HansonBridgett

MEMORANDUM

TO: San Jose Elections Commission

FROM: Hanson Bridgett LLP

DATE: February 14, 2012

RE: **Citizen Complaint**

Complainant: **Christopher Platten**

Respondents: **Mayor Chuck Reed, Russell Crosby, Michael Moehle**

Alleged Violations: **Ethics Violation**

Complaint Filed: **February 9, 2012**

I. INTRODUCTION

A complaint was filed with the San Jose Elections Commission ("Commission") on February 9, 2012 ("Complaint") alleging violation of Title 12 of the San Jose Municipal Code ("Municipal Code") by Respondents Mayor Chuck Reed, Russell Crosby, and Michael Moehle.[1] (**Exhibit A**) Under authority of San Jose City Council Resolution No. 75640, we conducted an evaluation of the Complaint to determine whether cause existed to conduct an investigation. As discussed below, we have determined that neither the Complaint nor the supporting materials sets forth facts sufficient to warrant an investigation by the Commission. We are recommending, therefore, that the Commission dismiss the Complaint as to each of the Respondents and close its file in the matter.

II. COMPLAINT/ALLEGATIONS

The Complaint alleges essentially one violation: that the Mayor and two City employees "knowingly mislead and misrepresented to the council and the public the true and accurate 5-year projections for City contributions to retirement plans." The Complaint notes that during a public discussion of the budget, Crosby cited a figure of $650 million as a projected cost of retirement benefits. Crosby later stated that the figure was given at the time "off the top of his head" and that he advised the Mayor's staff that the figure should not be used. The Complaint alleges that, nonetheless, the Mayor used the $650 million figure in conjunction with a request to modify the budget and in other public statements related to retirement costs. The

[1] Mr. Crosby is an employee of the City, appointed by the City Manager. Accordingly, we referred the Complaint to the City Manager as required by Resolution No. 75640, paragraph F.4. (**Exhibit B**)

complainants state that as a result, Respondents engaged in misconduct by "knowingly distributing false material facts and by knowingly failing to disclose true material facts."[2]

The Complaint cites a violation of Municipal Code §12.18.220. This section of the Municipal Code states that, "'Misconduct in office' means an egregious and serious wrongful or unlawful act, lawful act performed in a wrongful manner, or a failure to act when a duty to act existed, that is taken in his or her official capacity or in relation to the duties of office."[3]

As described in the Complaint, the context of the alleged violation is that the statements in question were made in the course of discharging official duties. Specifically, the Complaint alleges the "misleading" statements were made during budget discussions/negotiations concerning retirement costs or in public statements by the Mayor related to discussion of the budget proposals related to retirement costs. The Complaint does not allege 1) that the "misleading" statements were made in the course of an election campaign, 2) facts related to lobbying activity, or 3) circumstances related to a conflict of interest.

In describing the "misconduct" under §12.18.220, the Complaint refers to three City Council Policies (attached as **Exhibit C**):

- Council Policy 0-15: This is the Code of Ethics for City employee/officials and requires that the conduct of personnel subject to the policy "should be above reproach to assure that their City position is not used for personal gain."

- Council Policy 0-28: This policy is the Council Conduct Policy and is applicable only to the Mayor and members of the City Council. The policy describes standards and procedures for discipline of councilmembers similar to forfeiture of office standards/procedures in Title 12, Chapter 18.

- Council Policy 0-32: This policy is also applicable only to the City Council and requires that members publicly disclose facts/information "relevant to a matter under consideration by the Council which have been received from a source outside of the public decision-making process."[4]

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[2] The Complaint was filed by Christopher Platten of the law firm Wylie, McBride, Platten & Renner on behalf of several individual complainants.

[3] This part of Title 12 (Chapter 18- Removal from Office) sets forth procedures for "removal of a member of the city council pursuant to Charter Section 405." (§12.18.010) Section 12.18.220 is related to §12.18.300, which provides that "[t]he city council may remove a member of council from office for willful misconduct in office."

[4] The Complaint also alleges a violation of California Government Code Section 6203 which provides a misdemeanor penalty for acts by specified individuals related to public documents. This section of the Code appears to be related to discharge of duties by document custodians or notaries; however, even assuming that the facts alleged in the Complaint established that the provision is applicable to any of the Respondents, it is evident that the Commission has no authority or jurisdiction to investigate or to take action on an alleged violation of the Government Code.

III. JURISDICTION OVER THE COMPLAINT AND DETERMINATION AS TO CAUSE FOR INVESTIGATION

A. Standards/Procedure for Evaluation of the Complaint.

The Respondents were notified of the allegations and presented with a complete copy of the Complaint on February 10, 2012. (**Exhibit D**) Resolution No. 75640 defines complaints over which the Commission has jurisdiction. Paragraph E.1 states:

> Any person may file a complaint alleging possible violations of the campaign finance, lobbying, conflicts of interest and certain governmental ethics ordinances set forth in Title 12 of the San Jose Municipal Code.

The Commission's jurisdiction extends to investigation of complaints alleging violations "only if the complaint identifies the specific alleged violations which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation." (Municipal Code §12.04.080(B); Resolution No. 75640, para. E.1) The Commission Regulation further provides that "[t]he Evaluator shall review every complaint to determine whether sufficient cause exists to conduct a preliminary investigation." (para. F.2) The Evaluator may proceed with an investigation if the "complaint identifies specific facts, which if proven, would be a violation of the Municipal Code." (*Id.*)

We conduct our evaluation of the Complaint in the context of the statutory requirements of the Municipal Code and reasonable interpretation of the statutory provisions. Under paragraph F.5 of the Commission Regulations, a recommendation by the Evaluator that the Complaint does not warrant investigation is referred to the Chair and the Chair may place the matter on the agenda for the Commission to consider the Evaluator's recommendation.

B. The Commission Does Not Have Jurisdiction Over an Alleged Violation of Title 12, Chapter 18.

Under Title 12, the Commission has the duty to "monitor compliance with all campaign and ethics ordinances" and to "review and investigate allegations of violations of" Title 12. (See, §12.04.070) Section 12.04.080 also provides that the Commission has the authority to investigate complaints alleging violations of Title 12. Despite the broad language of these sections, the Commission's authority does not extend to every act of alleged misconduct by city officials. The Commission's authority under Title 12 stems from San Jose City Charter Section 607 in that §12.02.101 states that:

> This title is intended to implement Charter Section 607. It is a compilation of all city ordinances which directly regulate campaign conduct and ethics.

Charter Section 607 is specific in the type of conduct that it addresses:

> The Mayor and City Council shall adopt and maintain a Code of Ethics to provide guidance to City officers and employees in their conduct while discharging their public responsibilities. This Code of Ethics shall include, but not be limited to, ordinances relating to the following areas of regulation:

> a) Limitations on and requirements for reporting of campaign contributions and post-election contributions to candidates for elected City Offices.
>
> (b) Reporting and registration requirements for local government lobbyists who act to influence any governmental action of the City of San Jose.
>
> (c) Limitations on the acceptance of gifts by City officers and employees including elected officers and members of Boards and Commissions.
>
> (d) Limitations on the acceptance of honoraria by City officers including elected officials, Council appointees and members of Boards and Commissions.
>
> (e) Regulations regarding disqualification of former City officers and employees in matters connected with former City duties or official responsibilities.
>
> The Mayor, on a biennial basis beginning in 1993, shall conduct a review of the City's Code of Ethics including any ordinances relating to ethic standards. The Mayor shall make any recommendation for amendments or changes to the Code of Ethics and its implementing ordinances to the City Council.
>
> No amendments or changes shall be adopted which in any way lessen the ethical standard in regulations except by a two-thirds vote of the City Council.

