

CITY OF SAN JOSE, CALIFORNIA

CITY COUNCIL POLICY

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DRAFT

CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE SAN CITY OF SAN JOSE

Purpose and Scope: To establish policy and guidelines for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and Civil Service employees in the discharge of their officially assigned duties and responsibilities. Individuals employed by the City under contractual agreement must also observe the provisions of this policy statement for the term of their contract or otherwise as the contract may stipulate.

Declaration of Policy: Elected and appointed officials and employees of the City of San Jose (hereinafter "City") at all levels are agents of the public purpose and conservators of the public trust. The proper operation of municipal government requires that they be independent, impartial and responsible in the fulfillment of the public trust placed on them. The citizens of San Jose expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

Responsibilities of Public Service: Persons in the public service are bound to uphold the Constitution of the United States and the Constitution of the State of California and to carry out the laws of the nation, state, and the City. They are bound to observe, in their official acts, the highest standards of integrity and to discharge faithfully the duties of their offices, recognizing that the lives, safety, health and welfare of the general public must be their primary concern. Their conduct in both their official and private affairs should be above reproach to assure that their public office is not used for personal gain.

General Rule with Respect to Conflicts of Interest: The State Political Reform Act of 1974 prohibits all City officials, officers and employees from making, participation in making, or attempting in any way to use his or her official position to influence a governmental decision in which the employee knows or has reason to know he or she has a financial interest.

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Persons in the public service shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or ought to have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may otherwise create a substantial conflict between their private interests or may impair their independence of judgment in the discharge 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 disqualify themselves from making, participating in the making, or seeking to influence any decision respecting such matter.

Acceptance of Favors and Gratuities: Persons in the public service 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, gratuities or favors of any kind which might reasonably be interpreted as an attempt to influence their actions with respect to City business.

For purposes of this Policy, the term "gift" is used as defined in San Jose Municipal Code Chapter 12.08 and all exceptions in that Chapter also apply to this Policy except where otherwise provided in a more stringent departmental or administrative policy. Employees are advised to check with their departments for such a policy. The exceptions in Chapter 12.08, Section 12,08.030 are included below.

Gifts which are acceptable are as follows:

- A. Gifts with a value less than fifty dollars (\$50): Any gift, including meals and beverages provided to an officer or employee in a business or social setting, that has a value less than fifty dollars (\$50), as long as the total value of all such gifts received from any one donor does not exceed fifty dollars (\$50) or more in any calendar year.
- B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.

- C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or employee by an individual in such individual's primary residence.
- D. Reciprocal gifts: Presents exchanged between any officer or employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.
- E. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.
- F. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include theatrical productions and art exhibits; political events include political fundraisers.
 - 1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.
 - 2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.
- G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental

agency in connection with an employment interview, when the interview is conducted at least one hundred fifty (150) miles from San José and where the situs of the employment will be at least the same distance from the City.

- H. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or employee by a potential employer, provided that the officer or employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve (12) months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.
- I. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or employee which has been authorized by a majority of the City Council or Redevelopment Agency Board or which is pursuant to a written City or Redevelopment Agency policy for intrastate or interstate travel regardless of the source of payment.
- J. City or Redevelopment Agency business: Transportation provided to an officer or employee by a contractor or other person doing business with the City or Redevelopment Agency, provided that such transportation is related to City or Redevelopment Agency business which is within the scope of employment or the duties of such officer or employee, and further provided that such transportation is not in excess of one hundred twenty-five (125) miles one way. Nothing in this subsection shall be interpreted to limit the City Council's or Redevelopment Agency Board's discretion to approve travel under subsection I. above.
- K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.

- L. Prizes and Awards from Bona Fide Competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974 as amended.

- M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

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Section 12.08.020 also provides that gifts include:

1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.
2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.
3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.

B. As used in Chapter 12.08, the term “gift” does not include:

1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.
2. Any devise or inheritance.

Use of Confidential Information: Persons in the public service shall not use confidential information acquired by or available to them in the course of their employment with the City for speculation or personal gain. Persons in the public service shall uphold the public's right to know, and in accordance with the Ralph M. Brown Act (Gov. Code, §§ 54950 *et seq.*), uphold the public's right to know not only the decisions taken, but also the deliberations which shape public policies.

Use of City Employment and Facilities for Private Gain: Persons in the public service shall not use, for private gain or advantage, their City time or the City's facilities, equipment or supplies, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

Incompatible Employment: Persons in the public service shall not engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of their official duties or would tend to impair their independence of judgment or action in the performance of their official duties. All City employees considering outside employment must apply for an Outside Work Permit prior to acceptance of the employment offer. It shall be the Administration's responsibility to determine if the outside work is compatible in accordance with Section 3.04.1710 of the San Jose Municipal Code.

Discussion of Future Employment: All offers or discussions of offers to City employees of future employment outside the 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 of judgment or could be construed by others as a bid for favorable treatment.

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Activities Incompatible with Official Duties and the Reporting of Improper Government Activities: Persons in the City service are strongly encouraged to fulfill their own moral obligations to the City by disclosing to the extent not expressly prohibited by law, improper governmental activities within their knowledge. 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, commanding, or influencing any person with the intent of interfering with that person's duty to disclose such improper activity.

Nondiscrimination: Persons in the public service shall not, in the performance of their service responsibilities, discriminate against any person on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, disability or perceived gender identity and they shall comply with the equal employment opportunity goals of the City.

Penalties for Non-Compliance: In addition to any other penalty as provided by law, violations of this Code of Ethics may be used as a basis for disciplinary action or censure of a Council Member by the Council. Violations of this Code of Ethics by Board and Commission Members shall constitute official misconduct.