

BLUE RIBBON TASK FORCE ON ETHICS ORDINANCE MEETING NOTES

Thursday, April 22

Room 204, City Hall

Attending: Councilmember Ken Yeager (Chair), Councilmember Cindy Chavez, Vice Mayor Pat Dando, Councilmember Chuck Reed

Staff: Deanna Santana (Interim City Clerk), Norm Sato (City Attorney's Office), Peter Jensen (City Manager's Office)

DISCUSSION

Panel Presentations

The Task Force listened to opening statements by each of four panelists: Dr. Betsy Carroll of San José State University, JoAnne Speers of the Institute for Local Self-Government, Virginia Holtz of the League of Women Voters, and Judy Nadler of the Markkula Center for Applied Ethics at Santa Clara University. Summaries of each statement are listed below:

- **Dr. Betsy Carroll** – Dr. Carroll quoted the American Society for Public Administration (ASPA) Code of Ethics, which states that ASPA professionals should demonstrate the highest standards of personal integrity in order to inspire public trust and confidence in public institutions. She feels this should be the foundation for all public officials, particularly given declining levels of trust in all of society's institutions. She stated that trust allows governments to build coalitions and accomplish goals.

Her suggestion for the Task Force's consideration was to require that contributions and payments (whether to political campaigns, candidate-controlled political action committees, or officeholder accounts) be reported and posted on the Internet within 24 hours of receipt.

- **JoAnne Speers** – Ms. Speers began with the question of whether good systems and rules are enough to promote good practices. She had three points regarding this question:
 - What makes rules work is internal and external training
 - Rules must have enforcement mechanisms behind them (funding, staff, and some insularity)
 - Rules are an imperfect way to produce truly ethical behavior, because they can be regarded as the standard of behavior, when in fact they should be considered the floor for ethical standards.

Ms. Speers felt that rule-based systems may actually diminish, rather than promote, the public's trust, and encouraged the Task Force to instead undertake a broader discussion of ethics through the adoption of a value-based code of ethics. She emphasized that the process of developing this would be as important as the product

itself, and that implementation strategies would be key to creating a culture of ethics. She concluded that her key messages were:

- Enforce the laws
 - Fix loopholes
 - Set your ethical sights beyond the laws
- **Virginia Holtz** – Ms. Holtz reviewed the establishment of the League of Women Voters, and cited the League’s positions. These included:
 - The belief that democratic government is a partnership between people and government
 - Encouraging governments to adopt mission statements focused on integrity and open government
 - Encouraging the adoption of a code of ethics for elected officials and employees
 - Supporting the timely distribution of information to the public (such as agendas and minutes)
 - Supporting the regulation of lobbyists, including the disclosure of clients and fees
 - **Judy Nadler** – Ms. Nadler reviewed the activities of the Markkula Center for Applied Ethics, and explained that the Center had assisted the City of Santa Clara in developing a Code of Ethics, with the goal of making it a living document that is part of everyday decision-making, based on a shared vision and agreed-upon sets of values determined through a community dialogue.

She felt the most important thing in developing that is the broadest commitment from all stakeholders to practicing everyday ethics. One way to reinforce that commitment is to celebrate when it’s done well – a suggestion was to place a city’s Code of Ethics on its website.

She praised San José for the level of public involvement in its decision-making, and encouraged the city to remind the public at City Council meetings of all the work that went into the process of bringing any given item to the Council agenda.

She referred to a flyer (included in the packet from the Markkula Center that she distributed) which lists twenty unavoidable ethics dilemmas of newly elected public officials. She encouraged elected officials to be aware of these issues, and of how their actions may be perceived. She suggested that communicating with the public about exactly what you’re doing will earn public confidence.

Task Force Questions

- How can the City require the disclosure of information without being so restrictive that people are afraid to talk to Councilmembers and officials? (Chair Yeager)
 - JoAnne Speers - pointed to the State’s definition of lobbyists, which is based on the number of contacts and on receiving compensation from a client. This raised the question of whether the rules should apply to those who work for non-profits.

- Ms. Speers' conclusion was that if you are paid to advocate for your organization, you should be treated like a lobbyist.
- Betsy Carroll - felt that that issue was not the problem, and that the focus should instead be on where money is coming from and who it is going to. As an example, she stated her opinion that the Mayor's efforts to advocate for the city at the federal and state level should be funded by the General Fund, because credibility is undercut if it is unclear where money is coming from.
 - Is it better for lobbying rules to be specific or broad? (Chair Yeager)
 - JoAnne Speers – felt there should be two buckets: ethics laws (understandable, affect conduct the public worries about, promote trust, simple enough for those being regulated to comply) and an ethics code (based on aspirations, positive). She felt that telling people what they cannot do affects a narrow range of conduct, while a broader ethics code could affect a broader range. She emphasized that you don't want to create an atmosphere in which people think that if something is not prohibited, they are free to do it.
 - Betsy Carroll – was far less concerned about who talks to elected officials than about who gives money to them. She felt that money was the most destructive influence.
 - Are there any examples of gold standard cities, not in terms of how the rules are written, but in how the city conducts business? (Councilmember Reed)
 - JoAnne Speers – didn't feel there was such a standard, simply because one size does not fit all. The Institute for Local Self-Government offers a menu of elements of various cities' codes, and she encouraged the City to choose what is most relevant and refine it for what works for San José.
 - Judy Nadler – agreed, but felt there are common items that should be part of a basic framework. She said that having a document that speaks to San José's culture is the key, and that having a sense of ownership of the document is unbeatable. Ms. Speers agreed, and mentioned that there are five or six core ethical values that recur in most cultures, such as honesty, compassion, fairness, and respect. Ms. Nadler also mentioned that Santa Clara created a "Make it Real" team that worked to make the Ethics Code a reality for everyone in the organization, rather than being limited to elected officials and senior managers.
 - Since creating a culture of conduct is as or more important than creating rules, are there any examples of gold standard cities in doing that? (Councilmember Chavez)
 - JoAnne Speers – offered Santa Clara as an example of a city that had built its ethics code from the ground up and made it a priority.
 - Because San José's outreach and frequent public involvement gives us the ability to worry about process rather than the more basic question of getting the public involved, did Santa Clara have a way to benchmark that element? (Councilmember Chavez)

