



## *Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** Mayor's Biennial Ethics Review  
Panel on February 16, 2010

**DATE:** March 29, 2010

---

On December 15, 2009, the City Council considered the Mayor's Biennial Review of the Ethics Ordinances and referred four issues to the Elections Commission and the people who participated in the Mayor's Ethics Review Panel on October 13, 2009:

1. Avoiding Conflicts of Interests Arising from Family Relationships
2. Closing a Loophole in Lobbyist Registration and Disclosures
3. Protecting Public Participation in Council Hearings
4. Limiting Anonymous Complaints to the Elections Commission

On February 16, 2010, five participants from the October 13<sup>th</sup> Panel met to discuss these referrals from the Council: Carl Cookson, Carole Leigh Hutton, Shirley Lewis, Tom Mertens and Alex Stuart. The February 16<sup>th</sup> Panel considered the following documents:

1. Memorandum from Mayor Chuck Reed to City Council, dated December 4, 2009, regarding "Mayor's Ethics Review Recommendations – Supplemental"
2. Memorandum from Councilmembers Ash Kalra, Nancy Pyle and Kansen Chu to Honorable Mayor and City Council, dated December 11, 2009, regarding "2009 Mayor's Biennial Ethics Review" recommendations
3. Memorandum from Mayor Chuck Reed to City Council, dated December 14, 2009, regarding "2009 Mayor's Biennial Review of Ethics Ordinances Amended and Restated"
4. Excerpt of Synopsis of City Council Meeting on December 15, 2009, Item 3.4: "Mayor's 2009 Biennial Review of Ethics Ordinances"
5. Editorial of the San Jose Mercury News, dated December 27, 2009, regarding "Lobbyist or not, it's disclosure that matters"
6. Letter from Ben Field, Chief of Staff, South Bay Labor Council, to Members of the Ethics Panel, dated January 29, 2010
7. Memorandum from Lisa Herrick, Sr. Deputy City Attorney, to Elections Commission, dated February 3, 2010, regarding "Nonprofit Organizations – Lobbying Regulations"

8. Memo from Lee Price, City Clerk, on behalf of Elections Commission Subcommittee on Anonymous Complaints, to the Elections Commission, dated February 3, 2010, regarding "Subcommittee Recommendation Regarding Anonymous Complaints"
9. Letter from Supervising Attorney James Zahradka, Law Foundation of Silicon Valley, to Members of the Ethics Panel, dated February 8, 2010, regarding "Ethics Reform Proposals"
10. Email from E. Chris Wilder, Executive Director, Valley Medical Center Foundation, to Ethics Panel Members, dated February 10, 2010, regarding "Message to ethics panel members"
11. Email from Gregory R. Kepferle, CEO, Catholic Charities of Santa Clara County, to Members of the Ethics Panel, dated February 10, 2010, regarding "Nonprofit Lobbying Regulations Proposed Change"
12. Memorandum from City Attorney Richard Doyle, to Participants in Mayor's Biennial Ethics Review Panel on October 13, 2009, dated February 11, 2010, regarding "Mayor's Biennial Ethics Review"
13. Letter from Mayor Chuck Reed to Mayor's Biennial Ethics Review Panel Participants, dated February 16, 2010, regarding "Closing a Loophole in Lobbyist Registration and Disclosure"

The following is a summary of the February 16<sup>th</sup> discussion:

### **Avoiding Conflicts of Interests Arising from Family Relationships**

The Council referral seeks input on the Mayor's recommendation that Council Policy 0-32 be amended to state that if a City Official has a family member involved in a matter and there is no legal conflict of interest then the City Official must disclose the relationship on the record at the time a decision is made.

The Mayor's recommendation would apply to all "City Officials", as defined in Section 12.12.120 of the San Jose Municipal Code:

"City Official" includes the Mayor and Members of the City Council; any appointee of the City Council; Mayoral or Council staff member; Redevelopment Agency Board Member; members of the Planning Commission, Appeals Hearing Board, Civil Service Commission; any City representative to any joint powers authority to which the City is a party; the City Manager and his or her Assistant City Manager and Deputy City Managers; the Executive Director of the Agency and his or her Assistant and Deputies; City department heads; and Agency division heads.