The areas enumerated in Charter Section 607 are addressed in Title 12: limitations on campaign contributions/fundraising (Chapter 5, 6 and 16), lobbying restrictions (Chapter 12), gift/honoraria restrictions (Chapter 8) and employment/post-employment restrictions (Chapters 10, 14, 15, 20). These are the provisions of Title 12 that the Commission routinely enforces.

On the other hand, Chapter 18 of Title 12 finds its authority under Charter Section 405.[5] Charter Section 405 states:

> The Council shall be the judge of the election and qualification of its members, including the Mayor, and of any other elective officer, and of the grounds for forfeiture or loss of their respective offices, and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member, or the Mayor, or the holder of any other elective office, charged with conduct constituting grounds for forfeiture or loss of his or her office shall be given, if he or she so demands, an opportunity to be heard in his or her own defense at a public hearing after reasonable notice to such members.

[5] Section 12.18.010 states that "[t]his chapter implements the ground and process for removal of a member of the city council pursuant to Charter Section 405."

This Charter section gives broad authority to the Council to determine, pursuant to Title 12, Chapter 18, whether grounds for forfeiture of office have been established, including grounds related to a violation of the standards under Charter Section 607. However, there is no authority for the Commission to act against a councilmember under Charter Section 607 (the Commission's Charter authority) except as provided for under Title 12 or Commission Regulations, neither of which empowers the Commission to remove a councilmember from office. Likewise, Council Policy 0-28 reserves to the Council power to otherwise address misconduct by a councilmember. Thus, the specific enforcement authority granted to the Council under Chapter 18 of Title 12 is not shared with the Commission. Consequently, the Commission has no authority to pursue a violation under Chapter 18 unless there is a separate basis for proceeding under another chapter of Title 12.

Even if Chapter 18 were to be interpreted as permitting enforcement action by the Commission, such interpretation places the Commission in the position of reviewing any policy or political act/decision alleged to constitute an "ethics" violation whether or not such conduct is related to authority under the Charter or the purpose of policies addressed to ethical issues (i.e., protecting against the use of public office for personal gain). The Commission's authority is premised on its expertise in matters related to the subject areas of Charter Section 607 and, as such, should be limited to that context.

C. The Complaint Does Not Allege Facts That Would Constitute a Violation of Any Other Chapter of Title 12.

The Complaint cites by implication a violation of the general section of Title 12 which provides that "all city and agency employees and all persons doing business with the city or agency are expected to fully comply with the applicable provisions of this title as well as all other city ethics policies and regulations." (See, §12.02.010) However, the complainant does not cite a specific section of Title 12 that has been violated and the facts alleged in the Complaint do not identify such a violation. The prohibitions and guidelines under Title 12 relate to campaign finance and disclosure, lobbying, reporting of gifts, and postemployment restrictions, but do not address the type of violation alleged in this Complaint. With respect to the allegation that the violation of the cited Council Policies constitutes a violation of Title 12, we do not find that the Complaint alleges facts sufficient to warrant investigation on that basis.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the foregoing, we find no cause to conduct an investigation as the Complaint fails to allege facts sufficient to sustain a potential violation of the Municipal Code for which the Commission has jurisdiction to act. Accordingly, we recommend that the Commission:

a. Adopt the Evaluator's opinion as set forth above and approve the recommendation against conducting an investigation of the Complaint (Resolution No. 75640, para. F.5)

b. The Commission may consider whether referral of the Complaint is appropriate. Resolution No. 75640, paragraph L provides that the Commission "may refer the matter to another government agency or official if the Commission determines that the agency or official

may more appropriately resolve the allegations of the complaint or enforce the applicable provisions of the law." However, Municipal Code §12.18.320 states:

> A member of the council may initiate a request for removal hearing by submitting the request in writing to the rules committee. Only a member of the council may make this request.

Thus, there is no direct mechanism to refer this Complaint to the City Council. If the Commission determines that the Complaint should be referred to the City Council, the Commission would have to refer the Complaint to one or more of the individual councilmembers with the request that action be taken pursuant to §12.18.320.

c. Close the file in this matter without further action.

Respectfully submitted,

M. D. Moye /TAM

M. D. Moye

EXHIBITS TO EVALUATOR'S REPORT

- **Exhibit A** - Citizen Complaint, dated February 9, 2012.
- **Exhibit B** - Letter from Hanson Bridgett LLP, to City Manager, dated, February 13, 2012, re: Referral of Complaint
- **Exhibit C** - City Council Policies
  (1) 0-15 re: Code of Ethics
  (2) 0-28 re: Removal from Office
  (3) 0-32 re: Disclosure of Material Facts
- **Exhibit D** - Letters from Hanson Bridgett LLP, to Mayor Chuck Reed, Russell Crosby and Mike Moehle, dated February 10, 2012, re: Complaint

EXHIBIT A

CITY OF SAN JOSE
SAN JOSE ELECTIONS COMMISSION
COMPLAINT FORM

RECEIVED
San Jose City Clerk
2012 FEB -9 A 11: 39

File this form with the Office of the City Clerk
200 East Santa Clara Street
San José, CA 95113
Telephone: 408-535-1260; Fax: 408-292-6207

Your Name* Christopher E. Platten

Address 2125 Canoas Garden Avenue, #120, San Jose, CA 95125

Telephone (Home) Area Code(408) 482-7613 (Work) Area Code (408) 979-2920

Your name, address and phone number are required. If you wish to remain anonymous, you may call the Elections Commission Anonymous Complaint Hotline at 408-975-ANON (2666) Certain Restrictions apply.

1. Nature of Complaint

☐ Campaign ☐ Gift Ordinance ☒ Ethics

☐ Lobbyist ☐ Revolving Door

2. Who is the person or persons you are complaining about? (Please provide name(s) and address(es); business and residence, if known.)

See attached narrative complaint

3. Describe complaint. State all facts as specifically as possible. (Attach additional pages as necessary.)

See attached narrative complaint

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2012 FEB -9 A 11: 39

4. Names and Addresses of potential witnesses, if known:

See attached narrative complaint

5. Additional Information:

6. Documentation: Please attach copies of any available documentation regarding the violation.

VERIFICATION

I certify under penalty of perjury under the law of the State of California that the above statements are true and correct.

Executed 2/9/2012 at San Jose, CA
(Date) (City and State)

(Signature)

INTRODUCTION

The elected officials and employees of the City of San Jose are required to tell the truth and are prohibited from lying, misleading or deceiving in fulfilling their public responsibilities.

Under California Government Code, Section 6203, the City Charter, City Council policy and the City Code of Ethics, elected officials and employees are prohibited from promulgating or filing misleading documents on material issues relevant to matters under Council consideration. In addition, these provisions impose a duty upon officials and employees to disclose true material facts. An NBC Bay Area News (KNTV) investigative report broadcast February 8, 2012 disclosed that Mayor Chuck Reed, City employee Russell Crosby and former City employee Michael Moehle knowingly mislead and misrepresented to the Council and the public the true and accurate 5-year projections for City contributions to retirement plans. Such misrepresentations were contained in the Mayor's June Budget Message for Fiscal Year 2011-2012 and in multiple public messages and memoranda promulgated by or known to these individuals. The Commission must investigate not only these deceptive actions, but also whether other officials and employees participated in the deliberate nondisclosure of true material facts.

