



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

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

**SUBJECT:** PROPOSED REVISIONS TO  
CHAPTERS 12.05 AND 12.12  
OF THE SAN JOSE MUNICIPAL  
CODE TO PERMIT REQUESTS  
FOR WRITTEN ADVICE FROM  
CITY ATTORNEY

**DATE:** October 29, 2009

---

## **RECOMMENDATION**

As recommended by the Elections Commission, approve an ordinance amending Chapters 12.05 and 12.12 of Title 12 of the San José Municipal Code permitting persons subject to elections, campaign and lobbying provisions to request written advice from the City Attorney.

## **BACKGROUND**

The Elections Commission recently made a number of recommendations to the City Council to amend certain provisions of the City's campaign finance regulations. During outreach to stakeholders about the campaign finance laws, the Elections Commission heard comment that persons subject to the City's elections, campaign and lobbying provisions would like the City Council to adopt provisions permitting those persons to request written advice from the City Attorney. On October 14, 2009, the Commission approved the concept of the draft ordinance posted with this memo and directed staff to present the recommendations to the City Council.

## **ANALYSIS**

The proposed ordinance amends Title 12 to permit any person to ask the City Attorney to provide written advice with respect to the person's duties under the provisions of Chapters 12.05 (Elections), 12.06 (Municipal Campaign Contributions) and 12.12 (Municipal Lobbying). The provisions are modeled after the California Political Reform Act, which permits any person to ask the Fair Political Practices Commission to provide written advice with respect to the person's duties under the PRA. Accordingly, the proposed ordinance would require that the City Attorney provide the advice within 21 working days of the request (allowing the City Attorney to extend the time to respond for good cause). In

October 29, 2009

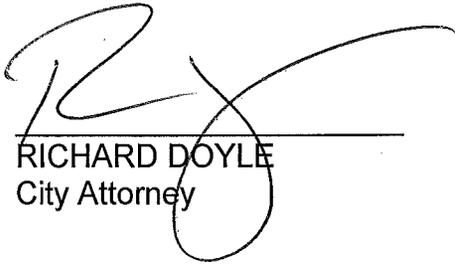
Subject: Proposed Revisions to SJMC re: Written Advice from City Attorney

Page 2 of 2

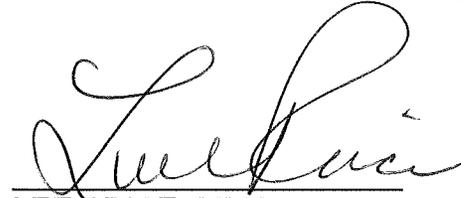
In addition, the written advice would be a complete defense in any enforcement proceeding before the Elections Commission, and evidence of good faith conduct in any other civil or criminal proceeding, as long as the requestor (1) made a timely request of the City Attorney in good faith; (2) disclosed truthfully all the material facts; and (3) committed the acts at issue either in reliance on the advice or because the City Attorney failed to provide the advice as required.

**CONCLUSION**

The proposed ordinance responds to the comments of stakeholders who are subject to the City's elections, campaign and lobbying provisions who would like to be able to request written advice from the City Attorney. The written advice would be a complete defense in any enforcement proceeding before the Elections Commission, and evidence of good faith conduct in any other civil or criminal proceeding, as long as the requestor (1) made a timely request of the City Attorney in good faith; (2) disclosed truthfully all the material facts; and (3) committed the acts at issue either in reliance on the advice or because the City Attorney failed to provide the advice as required.



RICHARD DOYLE  
City Attorney



LEE PRICE, MMC  
City Clerk

For questions please contact Lee Price, City Clerk, at (408) 535-1260