



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Declaration and Disclosure of
Conflict of Interest Policy

DATE: November 15, 2006

RECOMMENDATION

Discussion and adoption of a Resolution approving a Disclosure of Conflict of Interest Policy requiring the Mayor, Councilmembers and members of City Boards and Commissions to conduct a review of agenda items in order to publicly disclose the nature of any conflict of interest.

OUTCOME

The proposed Policy, if adopted, implements Sunshine Public Information Reform No. 9. referred to staff by the City Council for implementation.

BACKGROUND

On May 23, 2006, the City Council referred nine proposals to the Sunshine Reform Task Force and directed staff to proceed to implement 14 proposals. The proposed Policy and Declaration Form attached to this memorandum addresses the recommendation in "Public Information Reform No. 9."

The Policy requires Councilmembers to publicly disclose a conflict of interest by filing a Declaration Form with the City Attorney and City Clerk 24 hours prior to a City Council meeting at which the item will be heard. The Council also directed that this requirement be expanded to include City Boards and Commissions.

ANALYSIS

The state Political Reform Act (Gov. Code Section 81000 *et seq.*) provides a process for disclosure and disqualification during a Council or Commission meeting. The proposed Policy is intended to exceed the requirements of state law by requiring formal advance notice and disclosure of any conflict of interest with respect to an agenda item or matter in addition to the disqualification procedures which are required under state law.

A. Scope of Proposed Policy

The proposed Policy would apply to City elected officials and members of City Boards and Commissions who are "public officials" under the state Political Reform Act. Members of City Boards and Commissions, including those Boards and Commissions which are solely advisory, are officers of the City under the City Charter and also "public officials" under the California Political Reform Act.

The City Council may wish to consider limiting the Policy to those Boards and Commissions which perform administrative actions (also called "quasi-judicial actions") such as the Planning Commission, Civil Service Commission, Appeals Hearing Board and Elections Commission.

B. Types of Conflicts of Interest to be Identified

The Policy requires the identification of specific economic interests which creates a conflict of interest under state law on the attached Form. For example, if a business entity is the Councilmember's economic interest which creates a conflict, the Councilmember must disclose the name of the business entity on the Form. If a Councilmember has a financial interest in a pending agreement or contract (as described in Gov. Code Section 1090) then the description of the agreement or contract and the Councilmember's interest in the matter must be disclosed on the Form.

Additionally, a conflict of interest referred to as a "common law" conflict of interest may cause disqualification even if based on a non-economic conflict of interest. Such a conflict may arise where a Councilmember has a private or personal interest which renders them to be unable to make a fair or impartial decision and therefore conflicts with their official duties. This type of conflict is based on case law and should be reviewed with the City Attorney's Office.

C. Procedure for Disclosure and Declaration of a Conflict of Interest

Disclosure by a Declaration Form must be submitted to the City Clerk with a copy to the City Attorney at least 24 hours in advance of the meeting at which the agenda item will be discussed or heard. If knowledge of the conflict arises within 24 hours of the meeting, the form must be filed with the City Clerk with a copy to the City Attorney at the time the conflict of interest is known but no later than the end of the meeting at which the agenda item is heard.

If a conflict of interest arises for an item on a closed session agenda, the Form must be filed with the City Clerk with a copy to the City Attorney as a part of the official public record. The Declaration Form should be filed at least 24 hours before the closed session unless knowledge of the conflict of interest arises within 24 hours of the closed session, at which time the Form must be filed immediately with the City Clerk with a

copy to the City Attorney. The disclosure of a conflict of interest for a closed session is limited to a declaration that the Councilmember's or member's recusal is because of a conflict of interest under state law.

CONCLUSION

The proposed Policy would require the Mayor and Councilmembers and members of City Boards and Commissions to publicly disclose a conflict of interest by filing a Declaration Form prior to a City Council or Board or Commission meeting. The Policy, if adopted, would implement a Sunshine Public Information Reform.

PUBLIC OUTREACH/INTEREST

The contemplated action does not appear to qualify as an item of significant interest based on the established criteria. This memorandum and proposed ordinance are posted on the City's website for the November 21, 2006 Council Agenda.

RICHARD DOYLE
City Attorney

By 

Norman Sato
Chief Deputy City Attorney

Attachment

cc: Les White
Lee Price
Boards & Commissions

For questions please contact Norm Sato, Chief Deputy City Attorney at (408) 535-1925

CITY COUNCIL DECLARATION OF CONFLICT OF INTEREST POLICY

Policy Number _____

PURPOSE

The purpose of this policy is to require the Mayor and Councilmembers and members of City Boards and Commissions to conduct a review of agenda items in order to publicly disclose the nature of any conflict of interest with respect to an agenda item.

State law requires that immediately prior to the consideration of a matter before an agency, a public official (a) identify the financial interest that gives rise to the conflict in sufficient detail to be understood by the public; (b) publicly state his or her recusal from the matter; and (c) leave the room until after the disposition of the matter unless the matter appears on a consent calendar or other similar portion of an agenda for uncontested matters. (Gov. Code Section 87105).

This policy is intended to exceed the requirements of state law by requiring advance notice and disclosure of any conflict of interest with respect to the agenda item or matter in addition to the procedures required by Gov. Code Section 87105.