FACTUAL BACKGROUND

At the February 14, 2011 City Budget Priority Session (at 2:09 of the meeting), San Jose Retirement Department Director Russell Crosby off-handedly estimated that the City's projected pension contribution costs for FY 15-16 could rise an additional $250 million above the then-current figure of $400 million to $650 million. Former City employee and professional actuary Michael Moehle was present when Crosby made this statement and did not correct him or take issue with the accuracy of Crosby's representation. According to the NBC Bay Area News broadcast interview of Crosby, this figure "came off the top of my head," and was made <u>without any independent actuarial analysis or support</u>. Further, according to Crosby, he specifically informed the Mayor and members of the Mayor's staff not to repeat or use the $650 million figure with the public or the Council because it was not actuarially accurate or true. In Mayor Reed's interview with the NBC Bay Area News

investigative reporter, when confronted with Crosby's statement, he first denied, then did not "recall," and then did not "remember" Crosby's admonition not to use the $650 million figure.

On April 13, 2011, Mayor Reed and Vice Mayor Nguyen issued a press release stating that San Jose's Retirement Director Russell Crosby has projected that pension contribution costs could rise to $650 million per year by FY 15-16. A true and correct copy of the April 13, 2011 press release is attached.

On May 13, 2011, Mayor Reed and Vice Mayor Nguyen, and Councilmembers Herrera and Liccardo recommended that the Council adopt a declaration of a fiscal and public safety emergency. That recommendation is premised, in part, on the projection that pension costs could jump to $650 million if actuarial assumptions were adjusted to reflect modern conditions. This recommendation was made without the existence of any actuarial report or supporting data validating the $650 million projection and in spite of Crosby's express admonition. In the memorandum recommending the adoption of a declaration of fiscal emergency, the signatories expressly rely on Crosby's $650 million projection made at the February 14, 2011 City Council Budget Priority Session, which he admitted in the NBC Bay Area News broadcast came "off the top of my head."

On June 3, 2011, Mayor Reed exercised his discretion under Charter Section 502(d), and issued his "June Budget Message for Fiscal Year 2011-2012." A true and correct copy of pages 1-3 of the June 3, 2011 Budget Message is attached. This written Budget Message is required by the Charter if the Mayor wishes to exercise his discretion to recommend alterations to the City Manager's proposed budget. In his Budget Message, the Mayor writes: "That could cause retirement costs to jump to $650 million per year by 2016 [sic]." In addition, a chart on p. 3 of the Mayor's Budget Message depicts "The City's Skyrocketing Retirement Contributions" to reach $650 million for FY 2015-2016. These statements were based solely on Russell Crosby's later-disavowed exaggeration at the February 14, 2011 Council Budget Priority Session. It had no basis in fact. Moreover, Crosby, by his own testimony, had warned the Mayor and Councilmembers not to repeat or rely on the $650 million figure because it was not actuarially accurate or true.

The Mayor's Budget Message was adopted by the City Council on June 14, 2011.

The NBC Bay Area News' website posted an email dated June 15, 2011 from Russell Crosby to Michael Moehle, (the day following adoption of the Mayor's Budget Message), stating the following:

> 3:45 just got done w Alex [Gurza]. Pls send Alex and me a copy of the spreadsheet that calculated the $400 million contrib rate in 3 yrs. It also shows that with fixing demographics and other issues the rate is $575 million.
>
> FYI – it seems an off hand comment to Scott's people regarding no back up for the $650 number has caused them to challenge even $400MM. These are not good players. You have to assume everything said will be twisted into something else.
>
> Anyway, let's get that old spreadsheet out and do some damage control. Thx

This email confirms that the Mayor's use of the $650 million figure was without actuarial or factual support and solely the product of Crosby's "off the top of my head" comment on February 14, 2011. We believe the reference to "Scott's people" in the email describes employees under the direct supervision of former City Finance Director Scott Johnson, now an employee of the City of Oakland. In his position as City Finance Director, Scott Johnson was responsible for producing accurate financial disclosures to bond rating agencies, bondholders and prospective bondholders. The undersigned fear that an attempt was made to include the misleading and unfounded $650 million retirement cost projection in Johnson's required financial disclosures to bond rating agencies (e.g., Moody's, Fitch and S & P). ***Any attempt*** to have included the misleading $650 million retirement cost projection in the City's required financial disclosures could have triggered a lowering of the creditworthiness of the City of San Jose by the bond rating agencies. This would have dramatically increased borrowing costs for the City. If so, it would have been improperly used to support the declaration of a fiscal and public safety emergency by the Council.

As posted on the NBC Bay Area News website, on June 30, 2011, six days after adoption of the FY 2011-2012 Budget by the Council, which included 10% pay cuts to City employees, and layoffs, Michael Moehle emailed Gene Kalwarski, Bill Hallmark and Anne Harper of the Cheiron firm, actuaries to the San Jose Retirement Plans regarding "5-Year budget projections." This email instructed Cheiron as to the "Rules to follow in preparing the [actuarial] projections" to determine the City's contributions to their respective retirement plans. Among these were instructions that Cheiron was not to exercise independent expertise in making actuarial projections. Rather, Cheiron was expressly directed to disregard known historical events which include, but are not limited to, the 10% pay cuts to all City employees, the high double-digit market asset gains in each retirement plan and the impact of layoffs, retirements and employee position eliminations. But, Cheiron ***was*** directed to use the known incorrect assumption that employee compensation since July 1, 2010 had grown by 4.25%.

On July 20, 2011, per Crosby's instructions, Cheiron released to Crosby a letter containing its "independent" 5-year projection of City retirement contributions. This revised actuarial projection showed City contributions in FY 2015-2016 would *decrease* from $650 million used by Mayor Reed and others to $431.5 million. This is $218.5 million less than the misleading $650 million figure wrongly used by the Mayor in his June 3, 2011 Budget Message and other public and media documents. The undersigned complainants request the Commission determine the source of Crosby's instructions to Cheiron, and whether Crosby, Cheiron or other City officials or employees knew as of July 20, 2011 the Cheiron projections were incorrect because of the limiting instructions provided to Cheiron by Crosby and Moehle.

In November and December 2011, Cheiron delivered revised actuarial City contribution cost projections to the respective retirement plans, using the complete and accurate known historical events. These reports concluded that City contribution costs would be approximately $295.4 million for FY 2015-2016 or **$354.5 million less than the misleading $650 million projection contained in the Mayor's June 3, 2011 Budget Message**.

We Believe Mayor Reed, Russell Crosby and Michaeal Moehle Violated the Public Trust, the Law, the Charter, and City Polices By Knowingly Distributing False Material Facts and By Knowingly Failing to Disclose True Material Facts.

San Jose Municipal Code 12.02 et seq. contains the ethics provisions applicable to elected officials and employees. Elected officials may not engage in "misconduct," defined as "an egregious and serious wrongful act, lawful act performed in a wrongful manner, or a failure to act when a duty to act existed, that is taken in his or her official capacity or in relation to the duties of office . . . members of council have a duty to abide by . . . state law, city charter, city ordinances, and city policies, including . . . governmental ethics laws." (SJMC Section 12.18.220.)

Council Policy 0-32 requires members of the City Council to publicly disclose material facts that are relevant "for a member of the City Council to make an informed and knowledgeable decision and which would likely influence the decision of a member of the City Council on an item of business on the City agenda."

The City's Code of Ethics for officials and employees, Policy No. 0-15 requires "the elected and appointed officials and employees of the City . . . act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees."

As stated in the City Charter, "The citizens of San Jose expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

Moreover, California Government Code, section 6203, subdivision (a) provides, in pertinent part: "[e]very officer authorized by law to make or give any certificate or other writing is guilty of a misdemeanor if he or she makes and delivers as true any certificate or writing containing statements which he or she knows to be false." A violation of this code section is a misdemeanor.

