



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Price, MMC City Clerk
Richard Doyle, City Attorney

SUBJECT: Revisions to the
Conflict of Interest Code
for the City of San Jose

DATE: November 25, 2008

RECOMMENDATION

Adopt a resolution amending the Conflict of Interest Code for the City of San Jose.

OUTCOME

The recommended action ensures compliance with the California Political Reform Act and updates the list of those public officials and employees who are required to file the Fair Political Practices Commission Form 700 - Statement of Economic Interests.

BACKGROUND

The Political Reform Act (PRA) requires all public officials and employees who make or participate in the making of governmental decisions to disclose any economic interests that could be affected by those decisions. The PRA also requires that some consultants disclose their economic interests. The City Council has previously adopted by resolution a Conflict of Interest Code, which sets forth reporting requirements for all City departments and certain advisory boards and commissions. The Conflict of Interest Code must be updated periodically.

Pursuant to the last Conflict of Interest Code resolution, adopted on February 6, 2007, the City received Form 700s from approximately 1400 filers. Many filers questioned their designation and many more expressed confusion about what actually had to be disclosed. We therefore viewed this year's update to the Conflict of Interest Code as an opportunity to establish consistency throughout the City and, as a result, performed a particularly critical review.

On August 15, 2008, we notified Senior and Executive Staff that we were initiating a review of the Conflict of Interest Code and asked that each department assign a person to act as the liaison for the process. We conducted two orientation and training sessions for the liaisons on August 26 and 28, 2008. The liaisons were asked to work with their respective departments to review carefully the positions designated in the last resolution as well as the scope of the disclosures and draft a proposed list of designated filers.

Between September 23 and October 7, 2008, we met separately with nearly every department liaison to review and discuss the proposed list of designated filers. The review process included an analysis of each position within the department to determine whether the position required designation, the scope of disclosure required based upon the job duties and responsibilities of each position, and consideration of all positions which had a change of classification or duties or were currently vacant. The review also considered consultants retained by departments for potential inclusion as designated filers. By mid-October, we had received the departments' final proposals. After additional review and a second meeting with some departments, we have prepared a draft resolution that includes, by department, a list of designated filers by position.

After the Council adopts a resolution establishing a current Conflict of Interest Code, we will be offering a number of training sessions early next year on how to file the Form 700 for all the City's designated filers. In addition, the Office of the City Clerk will expand its on-line filing capabilities to enable all designated filers to file the Form 700 electronically, although an original document with signature will still be required.

ANALYSIS

The following changes have been made:

Designated Filers

The draft resolution revises the list of designated public officials and employees. The revisions reflect the following types of changes: (1) decision-making positions were created or deleted; (2) positions were modified to increase responsibilities, resulting in new or additional disclosures; or (3) positions were determined not to be decision-making, resulting in deleting disclosures.

Scope of Disclosure

The draft resolution revises the scope of disclosure for some designated filers. As we reviewed the previous version of the Conflict of Interest Code resolution, we noticed that some departments prescribed complicated limitations to their employees' disclosure while other departments had no limitations at all.

For consistency and easier implementation, we have recommended that Department Directors, Assistant Directors and Deputy Directors follow the instructions to the Form 700 – Statement of Economic Interests provided by the Fair Political Practices Commission. These disclosure categories are:

Investments: Investment means a financial interest in any business entity which is located in, doing business in, planning to do business in, or which has done business during the previous two years in the City's jurisdiction in which the filer, his

or her spouse or registered domestic partner, or his or her dependent children had a direct, indirect or beneficial interest totaling \$2,000 or more at any time during the reporting period.

Income, Loans & Business Positions: Report the source and amount of gross income of \$500 or more the filer or his or her spouse or registered domestic partner received during the reporting period if the source is located in, doing business in, planning to do business in, or has done business during the previous 2 years in the City.

Real Property: Report interests in real property located within the City or two miles outside the boundaries of the City or within two miles of any land owned or used by the City, except for property used exclusively as a personal residence.

