



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** HP FUNDS ALLOCATED FOR  
CONSTITUENT OUTREACH

**DATE:** January 31, 2008

### RECOMMENDATION

- a. Approval of Amendment No. 3 to the Naming Rights and Trademark License Agreement among the City, San Jose Arena Management, San Jose Sharks and Hewlett Packard Corporation removing restrictions on the use of a portion of the funds received by the City in exchange for the Arena naming rights.
- b. Adoption of a resolution specifying the City Council's intent to use the additional funds from the Naming Rights Agreement for constituent outreach in compliance with the Council Expenditure and Reimbursement Policy.

### BACKGROUND

On December 19, 2000, the City entered into an agreement with San Jose Arena Management LLP and Compaq Computer Corporation (subsequently assigned to Hewlett Packard Corporation) regarding the sale of naming rights of the Arena. In exchange for the right to sell the name of the Arena, the City receives funding from Hewlett Packard, through San Jose Arena Management. The agreement provides that a portion of those funds are to be distributed equally to each Council District, and are restricted to be used for educational, recreational and cultural purposes. These funds are referred to as District Funds or HP Funds. From Fiscal Year 2000-2001 through 2006-07, the amount of the total annual payment to the City was \$1,500,000, \$250,000 of which were restricted District Funds. As of this fiscal year, and through the end of the Agreement (FY 2014-15), the amount of the District Funds increased by \$125,000 for a total District Funds amount of \$375,000, and a total annual amount of \$1,625,000.

On October 16, 2007, the City Council approved the City Council Expenditure and Reimbursement Policy which sets forth comprehensive guidelines for the expenditure of public funds by the Mayor and Council offices. The policy recognizes that constituent outreach, including attendance at certain events, is a fundamental part of a Councilmember's job, has a public purpose, and within the parameters of the policy, may be paid for with City funds.

On November 20, 2007, the City Council approved the Mayor's Biennial Ethics Review recommendation to phase out existing and prohibit new Officeholder Accounts. Specifically, the recommendation called for each Member of the Council to (1) stop soliciting and accepting contributions to his or her Officeholder Account on or before February 1, 2008; (2) stop spending any contributions held in his or her Officeholder Account by July 1, 2008; and (3) close his or her Officeholder Account by July 1, 2008.

In order to offset some of the expenses associated with holding office which had been previously paid for through the Officeholder Accounts the Mayor has proposed that each Council Office will receive an additional appropriation of \$10,000 and the Mayor's Office will receive an appropriation of \$25,000. The source of these additional funds is the increase in annual funding from the Naming Rights Agreement.

On December 18, 2007, the City Council approved Ordinance No. 28212, phasing out the Officeholder Accounts. The ordinance is effective as of February 7, 2008. In Council discussion of this item, the following requests were made of staff: 1) an explanation of the procedure for using these additional funds; 2) a list of "Do's and Don'ts" for all expenditures under the new Expenditure Policy; and 3) a follow up discussion at Rules and Open Government Committee regarding the restrictions on the use of public funds by Councilmember's on advertising.

Item 3.4 on today's agenda is the Mid-Year Budget review, which recommends that the Council approve the appropriation of the additional \$125,000, to each Council Office and the Mayor's Office as set forth in the Mayor's Biennial Ethics review to be used for constituent outreach. The funds are recommended to be made available from an Earmarked Reserve (Officeholder Accounts). The 2007-2008 Adopted Budget established an Officeholder Accounts Earmarked Reserve for possible use for constituent outreach and attending community events in the event that the City Council approved the elimination of Officeholder Accounts. At the time, this reserve was created from a reduction to the Arena Community Fund, which is funded from the Naming Rights Agreement.

The City Clerk intends to schedule a discussion of the use of public funds for advertising at a Rules and Open Government Committee meeting within the next several weeks.

