



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Eliminating Officeholder  
Accounts

**DATE:** December 6, 2007

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## **RECOMMENDATION**

Approval of an ordinance to eliminate existing Officeholder Accounts and prohibit establishing new Officeholder Accounts after July 1, 2008.

## **BACKGROUND**

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.

The Mayor has proposed that as part of the mid-year budget actions, in February 2008, each Council Office will receive an appropriation of \$10,000 and the Mayor's Office will receive an appropriation of \$25,000 based on funds identified in the 2007-2008 budget process. The source of the funds would be the HP Pavilion Community Fund. Based on Council discussion, the purpose of the appropriation will be to offset some of the expenses associated with holding office which had been previously paid for through the Officeholder Accounts. Some of these payments are for the cost of supporting local organizations that serve San Jose residents and businesses. We note that the HP Pavilion Community Fund can only be used for educational, cultural, or recreational purposes. It should also be noted that some of the expenditures permitted through the Officeholder Account will not be allowed under the Council Expenditure and Reimbursement Policy (Resolution No. 74056). Pursuant to Council request, the issue of paying for newspaper advertisements with public funds will be placed on a future agenda of the Rules and Open Government Committee for further discussion.

Attached is the proposed ordinance with the amendments in underscore or ~~striketrough~~ to facilitate review.

## **ANALYSIS**

### ***Transition Officeholder Account Provisions***

The proposed ordinance would repeal all the codified sections regulating Officeholder Accounts. During the transition period, interim provisions, effective through June 30, 2008, would be enacted which would be substantially the same as the sections that currently regulate officeholder accounts except that fundraising for the officeholder accounts would be prohibited after February 15, 2008; and all expenditures would have to be made by June 29, 2008.

### ***Officeholder Account Prohibition***

In the absence of local Officeholder Account regulations, state law governing the use of campaign funds would apply. Under state law, an officeholder may use his or her campaign bank account to offset officeholder expenses. Since Council has directed that contributions not be used for officeholder expenses, the proposed ordinance would prohibit the establishment of new Officeholder Accounts after July 1, 2008.

### ***Other Technical and Clarifying Changes***

The proposed ordinance would also delete references to the "Officeholder Account" in various sections of Title 12.

**CEQA** - Not a project.

## **CONCLUSION**

Approval of the proposed ordinance would authorize the phasing out of existing Officeholder Account fundraising and expenditures and prohibit the establishment of new Officeholder Accounts after July 1, 2008.

RICHARD DOYLE  
City Attorney

By

  
Rosa Tsongtaarii  
Deputy City Attorney

cc: Debra Figone  
Lee Price

For questions please contact Rosa Tsongtaarii, Deputy City Attorney, at 535-1985.