Gifts: A gift is anything of value for which the filer has not provided equal or greater consideration to the donor. A gift is reportable if its fair market value is \$50 or more. In addition, multiple gifts totaling \$50 or more received during the reporting period from a single source must be reported. Gifts are reportable regardless of where the donor is located.

We have recommended further that employees with responsibilities below the Deputy Director level file narrower disclosures – that is, report investments in, business positions in and income from any business entity located in or doing business in the City as well as gifts from sources located in or doing business with the City.

The draft resolution generally follows these recommendations.

Filers Designated as 87200 Filers

The Political Reform Act, specifically, Government Code Section 87200, requires “public officials who manage public investments”, among others, to file Form 700s with the Fair Political Practices Commission. We identified several positions and Boards that we recommend be designated as “87200 Filers” in the draft resolution. These changes also comply with the recommendations made by the City Auditor in Audit 08-02 relative to the Retirement Boards. In addition to another designated position in the Finance Department, the members of the Retirement Boards and key Retirement Services staff are recommended to be designated as “87200 filers” because they manage public investments:

1. Deputy Director of Finance U – Treasury
2. Director of Retirement Services U
3. Deputy Director of Retirement Services U – Chief Investment Officer
4. Administrative Officer of Retirement Services – Investment Officer
5. Members of the Police and Fire Retirement Board
6. Members of the Federated Employees Retirement Board

Advisory Boards and Commissions

It came to our attention that the San Jose Arena Authority had – inadvertently – not been included in several previous versions of the Conflict of Interest Code resolution. The Arena Authority board members do make, or participate in the making of, governmental decisions and should be filing the Form 700. We have corrected this mistake in the draft resolution and the board members filed a Form 700 as soon as we discovered the error.

Temporary Employees

The draft resolution also requires that any temporary employee – including an employee who has retired and been rehired in a temporary capacity – comply with the Conflict of Interest Code if he or she works in a position that has been designated to file the Form 700.

Consultants

The draft resolution also requires that some consultants retained by the City comply with the Conflict of Interest Code. In preparing new consultant agreements, or extensions of current agreements, the City Attorney and the department retaining the consultant will determine whether or not the consult should be a designated filer. This will be noted in the contract and departments will be responsible to work with their consultants to ensure compliance.

Compliance and Enforcement

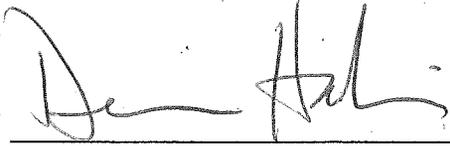
As a part of the draft resolution, we have proposed new enforcement provisions as recommended by the City Auditor. Currently, the Office of the City Clerk follows-up with any designated filer who does not file his or her Form 700 in a timely manner. The new provisions require notification to the Department Director of any filer who has not filed as required and after a reminder by the City Clerk. Any employee who has not filed may be recommended for disciplinary action by the Department. The City Clerk will work with Departments and the Office of Employee Relations as necessary on any issues arising from non-compliance by any designated employee. The City Clerk will also follow-up with any member of a designated Board or Commission or consultant who does not comply with the disclosure requirements, including coordination with Department Directors with responsibility for the particular Board, Commission or consultant as necessary.

PUBLIC OUTREACH

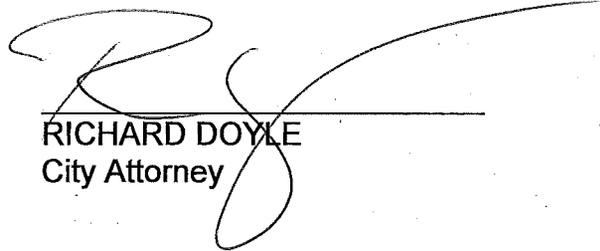
This item appears on the printed and posted Council Agenda.

COORDINATION

This item was coordinated by the City Clerk and the City Attorney with the assistance of all Department Directors.



LEE PRICE, MMC
City Clerk



RICHARD DOYLE
City Attorney

For questions please contact Dennis Hawkins, Assistant City Clerk at 408-535-1252.

cc: Debra Figone
Department Directors