



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

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

SUBJECT: Council Expenditure and
Reimbursement Policy

DATE: June 8, 2007

RECOMMENDATION:

That the Rules and Open Government Committee approve the draft Council Expenditure and Reimbursement Policy for consideration and adoption by the City Council on June 19, 2007.

BACKGROUND

On October 3, 2006 the City Council reviewed the current policies relating to Council expenditures and reimbursements. The City Attorney and City Clerk were directed to develop a comprehensive Council Expenditure and Reimbursement Policy for discussion by the Council Rules Committee.

The Council indicated at the October 3, 2006 meeting that it would like the new Council Expenditure and Reimbursement Policy to be based on higher standards than what is legally required. Further, Council indicated a desire that the new policy establish clearer guidelines as to what types of expenditures are permitted, including expenditures to support community based organizations and constituent outreach.

The Rules and Open Government Committee discussed various elements of a revised Council Expenditure and Reimbursement Policy on January 31, 2007 and directed staff to develop a draft policy for review and discussion. The Committee asked staff to clarify "sponsor" (as it relates to special events); the use by a Councilmember of a City-owned or leased vehicle; and what cannot be paid for using public dollars. The Committee concurred that there is a need by each Councilmember to get out in the Community and participate in local events. It was suggested that a budget be identified for constituent outreach and a clear policy developed to provide guidance as well as limit the need for fundraising. The Committee also agreed that if the City provides funding to an organization, then individual members of the Council should not have to buy admission to the event. The Committee also requested the draft policy include provisions regarding mass mailings and advertising.

The Committee reviewed and discussed the draft at four meetings in May. Based upon the Committee's input, staff was directed to present a comprehensive draft policy at the June 13, 2007 Committee meeting with a goal of forwarding it to the full Council for adoption prior to June 30, 2007.

ANALYSIS

Discussion by the Committee has provided additional insight and guidance for staff regarding key policy elements. The attached draft policy addresses the following:

1. Establishes the public purpose and process regarding expenditures by the Mayor and Councilmembers
2. Describes the scope of the policy and establishes key definitions, including City or Redevelopment Agency sponsored events
3. Provides compliance with the City Charter regarding compensation for the Mayor, Councilmembers and their staff
4. Establishes policies and procedures regarding:
 - a. retention of consultants
 - b. office supplies and equipment
 - c. admission to events
 - d. membership dues
 - e. publications and subscriptions
 - f. advertising
 - g. constituent outreach
 - h. employee recognition
 - i. grants
 - j. travel
 - k. food and beverage
 - l. contributions to non-profit organizations
 - m. unauthorized expenditures of public funds
 - n. process for payment, reimbursement and review

The draft policy contains some elements that require further discussion with the Committee:

Gifts to constituents: Staff is recommending that gifts to constituents (flowers, memorabilia, etc.) not be a permitted expenditure. While expenditures for employee recognition are permitted, they are limited and clearly defined. The concern about Councilmembers providing gifts to constituents is one of articulating a public purpose for the expenditure. The example of a refrigerator magnet provided by a Councilmember to the community which contains contact information regarding various City departments, programs or services can be justified as communicating important information with constituents and therefore would not be considered a gift. However, a gift with no element of benefit to the public, no matter how small, is not appropriate. Furthermore, it could be perceived that Councilmembers are using public funds for personal or political benefit, and expenditures should therefore be restricted.

Restrictions on grants and donations of less than \$250: Staff is recommending that grants and monetary donations under \$250 be prohibited. The primary consideration in establishing a minimum grant or donation amount is the cost and staff time required to process the legal and fiscal documents of small expenditures. Staff is recommending that the Committee balance the relative minor impact of smaller contributions with the resources required to administer those funds.

Restrictions on providing meals at neighborhood or community meetings or events: In its discussion of the staff's recommendation to allow Councilmembers to purchase light refreshments for public meetings or events with constituents, it was suggested that they also be allowed to provide dinners for Neighborhood Advisory Council (NAC) meetings or other similar functions. Staff has not included that provision in the draft Policy because of concerns about different NACs being treated differently, and the perception that the meal is being provided by the Councilmember and not the City. If the Council decides that NACs should be provided meals at their meetings at City expense, the Council can direct staff to do so.

