

**DRAFT #2**

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
CHAPTER 12.10 OF TITLE 12 OF THE SAN JOSE  
MUNICIPAL CODE TO REVISE THE CITY OF SAN JOSE  
REVOLVING DOOR ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 12.10 of Title 12 of the San Jose Municipal Code is amended to be numbered and to read as follows:

**12.10.010 Purpose.**

The purposes of this chapter are:

- A. To assure the independence, impartiality and integrity of city and agency officials and designated employees in making governmental actions and decisions.
- B. To prevent such former officials and designated employees from using their positions with the city or agency for personal gain.
- C. To prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the city or agency by hiring former officials and designated employees.

**12.10.020 Definitions.**

For purposes of this chapter, the terms below shall have the following meaning:

- A. "Agency official" shall mean the chairperson and members of the Board of directors of the redevelopment agency of the city of San José.

- B. "City official" shall mean the Mayor and City Councilmembers.
- C. "Commission" shall mean any body created by the City Council or Agency Board whose members are required to file statements of economic interest pursuant to the fair political practices act.
- D. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).
- E. "Nonprofit organization" shall mean an entity which would qualify as such under the federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the City Council or Redevelopment Agency board within the past five years.
- F. "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the City or the Agency.
- G. "Work" shall mean any activity for which compensation is received from any source, including compensation received as an independent contractor. Work includes the supervision or direction of others performing work, except as provided in Section 12.10.050. Work for the City or Agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a City or Agency official or designated employee on any type of board, committee or similar body as a representative of the City or Agency is deemed to be work for the City or Agency.

### **12.10.030 Prohibitions.**

For one year immediately following the termination of City or Agency office or employment, no former City or Agency official or designated employee shall:

- A. Work on any matter on which the official or employee worked on behalf of the City or Agency during the twelve months prior to termination of service, or which was within

the former City or Agency official's or designated employee's area of job responsibility. For example, "work on any matter" includes providing advice or recommending any action with regard to City or Agency legislative or administrative matter such as a land use, development or public works project.

B. Represent anyone else, whether or not for compensation, before the City Council, Redevelopment Agency Board, any commission thereof, or any staff of the City or agency.

C. Receive any gift or payment which would be prohibited under Part 5 of this chapter from any person who was, in any way, involved in or affected by the work of the official or employee during the twelve months prior to the termination of service.

#### **12.10.040 Prohibition for former commission members.**

A former member of a commission shall not represent anyone else, whether or not for compensation, before the commission on which the former member served, for a period of one year immediately following the termination of service on that commission. No other provisions of this chapter shall apply to persons serving on a commission who are not otherwise City or Agency officials or designated employees.

#### **12.10.050 Exceptions.**

The following work shall not be subject to the prohibitions of Section 12.10.030:

- A. As an employee or volunteer of a nonprofit organization, as defined in Section 12.10.020.E.;
- B. As an employee of a government entity;

C. As an independent contractor of the City or Agency where it has been determined that it is in the best interest of the City or Agency to retain the former official or employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In such event, the City or Agency shall contract directly with the former official or employee. The rate of compensation for such services shall not exceed the former official's or employee's rate of pay, including benefits, at the time City or Agency service terminated.

**12.10.060 Applicability.**

A. The provisions of this chapter shall not apply to prevent a former City or Agency official or designated employee from testifying as a percipient witness in any legal proceeding.

B. The provisions of this chapter shall not apply to prevent a former City or Agency officer or designated employee from working as a supervisor of a person or persons performing work that would be prohibited by this chapter, so long as the supervisor is screened from any personal participation in the work and receives no part of the fee therefrom.

**12.10.070 Waiver.**

The City Council or Redevelopment agency board of directors may waive the prohibitions of Section 12.10.030, upon full disclosure of the facts surrounding the proposed activity, if the Council or board finds that such waiver is in the best interest of the City or agency and that such waiver is not inconsistent with the purposes of this chapter as set forth in Section 12.10.010.

City

**12.10.080 Enforcement**

- A. The City Attorney may conduct inquiries or investigate complaints of violations of this Chapter. The City Attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this Chapter.
- B. A City or Agency official, designated employee or person who is subject to the provisions of this Chapter may request a formal written opinion from the City Attorney and may reasonably rely on such advice in order to comply with the requirements of this Chapter.
- C. Any person may file a complaint with the City Clerk alleging a violation of this Chapter with the Elections Commission.
- D. The City Attorney may put persons on notice of a potential violation of the requirements of this Chapter, whether or not a complaint is filed with the Elections Commission.

**12.10.090 Penalties**

Violations of this Chapter may result in civil penalties of up to five thousand dollars (\$5,000) for each violation. The City of San Jose or the Redevelopment Agency shall be entitled to recover from any former City or Agency official or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this chapter.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES

Mayor

ATTEST:

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LEE PRICE, CMC

City Clerk