By deliberately publishing before the Council and the public the knowingly false, misleading and deceptive FY 15-16 City pension contribution cost of $650 million and by limiting the Cheiron firm from using known historical events to produce a complete true and accurate 5-year actuarial projection of City pension contribution costs, Mayor Reed, Russell Crosby and Michael Moehle violated the legal and ethical duties imposed upon them by law, Charter and policy. This warrants a full, complete and independent investigation by this Commission to determine who knew of these actions and when did they know of them.

CONCLUSION

Based on the foregoing described conduct, it is clear that:

1. By his June Budget Message, and numerous public statements and publicly distributed documents, Mayor Reed and potentially other Councilmembers deliberately misrepresented material facts to the Council and public by claiming that 5-year actuarial projections of City contributions to retirement plans could reach $650 million by fiscal year 2015-2016 in violation of Government Code, section 6203, the requirements of the Charter, San Jose Municipal Code, Section 12.18.220, Council Policy No. 0-32 and the City's Ethics Policy No. 0-15. Mayor Reed and potentially other Councilmembers failed to disclose true and accurate material facts regarding the projected cost of City contributions to the retirement plans in fiscal year 2015-2016 in violation of the duties imposed under law.
2. By their failure to inform the Council and public that the Mayor's representation of $650 million in projected City contributions to retirement plans by fiscal year 2015-2016 was unsupported by actuarial analysis and merely a figure "off the top of [Crosby's] head," and by his limiting instructions to Cheiron in June, 2011 regarding what rules it was to "follow" in reaching its July 20, 2011 5-year pension contribution cost projection, Russell Crosby and Michael Moehle failed to act in accordance with the requirements of the Charter and City Ethics Policy No. 0-15.

Complainants request the Commission conduct a thorough and independent investigation into the actions of Mayor Chuck Reed, Russell Crosby, Michael Moehle and potentially other officials and employees to determine whether the conduct described

herein, or later discovered substantiates violations of law and City policies from which appropriate action should be taken.

POTENTIAL WITNESSES

Chuck Reed	Pier Luigi Oliverio
Madison Nguyen	Rose Herrera
Pete Constant	Donald Rocha
Ash Kalra	Nancy Pyle
Sam Liccardo	Debra Figone
Kansen Chu	Scott Johnson
Xavier Campos	Jennifer McGuire
Russell Crosby	Bill Hallmark
Michael Moehle	Gene Kalwarski
Anne Harper	Alex Gurza
Sharon Erickson	Richard Doyle
Julia Cooper	Ed Shikada
Arn Andrews	Deanna Santana

DESIGNATION OF REPRESENTATIVES

Complainants designate the firm of Wylie, McBride, Platten & Renner, Christopher E. Platten, 2125 Canoas Garden Avenue, Suite 120, San Jose, CA 95125. (408) 979-2920 as their representative for purposes of prosecuting this complaint.

Respectfully submitted:

_____

Name Address Phone Number

_____

Name Address Phone Number

Complainants designate the firm of Wylie, McBride, Platten & Renner, Christopher E. Platten, 2125 Canoas Garden Avenue, Suite 120, San Jose, CA 95125. (408) 979-2920 as their representative for purposes of prosecuting this complaint.

Respectfully submitted:

Name	Address	Phone Number
ROBERT SAPIEN Jr.	978 TERRA BELLA AVE SAN JOSE CA	(408) 857-8418
JON C. UNLAND	1151 N. 4TH ST. SAN JOSE, CA 95112	(408) 298-1133
JOHN MUKHAR	700 Los Esteros Rd. San Jose CA 95134	408 945 5189
David Grady	5637 Enning Ave, San Jose CA 95123	408-226-3441
[illegible]	855 N. San Pedro St, #404, San Jose, CA 95110	408-277-4595
Dale L. Depp	4420 Monterey Rd. SJ 95111	408-839-0420
JOHN Roll	1151 N. 4TH ST. SJ.	298-1133
JAMES GONZALES	1151 N 4TH ST SAN JOSE CA 95112	408-298-1133
DAVID WOOLSEY	1151 N. 4TH ST. SAN JOSE, CA 95112	(408) 298-1133
REBECCA MARQUEZ	1151 N. 4TH ST, SJ	(408) 298-1133
FRANCO VADO	1151 N. 4th St SJ	408-298-1133

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Press Release

Office of Mayor Chuck Reed

For Immediate Release:
April 13, 2011

Contact:
Michelle McGurk, Office of Mayor Reed
(408) 535-4840 or (408) 655-7332 (cell)

Mayor Reed and Vice Mayor Nguyen to Discuss Impacts of Pension Costs on San José Budget

San José, Calif. -- Mayor Chuck Reed and Vice Mayor Madison Nguyen tonight will layout the potential impacts on community services should the City of San José's pension costs continue to spiral over the next five years.

The Mayor and Vice Mayor will speak at the annual community budget meeting in Vice Mayor Nguyen's City Council District 7. The meeting takes place at 6 p.m. at the Tully Community Library, 880 Tully Road, San José, and is open to the public.

"San José already faces devastating cuts in services starting July 1," said Mayor Chuck Reed. "It's time to attack the root causes of our structural budget deficit so we can restore police and fire services, libraries and community centers."

San José faces a $115 million budget shortfall in the fiscal year beginning July 1. By law the City must balance its budget. The City Council has asked for concessions of 10 percent in total compensation (wages and benefits) from all employees, however, this will only cover $38 million of the shortfall. The City Council is also seeking retirement reforms and other benefit changes that could offer immediate savings.

The remainder of the savings will primarily come from service cuts, including employee layoffs, with some small portion coming from new revenue. Tonight, the City Administration will lay out what those cuts could look like and how they will impact San Jose residents.

As bad as it is, the situation could get worse if retirement costs aren't brought under control. "Retirement costs are the largest single driving factor of our structural budget deficit," said Mayor Reed. "By 2015, San José will have to pay $400 million a year to cover the cost for commitments made to our employees and retirees – and that's the optimistic scenario. It's bad, and it could be worse."

San José's retirement director has projected that costs could rise to $650 million per year by fiscal year 2015-2016 if the funds don't achieve their projected 7.5%-plus rates-of-return or if actuarial factors continue to increase pension costs.

"We need our community and our employees to work together and return San José to fiscal health," said Vice Mayor Nguyen. "Rising pension costs threaten the very things that make our community a wonderful place to live, work, and raise a family: our safety and quality of life."

MORE

In March, the City Council unanimously approved a set of Fiscal Reform Guiding Principles outlined by Mayor Reed. The goal is to restore services to January 1, 2011 levels, open never-opened new libraries, community centers, fire stations, and the police substation within five years by gaining control of the structural deficit.

This will be accomplished by strategies that include:

1. Reducing compensation for existing employees. (Potential savings: $38 million)
2. Avoiding increases in retirement costs beyond the amounts paid for this fiscal year. (Potential savings: $167 million)
3. Reforming workers' compensation and disability retirement systems. (Potential savings: $12 million)
4. Reducing costs for sick leave payouts, vacation buybacks, and overtime pay. (Potential savings: $15 million)
5. Modifying healthcare plans and cost sharing.
6. Organizational changes and efficiencies.

The Mayor, City Council, and City Manager's office are holding community meetings in every Council District throughout the City as part of San José's community-based budget process. The complete schedule is online here: http://www.sanjoseca.gov/BudgetInfo.asp.

