, and request and receive information from my STD and LTD providers regarding my coverage.

Employee's Signature: \_\_\_\_\_ Date : \_\_\_\_\_





**PHYSICIAN'S CERTIFICATION OF CATASTROPHIC ILLNESS**

Date Physician Completes this form: \_\_\_\_\_

Patient Name: \_\_\_\_\_

Patient Diagnosis:

\_\_\_\_\_  
\_\_\_\_\_

Onset of Catastrophic Illness:

\_\_\_\_\_  
\_\_\_\_\_

Course of Treatment(s) and Date(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Symptoms which result in inability to work (Explain):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Current Prognosis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When do you anticipate Patient will be able to return to work? (Please provide the anticipated or exact date of return to work)

\_\_\_\_\_



I certify that the above-named patient should be considered for approval of catastrophic illness status. She/He has a life-threatening illness or injury.

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**Attending Physician Only**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Physician's Name/Title (print):  
\_\_\_\_\_

Business Address/Street:  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Work Phone Number and Extension: \_\_\_\_\_ License #: \_\_\_\_\_

## EXHIBIT C

### CIVIL SERVICE RULES

All of the City's Civil Service Rules that apply to the matters discussed in this report are too voluminous to set forth here. They may be found on line at the following web address: [http://www.sfgov.org/site/civil\\_service\\_index.asp?id=4519](http://www.sfgov.org/site/civil_service_index.asp?id=4519). In particular, Civil Service Rule 120, Leaves of Absence (applicable to City employees except police, fire and MTA service critical), which includes Sick Leave, may be found at: [http://www.sfgov.org/site/civil\\_service\\_page.asp?id=6305](http://www.sfgov.org/site/civil_service_page.asp?id=6305).

The full text of specific Civil Service Rules cited in the report include the following:

#### **120.7.1 Sick Leave - Medical Reasons**

Absence because of illness, including alcoholism, or injury other than illness or injury arising out of and in the course of City and County employment; absence due to illness or injury arising out of and in the course of employment is administered either under the Rules of the Retirement Board and is referred to as "disability leave" and may be supplemented as provided elsewhere in this Rule or under the provisions of this Rule and the Administrative Code for those employees injured by battery ("leave due to battery"); and absence because of medical or dental appointments.

#### **Sec. 120.11 Prohibition Against Employment While on Sick Leave with Pay**

**120.11.1** Employees are prohibited from working in any other employment while on sick leave with pay unless, after considering the medical reason for the sick leave with pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in a secondary employment subject to the provisions of these Rules governing such employment.

**120.11.2** Violators of this section are subject to disciplinary action as provided in the Charter.

#### **Sec. 120.21 Prohibition Against Employment While on Sick Leave Without Pay**

**120.21.1** Employees are prohibited from working in any other employment when on sick leave without pay unless, after considering the medical reason for the sick leave without pay, the appointing officer with the approval of the Human Resources Director, grants permission for the employee to engage in outside employment.

**120.21.2** Violators of this section are subject to disciplinary action.