

COUNCIL AGENDA: 04-29-08  
ITEM: 3.4

# Memorandum

**TO: HONORABLE MAYOR AND  
CITY COUNCIL**

**FROM: Lee Price, City Clerk**

**SUBJECT: SEE BELOW**

**DATE: 04-18-08**

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**SUBJECT: ELECTIONS COMMISSION SPECIAL ELIGIBILITY REQUIREMENT  
THAT ONE MEMBER OF THE ELECTIONS COMMISSION BE AN  
ATTORNEY-AT-LAW**

## **RECOMMENDATION**

That the City Council adopt an ordinance amending the San José Municipal Code to change the special eligibility requirement that one member of the Elections Commission be an attorney-at-law licensed to practice in California.

## **BACKGROUND**

San José Municipal Code Section 2.08.1630(A) requires that one member of the Elections Commission "be an attorney-at-law licensed to practice in the state of California."

In May of 2007, the Commission passed a motion to recommend that the City Council adopt an ordinance amending the Municipal Code to change the requirement that one member of the Commission be an attorney licensed to practice in California. This action was a result of resignations by two attorney representatives within a few short months, as well as difficulties associated with recruiting applicants who meet the special eligibility requirement. (See attached Memorandum presented to the City Council on June 5, 2007)

On June 5, 2007 the Council considered the Commission's recommendation, but it also interviewed former Commissioner Tony Ventura, who is an attorney and who submitted his application *after* the Commission made its recommendation. Staff forwarded to the Rules and Open Government Committee the Commission's recommendation and it was placed on the agenda. The Committee also placed on the same Council agenda an interview of Tony Ventura. At the Council meeting on June 5, 2007, the Council interviewed and appointed Tony Ventura and took no action on the proposed ordinance.

Last month, Tony Ventura resigned. On April 9<sup>th</sup>, the Elections Commission decided to recommend, once more, that the Council eliminate the special eligibility requirement.

April 18, 2008

Subject: Elections Commission Special Eligibility Requirement

Page 2

## ANALYSIS

The Elections Commission is staffed by at least one attorney from the City Attorney's Office and has a contract with the law firm of Hanson Bridgett Marcus Vlahos Rudy LLP to evaluate complaints made to the Commission. Moreover, the Commission may retain other legal consultants under certain circumstances. In short, the Elections Commission has access to legal expertise from several sources and need not rely on an Attorney Member.

Currently, there are two vacancies on the Elections Commission. The Commission's current workload includes a few remaining Council referrals concerning the City's campaign finance ordinance, including an audit of the 2006 election. In addition, the 2008 Election Cycle has begun and the Commission may need to respond quickly in their quasi-judicial capacity if a complaint is filed. The Commission will be better equipped to handle its workload and respond in the event of a complaint if vacant positions are filled as soon as possible.

A proposed ordinance is attached. The proposed ordinance adds, deletes or modifies certain sections of Section 2.08.1630. The section number and title are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike through type~~; portions of the regulations not cited or not shown in underscoring or strike through type are not changed.

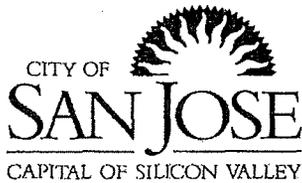
## CONCLUSION

By eliminating the requirement for an Attorney Member position and replacing it with a Citizen-At-Large position, the Elections Commission should be able to maintain a full membership and attend to its workload.



LEE PRICE, MMC  
CITY CLERK

LP:me



## Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL      **FROM:** Lee Price, City Clerk

**SUBJECT:** Elections Commission Recommendation to Change Special Eligibility Requirement That One Member Of The Elections Commission Be An Attorney-At-Law      **DATE:** May 17, 2007

### Recommendation

That the City Council adopt an ordinance amending the San Jose Municipal Code to change the special eligibility requirement that one member of the Elections Commission be an attorney-at-law licensed to practice in California.

### Background

San Jose Municipal Code Section 2.08.1630(A) requires that one member of the Elections Commission "be an attorney-at-law licensed to practice in the state of California."

Earlier this year, April Lin Walsh, Attorney Member, and Norman Kline, Citizen-At-Large Member, resigned from the Elections Commission, leaving the Commission with only three Commissioners.

A Notice of Vacancy for both positions was posted to the City's website in mid-February 2007 and sent to 400 community groups, agencies, chambers of commerce, associations and organizations. Councilmembers' offices also publicized the vacant positions. Despite extensive outreach, not one person applied for the Attorney Member position. In contrast, five people interviewed for the Citizen-At-Large Member position on March 20, 2007.

At its May 9, 2007 meeting, the Elections Commission passed a motion to recommend that the City Council adopt an ordinance amending the Municipal Code to change the requirement that one member of the Commission be an attorney licensed to practice in California.

May 17, 2007

Subject: Elections Commission Recommendation to Change Special Eligibility Requirements

Page 2

### Discussion

The Elections Commission is staffed by at least one attorney from the City Attorney's Office and has a contract with the law firm of Hanson Bridgett Marcus Vlahos Rudy LLP to evaluate complaints made to the Commission. Moreover, the Commission may retain other legal consultants under certain circumstances. In short, the Elections Commission has access to legal expertise from several sources and need not rely on an Attorney Member.

Furthermore, the Elections Commission's current workload includes a number of reforms proposed by Mayor Reed and his Transition Team concerning the City's campaign finance ordinance as well as City Council referrals relating to publicly financed elections. The Commission will be better equipped to handle its workload if the vacant position is filled; the Commission expects that, as during the vacancy advertised in February, a number of candidates will apply for a Citizen-At-Large position.

A proposed ordinance is attached. The proposed ordinance adds, deletes or modifies certain sections of Section 2.08.1630. The section number and title are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

### Conclusion

By eliminating the requirement for an Attorney Member position and replacing it with a Citizen-At-Large position, the Elections Commission should be able to maintain a full membership and attend to its workload.



LEE PRICE, MMC  
CITY CLERK

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
TITLE 2 OF THE SAN JOSE MUNICIPAL CODE TO  
AMEND CHAPTER 2.08 TO (1) CHANGE THE SPECIAL  
ELIGIBILITY REQUIREMENT THAT ONE MEMBER OF  
THE ELECTIONS COMMISSION BE AN ATTORNEY-AT-  
LAW; AND (2) MAKE OTHER TECHNICAL AND  
CLARIFYING CHANGES**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.08.1630 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

**2.08.1630 Special eligibility requirements.**

- A. Each member of the commission ~~shall~~must be a qualified elector of the city and have some demonstrated familiarity and experience with campaign laws. ~~One member of the commission shall be an attorney-at-law licensed to practice in the state of California.~~ The commission's membership should be representative of the community.
- B. No member will ~~shall~~ be employed by the city or have any direct and substantial financial interest in any business, work or official action taken by the city.
- C. While serving on the commission, no member ~~shall~~will hold any other public office.
- D. No member ~~shall~~will participate as a candidate in any election to public office for a period of one year both before and after tenure on the commission.

E. While serving on the commission, no member ~~shall~~will publicly endorse any candidate for city office nor engage in any political or campaign activity on behalf of any candidate for city office.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk