



# Memorandum

TO: Rules Committee

FROM: Vice Mayor Cindy Chavez  
and Councilmembers Linda  
LeZotte and Ken Yeager

SUBJECT: SEE BELOW

DATE: December 7, 2005

APPROVED:

DATE:

12.07.05

**SUBJECT: INITIAL REPORT FO THE INDEPENDENT INVESTIGATOR**

**RECOMMENDATION:**

Bring forward as part of the review of the initial report of the independent investigator the following actions as it relates to the conduct of the Mayor, a senior member of his staff, and Council Appointees relating to the Norcal negotiations and subsequent contract amendment:

- (1) Censure the Mayor;
- (2) Admonish Joe Guerra, the Director of Policy and Budget for the Mayor, and recommend the Mayor's office take appropriate disciplinary actions; and
- (3) Request public apologies from Del Borgsdorf, the City Manager, and Rick Doyle, the City Attorney, for their actions relating to the Norcal .

As it relates to consideration of the Initial Report of the Independent Investigator, recommend that the Council:

- (1) Accept the investigation;
- (2) Direct Staff to prepare a cover letter, or other appropriate documentation, and to forward the report as our formal response to the Grand Jury investigation;
- (3) Direct Staff to waive confidentiality of the documents utilized in the creation of the Initial Report; and
- (4) Direct Staff to incorporate training on the City Charter and other appropriate city policies in an effort to prevent future violations such as those outlined in the initial report.

**BACKGROUND:**

We feel these actions are necessary in light of the results from the independent investigation into whether or not the Mayor, Mayor's staff or other City officials or employees violated the City

Charter, Municipal Code, City Policies related to ethics or independent judgment or other laws regarding the amendment to the Recycle Plus! Contract with Norcal Waste Solutions. At this time swift and deliberate action is required to guard the public trust and ensure for the residents of San Jose that evidence of such violations will not be ignored. However, these actions must also follow due process, as codified by City Council Policies and Procedures for admonishing public officials. The disciplinary actions taken by the Mayor's office could include, but not be limited to a salary reduction, loss of responsibilities, and removal from future involvement with Recycle Plus! Contract negotiations. This is the standard that the public deserves and expects.

In order to further ensure the transparency of this process for the public it is appropriate for the following recommendations to be brought to the City Council for discussion at the next scheduled meeting.

According to the independent investigation it is clear that the Mayor and Joe Guerra the Director of Budget and Policy for the Mayor, concealed material facts and commitments they had made required for the City Council to make an informed decision in this case and did so to the detriment of the public. There is also evidence that suggests that City Manager Del Borgsdorf and City Attorney Rick Doyle were complicit in this concealment, by not alerting the City Council to any knowledge they had of these facts and commitments.