

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Nepotism and Consensual
Personal Relationships
Ordinance – City Council

DATE: November 29, 2007

RECOMMENDATION

Approval of an ordinance adding a new Chapter 12.20 to the San Jose Municipal Code to establish rules prohibiting nepotism and rules regarding consensual personal relationships in the workplace for the Mayor and Members of the City Council.

OUTCOME

Approval of this ordinance would codify the rules for nepotism and consensual personal relationships in the workplace for the Mayor and City Council.

BACKGROUND

On February 27, 2007, the Administration provided the Mayor and City Council with information and background on the City's Nepotism Policy which addresses issues created by having relatives in the workplace. The report also referenced the City's Discrimination and Harassment Policy which included guidelines on consensual romantic relationships which exist between non-relatives within the same chain of command. The Council accepted the City Manager's report and directed the City Attorney to develop an ordinance addressing nepotism and consensual romantic relationships which would apply to Members of the City Council.

This memorandum will provide a summary of the proposed Nepotism and Consensual Personal Relationships Ordinance for the Mayor and Members of the Council. The proposed Ordinance is attached.

DISCUSSION

Section 907 of the San Jose City Charter contains the following provision relating to nepotism:

The Council shall not appoint to a salaried position under the City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to any member of such Council; nor shall the City Manager or any other appointing authority appoint to any salaried position under City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to such appointing authority.

Generally, the intent of a nepotism policy or law is to address ethical issues such as actual or perceived favoritism, bias, and potential conflicts of interest created from the hiring, appointment or supervision by a public official of his her relatives.

A. Scope of Application of Current City Policies

The City Policy Manual contains a Nepotism Policy (Chapter 1.1.3) which provides policy direction regarding the hiring and supervision of relatives and/or family members. The Policy provides that it applies to City officers and employees.

In addition to the Nepotism Policy, the City Policy Manual also contains a Discrimination and Harassment Policy (Chapter 1.1.1) which provides guidelines for consensual sexual or romantic relationships. This Policy is important because many of the same issues may be created by consensual romantic relationships and nepotism. These two Policies are generally consistent in that both have similar restrictions between married employees and those who may be in a romantic relationship in the workplace.

The current Policies have not been approved by Council action to expressly apply to the Mayor and Councilmembers. Thus, approval of the proposed ordinance will make the nepotism and consensual personal relationships rules applicable to the City Council.

B. Application of the Proposed Ordinance

The proposed Ordinance applies to "Public Officials" defined as Members of the Council including the Mayor. The Ordinance defines "immediate family members" to include relatives by blood, marriage, law and domestic partners as specified in Section 12.10.210.

C. Prohibition of Nepotism

The Ordinance prohibits a Public Official from appointing, employing or participating in a hiring or employment decision involving any person within his or her immediate family. Additionally, an Official cannot use his or her position to influence another City or Redevelopment Agency official or employee to hire an immediate family member.

A Public Official is also prohibited from directly or indirectly supervising an immediate family member. Immediate family members may not be employed in a supervisor-subordinate relationship even if resulting from marriage after the employment relationship was established or formed. The supervisor-subordinate relationship includes all levels of supervisors within the chain of command and is not limited to the immediate supervisor.

D. Consensual Personal Relationships

The proposed ordinance defines a "Consensual Personal Relationship" as a consensual sexual or romantic relationship between an employee and Public Official who is in a position of authority and supervision over the employee. Consistent with the City's Discrimination and Harassment Policy, the proposed ordinance places the responsibility on the Public Official to ensure that he or she does not exercise any supervisory or evaluative function related to the employee or subordinate. The Public Official is responsible for ensuring that the employee is provided alternative employment outside of the Public Official's chain of command.

E. Enforcement

The proposed ordinance provides for complaints that allege a violation of the nepotism and consensual personal relationship restrictions by the Mayor to be made to the City Attorney. Complaints against Councilmembers may be made to the Mayor or the City Attorney. Complaints alleging a violation of the ordinance are not subject to review and investigation by the Elections Commission.

The ordinance clarifies that complaints alleging a violation by Mayor and Council staff may be made to the Mayor, Councilmember or the City Attorney. Complaints alleging a violation by a City Council Appointee may be made to the Mayor. As stated in the ordinance, this is consistent with the City's current Nepotism Policy, and Discrimination and Harassment Policy in its application to City employees.

PUBLIC OUTREACH

This memorandum and the draft ordinance are posted on the City's website for the December 4, 2007 Council Agenda.