Admission to events held in City of San Jose facilities: A suggestion was made that Councilmembers be exempted from paying for events held in City or Redevelopment Agency funded facilities and/or which the City is sponsoring or co-sponsoring the function. Implementation of this waiver may require additional coordination with various City departments and agencies to alter the facility use agreements to require event sponsors to comply with this requirement. Further, this issue is more appropriately addressed in the Gift ordinance, than in this Expenditure policy.

Personal Benefit Derived from Admissions to Events: During the Committee's discussion about the appropriateness of the City paying for admission to events when the Councilmember may receive personal benefit, the Mayor suggested that we consult the IRS rules for deduction for charitable contributions when a personal benefit is received. The IRS specifies that the amount of the deduction is anything in excess of the fair market value of the benefit received. In other words, if the admission price to an event is \$100 and the value of the dinner is \$50, then the deductible contribution to the charity is \$50. The draft policy provides that the City may pay for the contribution portion of the admission price, provided that the Councilmember does not also claim a tax deduction. We need further direction as to whether the Committee is recommending that the cost of the dinner should also be paid for by the City.

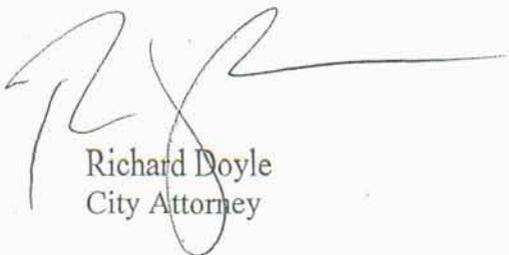
Based on prior Committee discussion and Council direction, staff is recommending that two policy elements, Mayor and Council Travel and Special Events, be deferred at this time. Staff will continue to work on these elements and report back to the Committee with revised policies and procedures concerning these topics:

Mayor and Council Travel: On August 8, 2006 the City Council adopted Resolution 73340 which amended City Council Policy 9-5, Travel by Elected and Appointed City Officials. The Resolution made the following changes to the policy: (1) to provide that only the City Council may designate one or more Council Members or members of Boards or Commission to act as the official representative of the City; and (2) to require that all out-of-state travel of an official nature by the Mayor, even if taken at no expense to the City, must be approved by the Council. Staff recommends that Policy 9-5 and related administrative procedures be reviewed and revisions brought to the Committee and Council for further consideration.

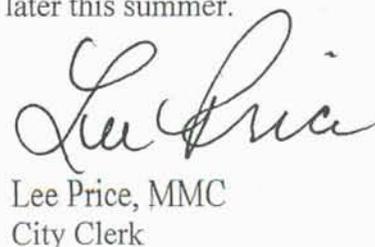
Special Events: After discussions in the Committee meetings involving expenditures on special events, Staff is recommending that Special Events be a specific expenditure category in the Constituent Outreach provisions of the Policy. On February 1, 2005 the City Council adopted Ordinance 72517 which required Councilmembers to submit a memorandum to the Rules Committee describing the event and proposed use of any funds in Special Event Accounts. The Council also referred to the Blue Ribbon Task Force procedural issues involving disclosure by Councilmembers of the receipt of contributions. Several other procedural items were also referred to staff to return to Council for further action. Since that time, the Blue Ribbon Task Force has disbanded and the issues for clarification have not yet been submitted to the Council for action. During the Committee's January 31 discussion, staff was requested to clarify "sponsor" as it relates to Special Events. In light of a number of unresolved questions and issues related to Special Events, Staff is recommending that the current draft policy be implemented. However, additional policy and procedures should be drafted regarding Special Events and presented to the Rules and Open Government Committee for further consideration prior to submittal to the full City Council.