## **ANALYSIS**

### **A. Amendment to the Naming Rights Agreement.**

The Naming Rights Agreement provides that as of August 1, 2007, \$375,000 of the naming rights funds to be paid to the City are to be distributed in equal amounts to each District of the City for educational, recreational and cultural purposes. The proposed amendment leaves this restriction in place with regard to the base annual payment of

\$250,000. However, for the additional annual amount of \$125,000, the proposed amendment removes the use restrictions, and the City may spend those funds for any public purpose for which the City Council chooses to appropriate for the funds. This allows the Council to use the funds for constituent outreach as recommended by the Mayor and the City Manager in the Mid Year Budget Review, as well as the flexibility to appropriate the funds for other purposes in the future.

B. Clarification on the Use of the Restricted HP Funds.

As mentioned above, the \$250,000 payment will remain restricted for use in each Council District for educational, recreational or cultural purposes. When the Naming Rights Agreement was initially entered into, there was no Council approved procedure for the use of these funds. Over time, practices have developed based on interpretation of the language in the Agreement, but there is still no written policy or procedure governing the use of these funds. For example, since the most frequent use of these funds by Council offices was, and continues to be, through granting the funds directly to third parties, the City Manager's Office established what has become known as the HP Grant process. Additionally, there has been occasion where a Council office has requested that HP Funds be transferred to fund a City recreation or cultural program. This has been determined to be an appropriate use of those funds. On the other hand, requests to use the funds to pay for admission to a fundraising event benefiting a cultural organization have been denied in the past as not being sufficiently directly related to the cultural purpose of the restricted funds. This is a conservative interpretation that was made in the absence of a comprehensive Expenditure Policy.

With the adoption of the Council Expenditure and Reimbursement Policy, questions have arisen as to whether that Policy changes any of the City's previous practices with regard to the use of HP Funds. The Expenditure Policy is intended to be applied in conjunction with any other restrictions that might apply to any particular source of funding. In other words, if a Council Office is requesting to spend a restricted source of funds on a particular expenditure, the requirement of both the Expenditure Policy and the funding source need to be adhered to. In the example of the cost of admission to a fundraiser for a cultural organization, since the City has never adopted a policy on the use of the HP Funds, the only restrictions on those funds are the broad purposes in the Agreement, including "cultural." Under the Expenditure Policy, as long as the cultural organization benefiting from the fundraiser provides services to residents or businesses of the City, it is considered an appropriate expenditure. Therefore, under the restrictions of both the Expenditure Policy and the Agreement, the cost of admission to such an event would be allowed.

January 31, 2008

**Subject: Actions Related to HP Funds**

Page 4

C. Procedures for the Expenditure of the Additional HP Funds.

Since the proposed amendment to the Naming Rights Agreement removes all restrictions on the \$125,000 of additional funds, it can be treated as General Fund money. Therefore, the only restrictions on the funds will be those imposed by the City Council pursuant to resolution. In accordance with Council direction, the proposed resolution restricts these additional funds to use by the Mayor and Councilmember for allowable expenditures for "Constituent Outreach" and "Admissions to Events" as defined by the Expenditure Policy. These expenditures include communications with constituents, constituent surveys, special events and admission to fundraisers for civic, cultural, educational or charitable organizations providing services to San Jose residents or businesses. The procedures for payment or reimbursement are the same as for any other expenditure.

The City Clerk and the Finance Department are collaborating on a list of "Do's and Don't's" for Council expenditures to assist Councilmembers and their staffs in complying with the Expenditure Policy.

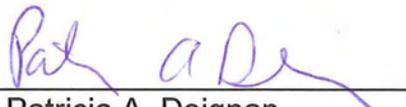
**PUBLIC OUTREACH**

This memorandum is posted on the City's website for the February 12, 2008 agenda.

**COORDINATION**

This item has been coordinated with the City Clerk's office and the Budget Office.

RICHARD DOYLE  
City Attorney

By   
Patricia A. Deignan  
Chief Deputy General Counsel

cc: Lee Price  
Debra Figone

For questions please contact Patty Deignan, Chief Deputy General Counsel 535-1201