# # #

City Council Agenda: 06-14-11
Item: 9.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: **JUNE BUDGET MESSAGE FOR FISCAL YEAR 2011-2012**

DATE: June 3, 2011

Approved: Chuck Reed

Date: 6/3/11

RECOMMENDATION

I recommend that the City Council and Redevelopment Agency Board:

1. Approve the direction outlined in this memorandum for purposes of adopting a final budget for Fiscal Year 2011-2012.

2. Direct the City Manager and the Redevelopment Agency Executive Director to implement the steps outlined in this memorandum to prepare for closing the projected budget shortfall for Fiscal Year 2012-2013.

3. Adopt a resolution authorizing the City Manager and the Redevelopment Agency Executive Director to negotiate and execute agreements for projects approved in the Mayor's Budget Message when amounts exceed the City Manager's or Executive Director's existing contract authority.

4. Authorize the changes proposed in the following Manager's Budget Addenda and incorporate them in the Adopted Budget, except in cases where the Addenda are superseded by the contents of this Budget Message.

MBA#	TITLE
6	Recommendation on the Proposed 2012-2016 Capital Improvement Program
8	Tier 2 Police Sworn Contingency Plan
9	Recommendation for the 2011-2012 Capital Budget for Sharks Ice at San Jose
10	HP Pavilion at San Jose Capital Budget Recommendation
11	2012-2016 Proposed Capital Improvement Program - Water Pollution Control Public Art Allocation
13	Planning Expedited Coordinated Review Fee
16	Arena Authority Funding
17	Office of the City Manager Staffing Reorganization
19	Mexican Heritage Plaza Funding
20	Solid Waste Enforcement Fee and Code Enforcement Staffing
23	Team San Jose 2011-2012 Performance Measures

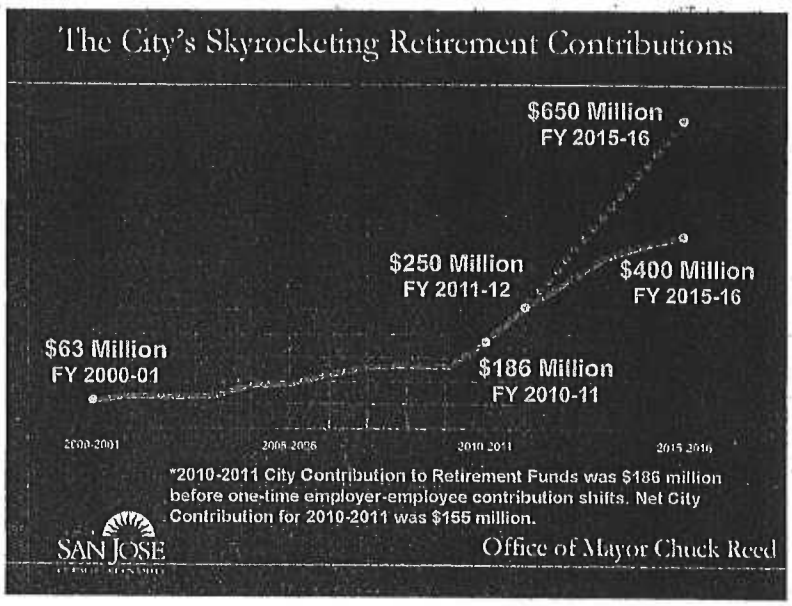
25 Incentive Program Exploration for Tenant Improvements of Existing Buildings
27 Bascom and Edenvale Community Center Reuse Update
30 Medical Marijuana
31 Fire Department Expedited Inspection Fee
33 Senior Nutrition Program Transition
35 Strong Neighborhoods Initiative
36 Legal Services - Environmental Services and Public Works Capital Projects
37 ESD Treatment Plant - Capital Limit Dated Positions
38 Enterprise Zone Program
39 Graffiti Eradication Alternative Service Delivery Proposal
40 2012-2016 Proposed Capital Improvement Program - Public Art Allocations in Various Programs
41 Alternative Service Delivery Proposal - Parks, Landscape, and Custodial Services
43 Development Services - Working at the Speed of Business
45 SAFER Grant
47 2011-2012 Rebudgets/Clean-Ups

INTRODUCTION

Over the last decade, San José has had 10 straight years of escalating budget shortfalls. Throughout this decade, our costs per employee have continued to go up - both in years when our revenues rose and when they shrank. Wages, healthcare costs, and other costs have increased over the past decade, while City services have been reduced.

The single biggest expense has been the growth in retirement costs. San José's unfunded liabilities for retirement benefits grew by billions of dollars, driving up the City's contributions to the retirement system by more than $190 million since 2000 ($63 million in 2000 to $255 million in 2011).

Unfortunately, the huge increase to fund retirement costs to date is just beginning. Using the most optimistic assumptions, retirement costs, if left unchecked, will increase to $400 million per year by 2016 – or almost 30% of the General Fund - and will continue to go up for another 10 or 15 years. Even greater increases in retirement costs are likely if actuarial assumptions, such as life expectancy, retirement ages, or rates of investment return, are modified by the retirement boards that are independent from the City and have fiduciary obligations to modernize assumptions and keep the plans solvent. That could cause retirement costs to jump to $650 million per year by 2016.



Preparing to Close a $100 Million Shortfall in 2012-2013

I want to thank our entire workforce for giving up ten percent in total compensation. I realize that it is a significant sacrifice for our employees, but is has allowed us to save hundreds of jobs and critical services throughout the community.

Last year we reduced our workforce by 800 positions, down to 4,200 General Fund employees. With this budget we have to cut another 600 positions, including police officers and fire fighters, dropping our General Fund staffing down to 3,600 positions.

Due primarily to another huge increase in retirement costs next year we expect at least a $78 million shortfall. That number is highly likely to grow by $20 million or more when the retirement boards consider the recommendations from their actuaries and set the retirement contribution rates for 2012-2013. As a result, a year from today we will be faced with cutting hundreds more jobs and once again cutting vital City services to close a $100 million shortfall.

Such cuts are unacceptable, but they can be avoided if we get control of our rising expenses and overhaul the way San José provides services. The City Council's action on May 24th in approving the Fiscal Reform Plan gives us the road map to get there, but most of the savings from retirement reforms are unlikely to be achieved in time to help us in 2012-2013, leaving us with a limited menu of options to close a $100 million gap in 2012-2013 without cutting services:

- Asset sales and other one-time funds
  ($25 million)
- Fiscal reforms: SRBR, sick leave, workers compensation, vacation
  ($16 million in 2012 per the Fiscal Reform Plan)
- Tax increases
  ($36 million per the Fiscal Reform Plan)

From: Moehle, Michael mailto:[mailto:michael.moehle@sanjoseca.gov]
Sent: Thursday, June 30, 2011 11:44 AM
To: Gene Kalwarski; Bill Hallmark; Anne Harper
Subject: 5-Year budget projections

Gene

Russell has requested that Cheiron prepare a 5-year projections (ending with City contributions for the 2015-2016 fiscal year) of City contributions for all 4 plans:

1. Federated Pension
2. Federated OPEB
3. P&F Pension
4. P&F OPEB
5. Totals for all 4 plans

Rules to follow in preparing the projections:

1. All projections should be based on the June 30, 2010 valuations/data/assumptions/methods, including payroll growth assumptions
2. The Federated pension projection should include the Option 2 discount rate phase in the Board adopted in November 2010
3. The P&F pension projection should assume that the discount rate is changed to 7.50% effective with the June 30, 2011 valuation
4. OPEB contributions should be assumed to continue to be subject to the 5-year phase in restrictions in the MOU's. Assume that if the maximum contributions are reached, that those maximums remain in effect.

