



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Les White

**SUBJECT: DRAFT COUNCIL-STAFF
INTERACTION POLICY**

DATE: March 22, 2006

RECOMMENDATION

Approval of the Council-Staff Interaction Policy (Council Policy 0-31), which would replace the Independent Judgment Policy (Council Policy 0-26) and the Interaction Policy (Council Policy 0-27).

OUTCOME

To provide direction and clarification on officeholder – staff interaction.

BACKGROUND

On April 25, 2005, the Blue Ribbon Task Force on Ethics conducted a hearing to discuss potential revisions to the Independent Judgment Policy and the Interaction Policy. The Task Force directed then-City Manager Del Borgsdorf to review the policies and recommend any revisions needed to provide guidance to the Mayor and Councilmembers regarding their interaction with staff in connection with land development proposals. The goal of this guidance was to allow City officeholders to have the level of involvement needed to have influence over policy decisions related to developments in their districts without violating the Charter provision prohibiting them from “giv(ing) orders to any ... employee.”

Two information memoranda have been provided reporting on the status of these revisions, the second of which indicated that revisions would be provided in Spring 2006.

ANALYSIS

Our review of the existing policies indicated that much of the language remains relevant to the way the City approaches development processes now. However, some of the language is repetitive or difficult to follow. Our recommended revised policy eliminates duplicative provisions, simplifies language, and draws more direct connections to Charter provisions where appropriate.

We shared a draft of the revisions with John Nalbandian, who chairs the Department of Public Administration at the University of Kansas. The university’s specialization in “city management and urban policy” is recognized as the best in the country, and Professor Nalbandian is internationally recognized for his research and understanding of relationships between elected

officials and professional city staff. In addition to his academic work, he served for eight years as city council member in Lawrence, Kansas, including two terms as the council’s mayor. Professor Nalbandian’s suggestions have been incorporated into the proposed revised policy. The table below provides a brief summary of the source of the language in the recommended revised policy (Attachment A; the Independent Judgment Policy and Interaction Policy are incorporated as Attachments B and C, respectively), and identifies significant additions or deletions from the existing policies.

Section	Source	Comments
Purpose	Independent Judgment Policy & Interaction Policy - Purposes	Added reference to source of information to address potential conflicts of interest.
Policy - #1	Interaction Policy - #1	Specified that projects must be “of significant impact” to require staff to advise Councilmembers. Under this provision, minor proposals such as tree removals or lot line adjustments would not require any notification to Councilmembers. Broadened requirement so that Mayor and City Council are to be advised of significant proposals with City-wide impact (previously only the Mayor was to be advised).
Policy - #2	Interaction Policy - #6 & #8	Deleted requirement that City staff arrange meetings between Councilmember and professional consultants.
Policy - #3	Interaction Policy - #2	Added language encouraging Councilmembers and their staffs to learn of City staff concerns.
Policy - #4	Interaction Policy - #4 Independent Judgment Pol. - #1/2	Added reference to relevant City Charter section.
Policy - #5	Interaction Policy - #5	Added language describing factors typically considered in developing staff recommendations.
Policy - #6	Independent Judgment Policy - #3	Minor language changes
Policy - #7	Independent Judgment Policy - #6	No changes
Policy - #8	Independent Judgment Policy - #7	Minor language changes
Policy - #9	Interaction Policy – Note	Edited to explain in lay terms

PUBLIC OUTREACH

N/A

COORDINATION

This memo was coordinated with Planning, Building, and Code Enforcement, the Fire Department, and the City Attorney’s Office.


 Les White
 City Manager

Council-Staff Interaction**Policy Number 0-31****PURPOSE**

The purpose of this policy is to provide guidance to staff and the Mayor and City Council in their interaction related to development projects. It is intended to interpret the provisions of Charter Sections 411 (*The Council; Interference with Administrative Matters*), 600 (*Council Action: Method*), and 607 (*Code of Ethics*). The policy aims to ensure that staff recommendations reflect their independent professional judgment while also ensuring that members of the City Council (this term includes the Mayor) have timely access to information about development projects and are free to express their viewpoints about them. Issues of potential conflicts of interest are addressed specifically in the City's Code of Ethics (City Policy 2.01).

SCOPE OF APPLICATION

This policy applies to the Mayor, City Councilmembers, their staffs, and all City employees.