Any declaration of a conflict of interest shall be submitted to the City Clerk with a copy to the City Attorney at least 24 hours in advance of the meeting at which the agenda item will be discussed or heard. If knowledge of the conflict of interest arises within the 24 hours of the meeting, the declaration form shall be filed with the City Clerk with a copy to the City Attorney at the time the conflict of interest is known but no later than the end of the meeting at which the agenda item is heard.

SCOPE OF APPLICATION

This policy applies to the Mayor, City Councilmembers and members of City Boards and Commissions who are "public officials" under the state Political Reform Act. Gov. Code Section 81000 *et seq.* The reference to "member" in this Policy shall mean the Mayor, City Councilmembers or members of City Boards and Commissions.

POLICY

It is the policy of the City Council of the City of San Jose that the members of the City Council and members of City Boards and Commissions should disclose conflicts of interest which requires abstention or disqualification from participation in a City or Redevelopment Agency (Agency) decision in advance of a public City Council, Agency Board or Board or Commission meeting.

CITY COUNCIL DECLARATION OF CONFLICT OF INTEREST POLICY

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1. Conflicts of interest shall be publicly disclosed in a conflict of interest declaration form filed with the City Clerk and City Attorney at least 24 hours before a Council or Board or Commission meeting unless the conflict of interest becomes known to a member within the 24 hours before the meeting in which case the declaration shall be filed with the City Clerk with a copy to the City Attorney, whenever the conflict of interest becomes known but no later than at the end of the meeting at which the agenda item is heard.

The declaration shall be set forth in a form prepared by the City Clerk.

2. The member shall identify the following:
 - (a) The City, Agency, Board or Commission decision or item of business and each type of economic interest held by the member which is involved in the decision and which gives rise to the conflict of interest (i.e. investment, business position, interest in real property, personal financial effect, or the receipt or promise of income or gifts); and/or
 - (b) The City, Agency, Board or Commission agreement or contract and the member's financial interest in the agreement or contract.
3. Conflicts of interest including economic interests under the Political Reform Act shall be identified in the disclosure form by the following details:
 - (a) If an investment, the name of the business entity in which the investment is held;
 - (b) If a business position, a general description of the business activity and the name of the business entity;
 - (c) If real property, the address or other indication of the location of the property, unless the property is the member's principal or personal residence, in which case, identification that the property is a residence;
 - (d) If income or gifts, the identification of the source; and
 - (e) If personal financial effect, then identification of the expense, liability, asset or income of the member affected.
4. Conflicts of interest including a financial interest in an agreement or contract as described in Gov. Code Section 1090 shall be identified in the declaration form by describing the interest in the agreement, including for example, agreements with nonprofits where the member serves on the nonprofit's board of directors.

5. "Common Law" conflicts of interest where a member's private or personal interests renders them unable to make a fair or impartial decision and therefore, conflicts with their official duties. This type of conflict of interest is based on case law and may apply to non-economic conflicts of interest.

6. If a City, or Agency, Board or Commission decision is made during a closed session of a public meeting and a member's economic interest creates a conflict of interest under the Political Reform Act or Gov. Code Section 1090, a declaration of a conflict of interest shall be filed with the City Clerk with a copy to the City Attorney as a part of the official public record. This declaration shall be filed at least 24 hours before the closed session unless knowledge of the conflict of interest arises within 24 hours of the closed session, at which time the declaration form shall be filed immediately with the City Clerk with a copy to the City Attorney. The declaration shall be limited to a declaration that the member's recusal is because of a conflict of interest under California Government Code Section 87100 of the Political Reform Act.

STATEMENT AND DECLARATION OF CONFLICT OF INTEREST FORM

City Council Policy _____ requires the Mayor and Councilmembers and members of City Boards and Commissions to a review agenda items for conflicts of interest in order to publicly disclose the nature of any conflict of interest. The Policy requires filing this form at least 24 hours in advance of the meeting at which the agenda item will be discussed or as soon as the conflict of interest is known but no later than the end of the meeting at which the agenda item is heard. You should consult with the City Attorney's Office about any potential conflict of interest and before you complete and submit this form.

You should disclose the conflict of interest on this form in accordance with the instructions and file the original form with the City Clerk and submit a copy to the City Attorney.

Policy _____ also provides information on state law procedures for disclosure of conflicts of interest concerning a matter on a City Council, Agency, Board or Commission agenda.

Name: (Last)	(First)	(Middle)	Daytime Telephone Number:
Title/Legislative Body:			
Meeting Date:			Agenda Item No.:
Description of Agenda Item:			

Please check the economic interest which is affected and which creates a conflict of interest for you in the Agenda Item described above:

- Investment – name of business entity: _____

- Business position – general description of the business activity and name of the business entity: _____

- Real Property – Address or location of the property (If principal or personal residence, then indicate only that the property is a residence): _____

- Income or gifts – Identification of the source: _____

STATEMENT AND DECLARATION OF CONFLICT OF INTEREST

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- Personal financial effect – Identification of the expense, liability, asset or income affected: _____

- Financial interest in an agreement or contract (as described in Gov. Code Section 1090) - description of the agreement or contract and the interest in the agreement or contract. (Include agreements or contracts with nonprofits if serving on the board of directors):

- Other (i.e. non-economic interest) _____

Verification

I have used all reasonable diligence in preparing this statement and have disclosed the conflict of interest described above as soon as the conflict of interest became known to me. I have reviewed this statement and to the best of my knowledge the information contained in this statement is true and complete. I declare under penalty under the laws of the State of California that the forgoing is true and correct.

Signature: _____

Date Signed: _____