Some participants expressed concern about what "family member" means and stated that some "bright line" was necessary. At least one participant was also concerned about the possibility that a family member, however defined, could be involved in a matter but the City Official might not have knowledge of that involvement.

Some participants questioned how disclosure would actually occur for those City Officials who are not Councilmembers and cautioned that any process should be simple. Some participants suggested that "City Officials" should be limited to the Councilmembers, Council Appointees, Planning Commissioners, Appeals Hearing Board Members, Civil Service Commissioners and Elections Commissioners, since those officials actually preside over public hearings.

The Panel agreed that San Francisco's disclosure requirement is a good model. Section 3.214 of the Campaign and Governmental Conduct Code requires:

A City officer or employee shall disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this Section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the City officer or employee's department, board, commission or agency shall constitute the public record.

### **Closing a Loophole in Lobbyist Registration and Disclosures**

The Mayor's recommendation is to amend the Lobbying Ordinance to narrow the lobbyist registration exemption for 501(c)(3) nonprofit organizations, requiring a nonprofit organization to register and comply with the ordinance if it is engaged in lobbying activity and is controlled, as defined below, by another entity that is required to register under the lobbying ordinance.

The proposed change would require the registration of officers and employees of a 501(c)(3) organization engaged in lobbying activity if it is controlled by an entity that is already required to register as a lobbying organization. All other 501(c)(3) organizations would remain exempt.

The definition of control would be:

- a. The other entity directly or indirectly appoints or selects members of the Board of Directors, officers or employees of the nonprofit; or
- b. The same person or organization manages or directs the nonprofit and the other entity; or
- c. The other entity and the nonprofit commingle assets, employees or expenses.

The participants expressed a broad range of views on this issue. Some participants asserted that disclosure of contacts with City Officials by nonprofits is desirable, and if registering as a "lobbyist" has a negative connotation, then a nonprofit organization could be labeled as a "registered advocate". These same participants also suggested that the City could waive the lobbying fees for registered advocates.

One participant agreed with the Mayor's recommendation to narrow the lobbyist registration exemption for 501(c)(3) nonprofit organizations, requiring a nonprofit organization to register and comply with the ordinance if it is engaged in lobbying activity and is controlled, as specifically defined, by another entity that is required to register under the lobbying ordinance.

Still another participant objected to the recommendation that nonprofit organizations be required to register as lobbyists. This participant argued that a nonprofit has no "agenda" when speaking with City Officials because it will not receive any financial gain; in other words, the nonprofit is simply trying to advance social policy.

### **Protecting Public Participation in Council Hearings**

The Council directed the Panel to review the concept of allowing, beyond the Brown Act, for public comments and debate about items on the Agenda during Orders of the Day even if the City Council is not debating any items during Orders of the Day.

The Panel questioned whether it should be providing input on this issue and concluded that the Council should rely on its own rules of conduct and decide the order and substance of business on the Agenda.

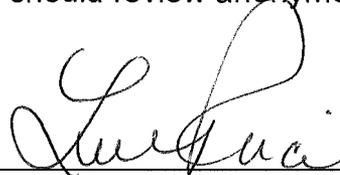
### **Limiting Anonymous Complaints to the Elections Commission**

The Council referral seeks the Panel to consider whether the phrase "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint and review and determine what additional situations would constitute "good cause" for providing anonymous tip line complaints for inclusion in the regulation.

Generally, the Panel disagreed with allowing anonymous complaints to the Elections Commission at all and asserted that it is important to assess the credibility of a complainant. At least one participant acknowledged, however, that there could be good reasons for permitting an employee to make an anonymous complaint about his or her employer.

Some participants also expressed concern that, under the current regulations and procedures of the Elections Commission, the Chair or Vice-Chair of the Commission was responsible for determining whether or not "good cause" exists. Instead, at least

one participant concluded that the Evaluator for the Elections Commission, along with the Chair or Vice-Chair of the Commission, should review anonymous complaints to determine whether "good cause" exists.



---

LEE PRICE, MMC  
City Clerk