CONCLUSION

The revised policy will provide guidance for the Mayor and Councilmembers, their staff, Council Appointees and the Administration regarding appropriate expenditures in furtherance of the Council's legislative and representative duties as the elected leaders of San Jose. The proposed draft policy meets the objectives established by the Council and Committee as expressed through prior discussions and direction to staff. The Offices of the City Attorney and City Clerk, in cooperation with the Administration, will continue to develop additional policy revisions regarding Council Travel and Special Events expenses. These issues will be brought back for Committee and Council review and action later this summer.



Richard Doyle
City Attorney



Lee Price, MMC
City Clerk

DRAFT CITY COUNCIL EXPENDITURE AND REIMBURSEMENT POLICY

PURPOSE

The purpose of this policy is to clarify and establish guidelines regarding proper expenditures and reimbursements for Members of the City Council and their offices.

The Mayor and Councilmembers must be reimbursed for expenses incurred in the performance of their duties or functions of office. (Charter Section 408) The office staff to the Members of the City Council must also be reimbursed for actual and necessary expenses incurred while performing official business of the City when such expenses are authorized or approved. (Charter Section 902)

The City Clerk shall perform all administrative functions on behalf of the Mayor's Office and each Council Office, including the review and approval of expenditures and requests for reimbursement made consistent with this Policy, and the negotiation and execution of contracts made consistent with this and all other City policies regarding contracts. The City Clerk may authorize a designee to perform these functions.

SCOPE

This comprehensive policy clarifies the authorized use of City funds to pay for all Mayor and Council Office expenses.

In determining whether an expenditure is appropriate to be paid from City funds, the Council finds that the following activities by the Mayor, Councilmembers and their staffs, provide benefit to the City:

1. Meeting or communications with constituents regarding City operations, services, projects, programs and policies; matters pending before the City Council or other governmental agencies; and issues raised by constituents.
2. Meeting with state and federal officials regarding issues that impact City operations, services, projects, programs and policies, or the community;
3. Participating in regional, state, and national organizations whose activities impact City operations, services, projects, programs and policies;
4. Attending educational seminars or conferences to better inform public officials regarding issues that impact City operations, services, projects, programs and policies, or to improve their skills; and
5. Recognizing and promoting public service in the community.

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This policy incorporates by reference existing expenditure and reimbursement policies that apply to the Mayor, Councilmembers, and their office staff, and establishes the parameters for other expenditures and reimbursements unique to public office.

DEFINITIONS

For the purposes of this Policy, the following terms shall be defined as specified:

Advertising

"Advertising" or "advertisement" means the payment for the placement of a message in any newspaper, magazine, or on any broadcast system, or on any electronic medium. "Advertisement" does not include the listing of contributors to an organization in an event program.

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City Sponsored Event

"City Sponsored Event" means an event to which the City or Redevelopment Agency has contributed funding or in-kind services in addition to the funding requested by the Mayor or Councilmember.

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Constituent

"Constituent" means residents of, and businesses, civic, cultural, and educational institutions within the City of San Jose.

Constituent Outreach

"Constituent Outreach" means communications with constituents to promote civic involvement and public awareness of City operations, services, programs, and policies, matters pending before the City Council and to elicit input from constituents regarding such matters.

Consultant

"Consultant" means an independent contractor, as determined in compliance with the federal Internal Revenue Service Guidelines, hired by the City to provide professional services to the Mayor or a Councilmember.

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Gift

"Gift" means the voluntary transfer of any thing, service, payment or value, paid for with City or Redevelopment Agency funds without the City or Agency receiving a benefit in return.

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EXPENDITURES AND REIMBURSEMENTS

A. MAYOR AND COUNCILMEMBER COMPENSATION

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Councilmember compensation is an authorized City expense.

The Mayor and Councilmembers receive a salary and benefits which include medical insurance, dental insurance, life insurance, retirement benefits and car allowance. The salaries and benefits are established by ordinance, after the Salary Setting Commission has made its recommendation to the Council.