In addition, we also need a 20-year projection of pension only City contributions for Federated and P&F.

Ideally you would prepare your own estimates for P&F, but in the interest of time you can rely on Segal's valuations (including their estimate of the cost impact of going to 7.5% for pensions which we can provide).

My understanding is that you have already prepared similar estimates for Federated in your presentations to the Board and that you may already have a working model for P&F that you presented to the Board as part of the RFP process for that plan. You can use your own judgement as to whether you want to refine any previous work you have prepared.

After you discuss internally, can you let me know when you expect to finish the projections?

Thanks

Mike

Michael Moehle
Retirement Investment Officer
City of San Jose
Department of Retirement Services

-----Original Message-----
From: Moehle, Michael
Sent: Wednesday, June 15, 2011 5:05 PM
To: Crosby, Russell
Subject: Re: Spreadsheet

Which remark are you referring to

----- Original Message -----
From: Crosby, Russell
To: Moehle, Michael
Sent: Wed Jun 15 15:50:04 2011
Subject: Spreadsheet

3:45 just got done w Alex. Pls send Alex and me a copy of the spreadsheet that calculated the $400 million contrib rate in 3 yrs. It also shows that with fixing demographics and other issues the rate is $575 million.

FYI - it seems an off hand comment to Scott's people regarding no back up for the $650 number has caused them to challenge even $400MM. These are not good players. You have to assume everything said will be twisted into something else.

Anyway, let's get that old spreadsheet out and do some damage control.
Thx

EXHIBIT B

MYRON D. MOYE
PARTNER
DIRECT DIAL (415) 995-5092
DIRECT FAX (415) 995-3420
E-MAIL mmoye@hansonbridgett.com

HansonBridgett

February 13, 2012

VIA ELECTRONIC MAIL

Debra Figone
City Manager
City of San Jose
200 East Santa Clara Street
San José, CA 95113

Re: ***Complaint Before the City of San Jose Elections Commission***

Respondents:	Mayor Chuck Reed
	Russell Crosby
	Michael Moehle
Nature of Complaint:	Ethics Violation
Complaint Filed:	February 9, 2012
Complainant:	Christopher E. Platten

Dear Ms. Figone:

The City of San Jose has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code to serve as Evaluator for the Elections Commission and we have been assigned the above-referenced complaint. A copy of the complaint is attached.

It is our understanding that Russell Crosby, one of the respondents named/identified in the complaint, is currently an employee of the City of San Jose and that your office is the appointing authority for Mr. Crosby. Pursuant to paragraph F.4 of Resolution No. 75640, we are referring the above-referenced complaint to you as provided for in that section of the regulation. Consistent with paragraph F.4, the Commission will take no further action on the complaint with respect to Mr. Crosby.

Let me know if you have any questions and thank you for your cooperation.

Very truly yours,

Mike Moye

Mike Moye

Attachment

cc: City of San Jose, City Clerk
Chair, San Jose Elections Commission (w/o attachment)

EXHIBIT C(1)

City of San José, California

COUNCIL POLICY

TITLE	TITLE CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE	PAGE 1 of 3	POLICY NUMBER 0-15
EFFECTIVE DATE August 19, 1980		REVISED DATE June 28, 2005	

APPROVED BY COUNCIL ACTION 8/19/1980, Res. No. 53699; 10/14/1980, Res. No. 53971; 3/23/1982, Res. No. 55371; 6/25/1991, Item 9(j), Res. No. 63171; 6/28/2005, Item 10.1(a1), Res. No. 72837

PURPOSE AND SCOPE

In order to best serve the citizens and customers of the City of San José, the elected and appointed officials, and employees of the City must act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees.

As stated in the City Charter, "The citizens of San José expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

The purpose of this Code of Ethics is to establish policy and guidelines, reflecting expected values and behaviors for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and employees. Individuals employed by the City under contractual agreement must also observe the provisions of this policy for the term of their contract or as the contract may stipulate.

For additional regulations regarding ethics please refer to Title 12 of the San José Municipal Code.

POLICY

Elected and appointed officials and employees of the City of San José at all levels are guardians of the public trust. City officials and employees are required to be impartial and responsible in the fulfillment of their duties. The citizens and customers of San José expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

1. **Responsibilities of Public Service**

   City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

2. **General Rule with Respect to Conflicts of Interest**

   City employees and officials are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

   All City officials, officers and employees are prohibited from making, participation in making, or attempting in any way to use his or her official position to influence a City decision in which the

employee knows or has reason to know he or she has a financial interest as defined by law. For example, City employees and officials shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may create a conflict between their private interests or may impair their independence of judgment in the accomplishment of their official duties. If, however, persons in the public service have financial interests in matters coming before them, or before the department in which they are employed, they shall remove themselves from making, participating in the making, or seeking to influence any decision regarding such matter. Employees who are designated in the City's Conflict of Interest Code, shall file the appropriate disclosure statements required under State Law.

A conflict of interest may arise when dealing with a current or prospective vendor, supplier, or other business. Please refer to Section 3 below and seek guidance from a supervisor or from the Employee Helpline at 535-8150.

3. **Acceptance of Favors, Gratuities and Gifts**

City employees and officials shall not accept money or other consideration or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts as defined in the City's Gift Ordinance, gratuities or favors of any kind which be perceived or interpreted as an attempt to influence their actions with respect to City business.

This is just a summary of your obligations, for additional information regarding specific regulations on the acceptance of gifts; please refer to policy 2.02, titled Gift Policy in the City Policy Manual. Additionally, if there are any discrepancies between this Gift Policy and Title 12 of the San José Municipal Code, Title 12 of the San José Municipal Code supersedes.

4. **Use of Confidential Information**

City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons. City employees and officials shall uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decisions taken, but also the deliberations which shape public policies. Any employee or official, who is aware of a breach of confidentiality, is expected to bring forth that information to the appropriate officials in a timely manner.

5. **Use of City Employment and Facilities for Personal Gain**

City employees and officials shall not use City time, City funds or City facilities, equipment or supplies for personal use or personal gain or for campaign related political activities, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

This is just a summary of your obligations, for additional information please refer to policy 1.6.2, titled Personal Use of City Equipment, and 1.7.1, titled Use of E-Mail, Internet Services and Other Electronic Media, in the City Policy Manual.

6. **Outside Employment**

No employee shall engage in any work, employment or occupation outside City employment, which is detrimental to City service, which prevents or impedes the efficient performance of their duties in City employment, or which is in any way in conflict with their employment with the City. No employee shall engage in any work, employment or occupation outside City employment unless they have notified their department via an Outside Work Permit, and the permit has been approved by the Department Director.

This is just a summary of your obligations, for additional information please refer to policy 1.2.3, titled Outside Employment Policy, in the City Policy Manual.

7. **Discussion of Future Employment**

   All offers or discussions of offers to City employees of future employment outside City service must be reported immediately to the employee's supervisor whenever such discussions occur with, or when such offer is made by, any person, firm or organization presently dealing with the City concerning matters directly within the employee's current areas of decision-making responsibilities. It shall be within the supervisor's discretionary powers to relieve said employee from further decision-making responsibilities in relationship to said person, firm or organization if he or she determines that the offer of employment or discussions of an offer of employment would impair the employee's independence or judgment or could be construed by others as a bid for favorable treatment.

8. **Reporting of Improper Activities**

   The City of San José has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor or another management employee within the employee's department. Employees may also call the Employee Helpline at 535-8150 or the Fraud and Audit Hotline at 535-8200.