POLICY

It is the policy of the City Council, subject to applicable restrictions of the Brown Act and the Fair Political Practices Act, that:

1. Individual City Council Members shall be kept advised by City staff of the status of potential and actual proposals for development (including land use, economic development, and housing proposals) of significant impact in that Council Member's district. The Mayor and the City Council shall be kept advised of the status of potential and actual proposals for development that have a significant City-wide impact.
2. As part of the review process for development proposals, meetings between the Council Member from the affected district, the landowner, the developer, community representatives, professional consultants retained by the City or by other parties to the proposal, and City staff are encouraged.
3. City staff is encouraged to communicate and coordinate with the City Council Member, including that Council Member's staff, to learn his or her particular concerns and viewpoints related to any development proposal. City council members and their staff members are encouraged to initiate similar communication with city staff to learn about potential city staff concerns.
4. During the course of the coordination described in #3, the Council Member is free to fully express his or her viewpoint, concerns, and questions. However, in accordance with Section 411 of the City Charter, the Council Member may not give any directive to any member of City staff. Nor shall the Council Member or the City Council as a whole attempt to require

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or coerce City staff to make any particular recommendation or to adopt any particular position as the staff position on any matter.

5. During the course of the coordination described in #3, City staff shall, without constraint, advise Council members of any concerns, decisions, and assessments with regard to any development proposal. In formulating recommendations for Council actions, staff may consider the viewpoints expressed by the Council Member as a factor alongside other factors such as existing City development policy as adopted by Council through the General Plan, the City charter and ordinances, relevant federal, state, or local laws, or other relevant City policies, goals, and objectives. The recommendations shall reflect staff's professional judgment, based on an analysis of the proposal, and of the other factors described above that are relevant to it.
6. No individual Council Member shall present his or her views regarding a development proposal as being the views of the City or the City Council unless that view represents an official City position approved by the Council, or the member has been specifically authorized by the Council to speak on behalf of the City.
7. No member of the City Council shall disclose any lawful closed session discussion or any attorney-client communication except to the extent required by law or after a waiver of confidentiality by the City Council as a whole has been obtained.
8. No individual Council Member shall negotiate with any property owner or developer for the grant, loan, payment or forgiveness of any sum of money by the City unless either officially authorized to do so by the Council, or done as part of a coordinated negotiating effort with City staff, as long as an express disclaimer is provided that any agreement between the parties is subject to approval by the full Council.
9. Whenever a determination is *quasi-judicial* in nature, i.e., a determination which "adjudicates" the entitlement of a property owner to certain uses of the land, due process requires that any communications the Mayor or Councilmembers have had with anyone regarding the issue be noted on the record. This can be accomplished either through a memo in advance of the Council hearing, or by disclosure at the hearing itself. The following processes are *quasi-judicial* in nature: Conditional Use Permits, Planned Development Permits, Site Development Permits, Special Use Permits, Variances, Height and Bulk Waivers, and Tentative Maps.

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CITY OF SAN JOSE, CALIFORNIA

CITY COUNCIL POLICY

TITLE	PAGE	POLICY NUMBER
INDEPENDENT JUDGMENT POLICY	1 of 2	0-26
	EFFECTIVE DATE	REVISED DATE
	8/24/93	

APPROVED BY COUNCIL ACTION

August 24, 1993, Item 9d

BACKGROUND

In 1980, the City Council adopted an *Arms Length* Policy with regard to Land Development Proposals. Since this Policy was adopted, the development process has undergone many changes. Concerns have been raised that the Policy, if read literally, would exclude the Mayor and City Council Members from participating in any discussions with City staff prior to the land use hearing. Additional concerns have been raised that "development" today should include economic development and housing projects. In addition, the City has undergone a number of dramatic changes in its structure during the past 10 years, including Measure J and term limits. In 1990, the City Charter was amended to, for the first time, specifically address the subject of ethics in City Government. It requires that "City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

It is, therefore, appropriate to have two separate policies; one which serves as a broad ethical code for the Mayor and Council Members to ensure the independence of the professional advice which City Council receives on all matters, and the other which sets forth the modern framework which encourages appropriate interaction in the development process.