- JoAnne Speers – felt that the key measure was the degree to which the Ethics Code informs decision-making. Santa Clara surveys its employees to monitor their familiarity with the code. She said that different cities have approached this differently, some top down (with the Council setting standards), some bottom up (through employee and public involvement), and others a mixture of the two.
- Virginia Holtz – mentioned that Santa Clara has an initiative called “Voting for Ethics”, which encourages the community to vote for candidates who display good ethics, thereby sharing the responsibility for upholding standards between the Council and the community. She also mentioned another example of this approach is the Harwood Institute, which promotes patriotism in the sense of the responsibility of individuals to help create good government.
- Are there cities that have positive experiences in the area of enforcement, particularly in avoiding having enforcement be used negatively in the political process?
(Councilmember Chavez)
 - JoAnne Speers – agreed that “gotcha” behavior in the course of a political campaign undermines public confidence. She felt that the enforcement tends to fall to the media and the public, so the best approach is self-enforcement, aided by mutual enforcement of colleagues, with a focus on the ethics code rather than merely on compliance with the rules.
 - Judy Nadler – felt that positive recognition of doing good is more powerful than punishment for doing bad. She mentioned that the grand dream of the “Voting for Ethics” project is that campaigns will be ethical, the best candidates will be elected, and voter turnout will increase.
 - Betsy Carroll – agreed that those were laudable goals that could be achievable if the ethical standards are embedded in a city’s culture. But she feels that such a culture change is the last thing that happens, while the first thing is taking action. She recommended a two-pronged approach: creating true and immediate full disclosure of where money is going, and holding meetings and creating a cooperative approach to create an ethics code.
- It is important to make lines clear and make enforcement clear to help people behave ethically. It is true that most people are concerned about the money, but it is best to focus on just a few areas. San Diego may be an example for us to draw from: their ordinance focuses on elections and campaigning, lobbyists, and ethics, and provides clear definitions of the standards of conduct.

An example of an ethical dilemma Councilmembers face is the relationship with community-based organizations. CBO’s do great work, but they are strong advocates for their own causes, and it’s likely that you look at them differently than a developer. How do you determine that a CBO representative is not a lobbyist, even though they are asking the city for money through grants or other sources? (Vice Mayor Dando)

- Judy Nadler – felt that a regulated paid lobbyist advocating on behalf of another party should be treated differently than someone advocating on behalf of their own organization. She felt that someone arguing for a position because of their passion regarding that issue is different from someone representing a client.

- Betsy Carroll – felt that everyone has a right to advocate a position, but that the question should be whether they're contributing to someone's campaign fund, and does that contribution unduly influence an office holder?
- JoAnne Speers – reminded the Task Force that the City already has a definition of lobbyists, and needed to consider whether or not to expand it. She agreed that being compensated is important, but number of contacts may also be a factor worth considering, since the public should know who is advocating legislative positions.
- Most Councilmembers have CBO's they favor. While Councilmembers often initiate efforts on behalf of the good causes the CBO's represent, they recognize that at some level, the CBO's get involved with them because of the positions they occupy. What thoughts do panelists have regarding Councilmembers raising money for CBO's, particularly by encouraging those with whom they do business to contribute? (Vice Mayor Dando)
 - Judy Nadler – mentioned that this situation is on the list of unavoidable ethics dilemmas for newly elected office holders. She suggests that officials ask themselves whether such involvement could affect the public's perception of the Councilmember's fairness to everyone in the community. She did not feel that a Councilmember should therefore cut all ties with community organizations, but should be very mindful of issues of perceived fairness.
 - JoAnne Speers – mentioned a February article in *Western City* that addresses this issue. She mentioned that another perception to be considered is that of the person being asked, and whether they feel obliged to contribute because they feel the officeholder's decision-making could be affected. She said that ethical questions are usually not questions of right and wrong, they are more often questions involving competing right values (in this case, aiding worthy charities and public perceptions of fairness of their elected officials).

Discussion of Future Task Force Activities

Chair Yeager suggested that Task Force members review the staff memo regarding potential amendments to sections of the lobbying ordinance from City Attorney Rick Doyle and Interim City Clerk Deanna Santana, and be prepared to discuss its contents at the Task Force's fifth meeting on May 10. The Task Force members were asked to hold their comments on ordinance changes until that meeting.

Public Comment

Kathy Chavez Napoli asked how the public will know about the process, and when non-lobbyist issues will be discussed. Chair Yeager informed her that the public is welcome at all Task Force meetings, and that recommendations will be presented at a meeting of the full Council. He mentioned that the Task Force has chosen to concentrate on the lobbyist ordinance first, so that members of the public interested in providing input on other elements of the Ethics Ordinance could send a letter explaining those positions, so that the Task Force could review those comments at the appropriate time.

Ms. Chavez Napoli mentioned that her key issues include access to the Mayor, Councilmembers, and department heads; the appointment of lobbyists to boards and commissions; and time limits for public comments at meetings. She stated her feeling that many elected officials have the highest ethical standards, but that the Task Force's work is important because currently, sometimes it pays to be unethical.

Jorj Tilson asked that the Task Force consider involving the Campaign Ethics Foundation (of which she is a board member) in its discussions of campaign issues.