   It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, directing or influencing any person with the intent of interfering with that person's duty to disclose alleged violations of City policy or local, State or Federal law.

   This is just a summary of your obligations, for additional information please refer to Policy 1.1.4, titled Non-Retaliation, in the City Policy Manual.

9. **Discrimination and Harassment**

   City employees and officials shall not, in the performance of their duties, discriminate against any person on the basis of race, color, religion, national origin, ancestry, age, sex, gender, pregnancy, childbirth or related medical condition, sexual orientation, marital status, disability, medical condition and actual or perceived gender identity and they will reinforce the City of San José's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

   This is just a summary of your obligations, for additional information please refer to policy 1.1.1, titled Discrimination and Harassment Policy, in the City Policy Manual.

VIOLATIONS OF THE CODE OF ETHICS

In addition to any other penalty as provided by law, employees who violate the Code of Ethics will be subject to disciplinary action, up to and including termination. The violation of this Code of Ethics by a City official, elected or appointed, constitutes official misconduct. For additional information, please refer to Title 12 of the San José Municipal Code and the City Council Censure Policy.

EXHIBIT C(2)

City of San José, California

COUNCIL POLICY

TITLE COUNCIL CONDUCT POLICY	PAGE 1 of 4	POLICY NUMBER 0-28
EFFECTIVE DATE November 8, 1994	REVISED DATE November 30, 2004	
APPROVED BY COUNCIL ACTION		11/08/94 Item 9(C)

PURPOSE

This Policy applies only to the Mayor and City Council members, and amends and supersedes the original City Council Policy 0-28, the Censure Policy.

GUIDING PRINCIPLES

It is the Policy of the City Council that all of its members shall abide by federal and state law, City ordinances and City policies, including the Code of Ethics. Violation of such law or policy tends to injure the good name of the City and to undermine the effectiveness of the City Council as a whole.

Depending on the circumstances of alleged violations of law or policy, the Council may initiate an investigation of the allegations prior to the filing of a request for any of the actions described in this policy.

Nothing in this policy shall preclude individual Councilmembers from making public statements regarding such alleged conduct.

Considerations

In deciding whether or not to open an investigation, Council should consider:

- whether an investigation may compromise investigations regarding the same alleged actions, and, if the actions may result in criminal charges, whether the right of the accused Councilmember to a fair jury trial may be compromised by proceeding with an investigation;
- if persons involved in the allegations may choose to exercise their constitutional right against self-incrimination, which may limit the investigation's ability to present a full picture of alleged events;
- how to ensure that it ensures protection of the rights of those accused of violations of law or policy, those making such accusations, and those who have information regarding the accusations.

At any point during any of the processes described in this policy, the Council may refer the matter, as appropriate, to the Santa Clara County District Attorney or to the San José Elections Commission for investigation. Following such a referral, the Council may proceed with any actions it chooses to undertake under the provisions of this policy.

While the Council has broad discretion in deciding actions it may choose to take in response to violations of law or policy, this policy provides definitions and procedures related to three types of action: admonition, sanction, and censure.

DEFINITIONS

Admonition

This is the least severe form of action. An admonition may typically be directed to all members of the City Council, reminding them that a particular type of behavior is in violation of law or City policy, and that, if it occurs

or is found to have occurred, could make a member subject to sanction or censure. An admonition may be issued in response to a particular alleged action or actions, although it would not necessarily have to be triggered by such allegations. An admonition may be issued by the City Council prior to any findings of fact regarding allegations, and because it is a warning or reminder, would not necessarily require an investigation or separate hearings to determine whether the allegation is true

Sanction

This is the next most severe form of action. Sanction should be directed to a particular member of the City Council based on a particular action (or set of actions) that is determined to be in violation of law or City policy, but is considered by the Council to be not sufficiently serious to require censure. A sanction is distinguished from censure in that it is not a punishment. A sanction may be issued based upon Council's review and consideration of a written allegation of a policy violation. The member accused of such violation will have an opportunity to provide a written response to the allegation. A sanction may be issued by the City Council and because it is not punishment or discipline, would not necessarily require an investigation or separate hearings.

Censure

Censure is the most severe form of action contemplated in this policy. Censure is a formal statement of the City Council officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing, but it carries no fine or suspension of the rights of the member as an elected official. Censure should be used for cases in which the Council determines that the violation of law or policy is a serious offense. In order to protect the overriding principle of freedom of speech, the City Council shall not impose censure on any of its members for the exercise of his or her First Amendment rights, no matter how distasteful the expression was to the Council and the City. However, nothing herein shall be construed to prohibit the City Council from collectively condemning and expressing their strong disapprobation of such remarks.

PROCEDURES

Investigation

1. Any member of the City Council may submit, in writing, an allegation concerning a violation of law or policy to the Rules Committee.

2. The Rules Committee shall determine whether to forward a recommendation to conduct an investigation to the full Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting. Part of the determination should include allowing the Councilmember who is the subject of the allegation the opportunity to address the allegation in writing or by appearing at the Rules Committee meeting at which the allegation is discussed.

3. If the Council determines, by majority vote, that:

a. An investigation is warranted, it may designate a standing or special committee or one of its members, including the Mayor, to conduct the investigation. The Council may select an independent investigator to assist in conducting the investigation. The independent investigator would be managed by the committee or individual designated by Council to conduct the investigation.

b. An investigation is not warranted, an individual Councilmember is not precluded from submitting a request for admonition, sanction, or censure in accordance with the provisions of this policy.

4. In the course of the investigation, the individual or committee designated to manage it must determine the process by which statements are taken. A witness may choose to provide a signed declaration under penalty of perjury attesting to his or her knowledge of the facts surrounding the allegations. If a witness is unwilling to submit such a declaration, the Council may issue a subpoena to compel the witness' testimony, consistent with its subpoena power granted under the City Charter.

5. At the conclusion of the investigation, the results shall be presented in writing to the full Council. Based on the results, any individual Council member may file a request for admonition, sanction, or censure.

Admonition

1. A request for an admonition must be submitted to the Rules Committee in writing by a member of the Council. The request should contain the specific language of the proposed admonition.

2. The Rules Committee shall determine whether to forward the proposed admonition to the full Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting.

3. An admonition can be approved by a majority vote of the Council.

Sanction

1. A request for sanction must be submitted to the Rules Committee in writing by a member of the Council. The request should contain specific allegations of conduct in violation of federal or state law, City ordinances, and City policies, including the Code of Ethics.

2. A copy of the request for sanction shall be provided to the Council Member accused of the conduct by personal service at least twenty-four (24) hours prior to the Rules Committee meeting at which it will be considered.

3. The Rules Committee shall determine that either:

a. The proposed sanction should be forwarded to the City Council for consideration as part of the Rules Committee report agenda item at the appropriate subsequent Council meeting; or

b. An admonition, rather than sanction, should be recommended to the City Council for consideration; or

c. No action is required.

4. This determination is subject to confirmation by the City Council as part of the Rules Committee report at the next Council meeting.

5. A sanction is based on the Council's review of the written record and of the information provided as part of the public hearing of the issue as part of the Council meeting. A sanction action must be approved by a majority vote of the Council.

Censure

1. A request for a censure hearing must be submitted to the Rules Committee in writing by a member of the Council. The request must contain the specific allegations of conduct in violation of federal or state law, City ordinances, and City policies, including the Code of Ethics, upon which the proposed censure is based.

2. A copy of the request for censure and the charges shall be served on the Council Member accused of the conduct by personal service at least twenty-four (24) hours prior to the Rules Committee meeting at which it will be considered.