PURPOSE

This Policy is intended as part of the implementation of Charter Sections 411 (*The Council; Interference with Administrative Matters*), 600 (*Council Action: Method*) and 607 (*Code of Ethics*). The purpose of this Policy is to ensure that the recommendations made and administrative actions taken by the City staff reflect the independent professional judgment of that staff and that only the official policies and positions of the City Council are represented as

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such. For purposes of this Policy, the term “member of City Council” includes the Mayor. The Policy applies equally to City Council Staff.

POLICY

The City Council is charged with the responsibility of setting City Policy after publicly hearing the independent professional advice and recommendations of City staff and considering the needs, interests and perspectives of all segments of the public. To that end it is the Policy of the City Council that:

1. No individual member of the City Council shall give any directive to any member of the City staff.
2. Neither an individual member of the City Council nor the City Council as a whole shall in any way attempt to require or coerce City Staff to make any particular recommendation or to adopt any particular position as the staff position on any matter;
3. No individual member of the City Council shall present his or her views as being the view of the City or the City Council unless that view reflects an official City position or the member has been officially authorized by the City Council to speak on behalf of the City.
4. No member of the City Council who is having discussions regarding any future employment or other business relationship with any person or entity shall participate in meetings or discussions with City staff involving that person or entity or the interests of that person or entity.
5. No member of the City Council who has entered into any agreement for future employment or other business relationship with a person or entity may participate in meetings or discussions with staff involving that person or entity of the interests of that person or entity.
6. No member of the City Council shall disclose any lawful closed session discussion or any attorney-client communication except to the extent required by law or after a waiver of confidentiality by the City Council as a whole has been obtained.

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7. No member of the City Council shall negotiate with any property owner or developer for the grant, loan, payment or forgiveness of any sum of money by the City unless either officially authorized by the City Council to do so or done as part of a coordinated negotiating effort in conjunction with City staff and with an express disclaimer that any proposal is subject to approval by the Council as a whole.

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CITY OF SAN JOSE, CALIFORNIA

CITY COUNCIL POLICY

TITLE	PAGE	POLICY NUMBER
INTERACTION POLICY	1 of 2	0-27
	EFFECTIVE DATE	REVISED DATE
	8/24/93	

APPROVED BY COUNCIL ACTION

August 24, 1993, Item 9d

BACKGROUND

This Policy is being adopted concurrently with the revised *Independent Judgment Policy* to emphasize the need for staff to provide access to information, at the earliest possible time, to members of the City Council with regard to potential land use, economic development and housing developments which impact their Districts, without in any way compromising the independence of the City Staff.

PURPOSE

The purpose of this Policy is to allow Members of the City Council to have access to information about development in a timely manner. Nothing in any Policy of the City limits the ability of an individual Member of Council from meeting with all parties involved in the development process or from freely expressing his or her views. For purposes of this Policy, "development" includes land use, economic development and housing projects. The term "Member of the City Council" includes the Mayor. It applies to Members of the City Council when acting directly or when represented by their staff members.

POLICY

It is the Policy of the City Council, subject to restrictions of the Brown Act and the Fair Political Practices Act, that:

1. The individual City Council Members shall be kept advised by the City staff of the status of potential and actual proposals for development in the Council Members' District. The Mayor shall be kept advised of the status

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of potential and actual proposals for development which have a city-wide impact.

2. City staff is encouraged to learn the particular concerns of the Council Member with regard to any development in the Council Member's District.

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3. Members of Council may request access to development applications at any time.
4. The Member of City Council may meet with City Staff and the developer to discuss any development at any point in the process. The Council Member is free to fully express his or her viewpoint, concerns and questions.
5. City staff shall, without constraint, advise members of Council about staff's concerns, decisions and assessment with regard to any development proposal.
6. The Member of Council may meet with professional consultants retained by the City but any such meeting must be arranged by and include City staff.
7. Staff may conduct project meetings with developers at which attendance is limited exclusively to working staff and developer representatives.
8. As part of the public review process for development proposals, meetings between the City Council Member from the district, the landowner, the developer, community representatives and City staff are encouraged.

NOTE: Whenever a determination is *quasi-judicial* in nature, i.e., a determination which "adjudicates" the entitlement of a property owner to certain uses of the land, due process requires that ex-parte communications be noted on the record. The following processes are *quasi-judicial* in nature: CUP, PD Permits, Site Development Permits, Special Use Permits, Variances, Height and Bulk Waivers and Tentative Maps.