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Since the car allowance is intended to cover vehicle wear and tear and fuel costs, mileage reimbursement is not an authorized expenditure for the Mayor and Councilmembers.

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B. MAYOR AND COUNCIL OFFICE STAFF COMPENSATION

The salaries and benefits of the Mayor and City Council support staff are authorized expenditures as long as the staff is hired and compensated pursuant to the City's policies and procedures.

C. RETENTION OF CONSULTANTS

The Mayor and Councilmembers may retain a Consultant to provide services to assist in the provision of City business, including but not limited to the following services:

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1. Event planning for City Sponsored Events;
2. Web site design for the Councilmember's official City website; and
3. Research on specific City or redevelopment issues.

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The Mayor or Councilmember must provide a description of the scope of services for the Consultant to the Office of the City Clerk, and, if the request is for a consultant to provide research on specific City or redevelopment issues, with a copy to the City Manager or Executive Director. The City Clerk is authorized to execute all consultant agreements on behalf of the Mayor or Councilmembers following all applicable City contracting procedures.

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D. OFFICE SUPPLIES AND EQUIPMENT

Acquisition of office supplies and equipment used solely for the conduct of City business by the Mayor and Council members is an authorized expenditure,

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subject to the review and approval of the City Clerk, and consistent with all City contracting procedures..

E. ADMISSION TO EVENTS

Admission to the following events for the Mayor and Councilmembers and their staffs are authorized expenses:

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1. A City Sponsored Event,

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Fundraising events where the proceeds of the event benefit a civic, cultural, educational, or charitable organization providing services to San Jose residents or businesses, [but only to the extent that the cost of admissions exceeds the benefit received by the attendee.] [WE NEED TO VERIFY THAT THIS WAS THE DIRECTION.] In addition to the admission price for the Mayor or Councilmember, admission for one staff person, to attend with the Mayor or Councilperson, is also an allowable expense. In addition, admission for a spouse or significant other, as appropriate and depending on the event, may also be an allowable expense. Admission to an event attended by a Council staff person in lieu of the Mayor or Council member is also an allowable expense. Additionally, admission to an event for any City required security detail is an allowable expense.

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3. Admission to conferences, meetings or seminars germane to city government, economic development, land use, public safety, park and recreation services or any other area of municipal governance that the City undertakes.

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Payment or reimbursement by the City for admission to events which are not authorized above must be approved by the Council in advance of the payment or reimbursement. At the end of each fiscal year, the City Clerk will report to the Council the total City expenditures for these events by the Office of the Mayor and each Council office.

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F. MEMBERSHIP DUES

The only memberships to be paid for by the City on behalf of the Mayor or Council offices are memberships in those governmental associations in which the City's membership extends to its officials, such as the California League of Cities, the National League of Cities and the National Conference of Mayors.

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G. PUBLICATION SUBSCRIPTIONS

Subscriptions to the following types of publications are authorized expenditures:

1. The publication is included as part of membership in an organization approved by Council pursuant to the Policy; or
2. The publication is a trade publication specific to city government, land use, public safety, park and recreation services; or any other area of municipal governance that the City undertakes; or
3. The publication is a local publication containing information of general interest to the community.

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H. ADVERTISING

The cost of advertising is an authorized expenditure if the advertising relates to the following:

1. A City Sponsored Event,
2. Recruitment office staff for the office of the Mayor or a Council office,

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Any advertisements paid for from public funds must properly attribute the City by including the City's logo in the advertisement. The design of such advertisements should conform to the state law restrictions regulating mass mailings, except that the advertisement may contain both the Councilmember's name and District designation, and slight variations in font size for clarification purposes may be allowed.

I. CONSTITUENT OUTREACH

Costs incurred by the Mayor or any Councilmember in conducting the following constituent outreach activities are authorized expenditures:

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1. Communicating with constituents within the state law restrictions regulating mass mailings.
2. Conducting informal surveys limited to eliciting constituent priorities/needs, except that the City will not pay for any such surveys within 12 months of any election in which the requesting official may run. Furthermore, in no event shall the City pay for any polling activities related to any person or issue that is or is expected to be the subject of a political campaign.

