



Memorandum

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TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Price, MMC

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

DATE: November 24, 2010

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 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 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 every two (2) years.

Pursuant to the last Conflict of Interest Code resolution, adopted on December 9, 2008 (and minimally revised on March 24, 2009), the City receives Form 700s from a very large percentage of City employees and commissioners - approximately 1400 filers. The City of San Jose already holds City employees and commissioners to very high ethical standards, as set forth in the Code of Ethics Policy and the City's Gift Policy, we viewed this year's update to the Conflict of Interest Code as an opportunity to perform a particularly critical review to be certain we were designating the appropriate employees and establishing consistency throughout the City.

On August 18, 2010, the Offices of the City Clerk and City Attorney 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. A project team, which included the Offices of the City Manager, City Attorney, and City Clerk, conducted two orientation and training sessions for the liaisons on August 30 and September 2, 2010. 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 9 and September 29, 2010, the team met 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 types of disclosures required based upon the job duties and responsibilities of each position, and consideration of all positions which had a change of classification, duties and/or were currently vacant. The review also considered all consultants retained by departments for potential inclusion as designated filers. By late October, we received the departments' final proposals. After additional review and revision, we have prepared the attached 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, a number of training sessions for department liaisons and designed employees, commissioners, and consultants on how to file the Form 700 will be offered early next year.

ANALYSIS

The following changes have been made:

Designated Filers

The attached 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 attached 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 make the broadest disclosure by following 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 most 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.

In addition, the revised Code has been drafted to reflect unique situations among departments that may affect disclosure requirements. For example, the Code for Environmental Services reflects consideration of the boundaries of contributory agencies to the Water Pollution Control Plant, the Airport boundaries reflects a two-mile radius of property owned or used by the City and/or within the Airport Noise Impact Area, and the Fire Department reflects mutual aid agreements.

Boards and Commissions

We have reviewed the City's boards and commissions and recommend that members of specified entities be covered under the Conflict of Interest Code. The recommended disclosure categories are appropriate to the duties and responsibilities of each board or commission – whether a quasi-judicial board or as an advisory board.

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Temporary Employees

The attached 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 and/or if the temporary employee is performing duties similar to his or her previous position.

Compliance and Enforcement

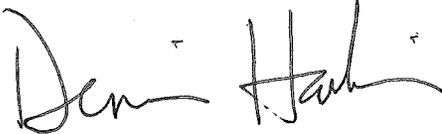
As a part of the resolution, we have continued to include enforcement provisions that were recommended by the City Auditor in 2008. The Office of the City Clerk follows-up with any designated employee who does not file their Form 700 in a timely manner. Then the Department Director will be notified of any employee who has not filed within the proscribed time and after a reminder by the City Clerk. Any non-filer 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 who does not comply with the disclosure requirements, including coordination with Department Directors with responsibility for the affected Board or Commission as necessary.

PUBLIC OUTREACH

This item appears on the printed and posted Council Agenda.

COORDINATION

The City Clerk, the City Attorney, and the City Manager coordinated this item with the assistance of all Department Directors.


for _____
LEE PRICE, MMC
City Clerk

For questions, please contact Dennis Hawkins, Assistant City Clerk at 408-535-1275.

C: Department Directors