3. The Rules Committee shall determine that either:

a. Further investigation of the charges is required; or

b. The matter is to be set for a separate public hearing; or

c. The recommended level of action is admonition or sanction, rather than censure; or

d. No action is required.

4. This determination is subject to confirmation by the City Council as part of the Rules Committee report at the next Council meeting.

5. Depending on the determination of the Rules Committee and the confirmation of the City Council;

a. If further investigation is required, it shall be done by an ad hoc committee appointed by the Mayor. If the Mayor is the subject of the charges, the committee shall be appointed by the Vice Mayor.

The following guidelines apply to ad hoc committee investigations:

i) The committee may be staffed by administrative and legal staff.

ii) If authorized by City Council, the committee may subpoena witnesses and documents.

iii) In making a determination, the committee should determine if taking all the facts and evidence into consideration, there are reasonable grounds to believe or not believe that the conduct, violation, or offense occurred.

iv) The committee shall issue a final report and recommendations to the City Council. The final report shall be made available to the public.

b. If a separate public hearing is set, it must be set far enough in advance to give the member of Council subject to the charges adequate time to prepare a defense, and that member shall be given the opportunity to make an opening and closing statement and to question his or her accusers. The member subject to the charges may be represented and may have the representative speak or question on his or her behalf. The Mayor, or Vice Mayor if the Mayor is the subject of the charges, would preside at the hearing. The rules of evidence shall not apply to the hearing, which is not a formal adversarial proceeding. The City Attorney or designee shall provide legal advice to the City Council during the hearing.

6. A decision to censure requires the adoption of a Resolution making findings with regard to the specific charges, based on substantial evidence, and approved by a two-thirds vote of the Council.

EXHIBIT C(3)

City of San José, California

COUNCIL POLICY

TITLE DISCLOSURE OF MATERIAL FACTS AND COMMUNICATIONS RECEIVED DURING COUNCIL MEETINGS	PAGE 1 of 2	POLICY NUMBER 0-32
EFFECTIVE DATE April 25, 2006	REVISED DATE March 2, 2010	
APPROVED BY COUNCIL ACTION	Revised 3/2/2010, Item 3.4(a), Res No. 75293;	

1. PURPOSE

The purpose of this policy is to require every member of the City Council to publicly disclose (1) material facts; and (2) communications received during Council meetings that are relevant to a matter under consideration by the City Council which have been received from a source outside of the public decision-making process.

2. SCOPE

This policy applies to every member of the City Council.

3. DEFINITIONS

"Material fact" means a fact that is relevant for a member of the City Council to make an informed and knowledgeable decision and which would likely influence the decision of a member of the City Council on an item of business on the City Council agenda. A fact is material if the failure to disclose the fact will substantially mislead any member of the City Council from making an informed and knowledgeable decision about an item of business on the City Council agenda.

"Communication received during a Council meeting" means a communication received and read during a Council meeting, either directly or indirectly, that is relevant to a matter under consideration by the City Council.

"Direct communication" includes but is not limited to, a text message, email and telephone call.

"Indirect communication" includes but is not limited to, a text message, email or telephone call received by a staff member of a member of the City Council or a conversation with a staff member of a member of the City Council which is then communicated to the elected official.

"Relevant to a matter under consideration by the City Council" means from (1) a party or his or her agent to an administrative hearing before the Council; or (2) any person who actively supports or opposes any administrative or legislative decision and has a financial interest in the decision.

"Actively supports or opposes a decision" means he or she engages in lobbying activity as defined in the San Jose Municipal Lobbying ordinance, testifies in person before the City or

Redevelopment Agency or otherwise acts to influence officers of the City or Redevelopment Agency.

4. POLICY

1. Each member of the City Council has a duty and responsibility to publicly disclose all (1) material facts; and (2) communications received during a Council meeting related to an item on the City Council agenda after the material facts are received or the communications are received during a Council meeting from sources outside of the public decision-making process.

2. The material fact or communication received during a Council meeting shall be disclosed at the Council meeting before the Council takes any action on the item after a good faith determination by the member of the City Council that the fact or communication is required to be disclosed in accordance with this policy:

   a. If the material fact is in written form, it shall be submitted to the City Clerk who will make the information publicly available.

   b. Material facts received orally and communications received during a Council meeting shall be disclosed no later than public discussion of the item under consideration by the City Council.

EXHIBIT D

MYRON D. MOYE
PARTNER
DIRECT DIAL (415) 995-5092
DIRECT FAX (415) 995-3420
E-MAIL mmoye@hansonbridgett.com

HansonBridgett

February 10, 2012

Mayor Chuck Reed
The Office of Mayor Chuck Reed
City of San Jose
200 E. Santa Clara Street, 18th Floor
San Jose, CA 95113

Re: ***Complaint Before the City of San Jose Elections Commission***

Respondents:	Mayor Chuck Reed
	Russell Crosby
	Michael Moehle
Nature of Complaint:	Ethics Violation
Complaint Filed:	February 9, 2012
Complainant:	Christopher E. Platten

Dear Mayor Reed:

The City of San Jose has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code to serve as Evaluator for the Elections Commission and we have been assigned the above-referenced complaint. A copy of the complaint was forwarded to you by electronic mail on February 9, 2012.

Pursuant to Resolution No. 75640, we are reviewing the Complaint to determine whether sufficient cause exists to conduct a preliminary investigation. If we determine that further investigation is appropriate, we will want to speak with you or your representative for further information.

Let me know if you have any questions and thank you for your cooperation.

Very truly yours,

Mike Moye

MDM:tam

cc: City of San Jose, City Clerk

MYRON D. MOYE
PARTNER
DIRECT DIAL (415) 995-5092
DIRECT FAX (415) 995-3420
E-MAIL mmoye@hansonbridgett.com

HansonBridgett

February 10, 2012

Russell Crosby
City of San Jose
Retirement Services
1737 N. First St, Suite 580
San Jose, CA 95112

Re: ***Complaint Before the City of San Jose Elections Commission***

Respondents:	Mayor Chuck Reed
	Russell Crosby
	Michael Moehle
Nature of Complaint:	Ethics Violation
Complaint Filed:	February 9, 2012
Complainant:	Christopher E. Platten

Dear Mr. Crosby:

The City of San Jose has retained our firm pursuant to Chapter 12.04.080 of Title 12 of the San Jose Municipal Code to serve as Evaluator for the Elections Commission and we have been assigned the above-referenced complaint. A copy of the complaint was forwarded to you by electronic mail on February 9, 2012.

Pursuant to Resolution No. 75640, we are reviewing the Complaint to determine whether sufficient cause exists to conduct a preliminary investigation. If we determine that further investigation is appropriate, we will want to speak with you or your representative for further information.

Let me know if you have any questions and thank you for your cooperation.

Very truly yours,

Mike Moye

cc: City of San Jose, City Clerk

MYRON D. MOYE
PARTNER
DIRECT DIAL (415) 995-5092
DIRECT FAX (415) 995-3420
E-MAIL mmoye@hansonbridgett.com

HansonBridgett

February 10, 2012

Michael R Moehle
450 North Brand Blvd., Suite 600
Glendale, CA 91203

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Mike Moye

MDM:tam

Enclosure

cc: City of San Jose, City Clerk

MYRON D. MOYE
PARTNER
DIRECT DIAL (415) 995-5092
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E-MAIL mmoye@hansonbridgett.com

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February 10, 2012

Christopher Platten
Wylie, McBride, Platten & Renner
2125 Canoas Garden Avenue
Suite 120
San Jose, CA 95125

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