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3. ~~Special events for the purpose of providing information to constituents on City services and programs, pursuant to City Council Policy No.~~

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~~Under no circumstances shall City funds be used to provide Gifts to constituents unless approved in advance by the City Council.~~

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J. EMPLOYEE RECOGNITION

~~Costs incurred by the Mayor or Council members in recognition of employee performance or service are authorized expenditures as long as such expenditures are consistent with the City's Administrative Policy No. 4.1.4.~~

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K. GRANTS

~~Councilmember or Mayor directed monetary contributions, to organizations are authorized expenditures only if the following criteria are met:~~

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1. ~~The amount of the contribution is at least \$250.00; and~~

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2. ~~The grant is in the form of a written agreement; and~~

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3. ~~The grantee is either:~~

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a. ~~A local nonprofit organization; a local unincorporated association; or a local political subdivision of the State of California (i.e. school district) and the grant is for educational, cultural, or recreational purposes, if the funding is from the Arena Community Fund; or~~

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b. ~~A local nonprofit organization; a local unincorporated association; or a local political subdivision of the State of California (i.e. school district) which provides services to San Jose residents or businesses, if the funding is from the General Fund.~~

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~~In no event shall grants be authorized for religious or political purposes.~~

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L. TRAVEL

~~Costs incurred related to official travel by the Mayor, each Councilmember, and their staff pursuant to City Council Policies No. 9-5 and 0-4 are authorized expenditures.~~

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M. FOOD AND BEVERAGE

Costs incurred by the Mayor and Council for the purchase of food and beverages under the following circumstance are authorized expenditures:

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1. Pursuant to City's Food and Beverage Expenditure Policy (City Policy Manual Section 5.1.5)

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2. Providing light refreshments at meetings or other events with constituents that are open to the public.

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The purchase of alcoholic beverages is not an allowable expense.

N. CONTRIBUTIONS TO NON PROFIT ORGANIZATIONS

Cash contributions to non profit organizations made by individual Council offices are subject to the provisions of Paragraph K above.

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In kind contributions of Council office staff time, use of City equipment, or use of City facilities, is only authorized if all of the following conditions are met:

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1. The organization is a nonprofit corporation, an unincorporated association, or a political subdivision of the State of California (i.e. school district);

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2. The organization provides services to San Jose residents; and

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3. The organization acknowledges the City of San Jose as the donor.

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O. UNAUTHORIZED EXPENDITURE OF PUBLIC FUNDS

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Notwithstanding any provision in this Policy to the contrary, the following costs incurred by the Mayor or City Council are not authorized expenditures and will not be paid for by the City:

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- 1. The personal portion of any trip;
- 2. Political or religious contributions or events;
- 3. Family expenses, including partner's expenses when accompanying official on City -related business, as well as children – or pet-related expenses;
- 4. Entertainment expenses, sporting events (including gym, massage and/or golf related expenses), or other cultural events; provided however, that expenses incurred in the use of the City's box at the Arena, subject to the provisions of City Council Policy 9.11 are authorized expenditures;

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- 5. Personal automobile expenses, including repairs, traffic citations, insurance, or gasoline; and
- 6. Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expenses is incurred.

PROCESS FOR PAYMENT AND REIMBURSEMENT AND REVIEW

All requests for reimbursements and processing of payments must be submitted to the City Clerk. The City Clerk will process certain requests pursuant to the following City policies:

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- 1. Employee Travel, City Policy Manual, Section 1.8.2
- 2. City Procurement Cards, City Policy Manual, Section 5.1.2
- 3. Petty Cash and Change Funds, Finance Administrative Manual, Section 5.6

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Each of these policies has certain restrictions and limitations on what expense types are allowable under the particular policy.

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All other expenses not covered by the above policies must be submitted to the City Clerk for processing and reimbursement using the Expense Reimbursement Form available on the Finance Department Intranet.

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