November 29, 2007

Subject: Nepotism Ordinance

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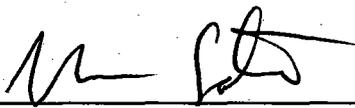
CONCLUSION

The proposed ordinance is an important component of the City's commitment to ethics and open government. The ordinance establishes reasonable rules prohibiting nepotism and rules concerning consensual personal relationships in the workplace for the Mayor and Members of the Council which are consistent with current rules for City employees and which should mitigate against actual or perceived favoritism, bias and conflicts of interest.

CEQA

Not a project.

RICHARD DOYLE
City Attorney

By 

Norman Sato
Chief Deputy City Attorney

cc: City Council Appointees

For questions please contact Norm Sato at (408) 535-1925

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 12 OF THE SAN JOSE MUNICIPAL CODE BY
ADDING A NEW CHAPTER 12.20 TO ESTABLISH RULES
PROHIBITING NEPOTISM AND TO ESTABLISH RULES
REGARDING CONSENSUAL PERSONAL
RELATIONSHIPS IN THE WORKPLACE FOR THE
MAYOR AND MEMBERS OF THE CITY COUNCIL**

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

Title 12 of the San José Municipal Code is hereby amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 12.20
NEPOTISM AND CONSENSUAL PERSONAL RELATIONSHIPS**

Part 1

Purpose and Scope of Application

12.20.100 Purpose

The purpose of this Chapter is to mitigate against actual or perceived favoritism, bias, and potential conflicts of interest created from the hiring, appointment or supervision by a Public Official of his or her relatives and from consensual personal relationships between a public official and subordinates in the workplace.

12.20.110 Scope of Application

This Chapter shall apply to the Mayor and City Council.

Part 2
Definitions

12.20.200 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

12.20.210 Consensual Personal Relationship

A Consensual Personal Relationship means a consensual sexual or romantic relationship between an employee and a Public Official who is in a position of authority and supervision over the employee. This can include direct or indirect reporting relationships where the Public Official is in a higher level position within the same chain of command as the employee or subordinate.

12.20.220 Immediate Family Members

“Immediate Family Members” include the following:

- A. By Blood: Parent, child, grandparent, grandchild, brother, sister, nieces, nephews, uncles, aunts, great grandchildren, or great grandparents.
- B. By Marriage: Husband, wife, stepparent, stepchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, half sister, or half-brother.
- C. By Law: Guardianship relationships and adoptive parent/child relationships.
- D. Domestic Partner: Individuals registered with the Human Resources Department and/or the State of California.

12.20.230 Public Official

“Public Official” means any of the members of the City Council including the Mayor.

12.20.240 Supervisor

“Supervisor” shall mean a Public Official having the authority to hire, terminate, transfer, lay off, reward, evaluate, discipline, or assign work to and direct other employees, or to effectively recommend such action if the exercise of such authority requires independent judgment.

Part 3

Prohibition - Nepotism

12.20.300 Hiring and Employment

No Public Official shall appoint, employ or participate in a hiring or employment decision involving any person who is an Immediate Family Member nor use his or her position to influence another City or Redevelopment Agency official or employee regarding a hiring or employment decision involving a member of the Public Official's immediate family.

12.20.310 Supervision

No Public Official shall directly or indirectly supervise an Immediate Family Member. This prohibition applies even in situations where the employment relationship was established or formed before a marriage.

Part 4

Consensual Personal Relationships

12.20.400 Responsibility

Where a consensual personal relationship exists, the Public Official will bear the primary burden of accountability, and must ensure that he or she does not exercise any supervisory or evaluative function related to the employee or subordinate. In such a case, the Public Official has the responsibility to ensure that the employee is provided alternative employment arrangements outside of the Public Official's chain of command.

Part 5

Enforcement

12.20.500 Complaints

- A. Complaints alleging a violation of this Chapter by the Mayor may be made to the City Attorney. Complaints alleging a violation by a member of the Mayor's staff may be made to the Mayor or City Attorney in accordance with the City's Nepotism Policy, and Discrimination and Harassment Policy which apply to City employees.

- B. Complaints alleging a violation of this Chapter by a Councilmember may be made to the Mayor or City Attorney. Complaints alleging a violation by a member of a Councilmember's staff may be made to the Councilmember or the City Attorney in accordance with the City's Nepotism Policy, and Discrimination and Harassment Policy which apply to City employees.

- C. Complaints alleging a violation of this Chapter by a City Council Appointee may be made to the Mayor in accordance with the City's Nepotism Policy, and Discrimination and Harassment Policy which apply to Council Appointees.

12.20.510 Review and Investigation of Complaints

Complaints alleging a violation of this Chapter shall not be subject to review and investigation by the San Jose Elections Commission.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk