

# Memorandum

---

**TO:** Sunshine Reform Task Force

**FROM:** Lee Price, City Clerk  
Lisa Herrick,  
Sr. Deputy City Attorney

**SUBJECT:** Overview of Ethics and Conduct    **DATE:** August 10, 2007

---

The purpose of this memo is to inform the Sunshine Reform Task Force about laws and policies – whether they are existing or newly approved – that relate to ethics and conduct in San Jose. We hope that this will help the Task Force frame the work of the Ethics and Conduct Subcommittee.

## **A. Ethics and Conduct Generally**

1. City Charter Section 607: Section 607 requires that the Mayor and City Council “adopt and maintain a Code of Ethics to provide guidance to City officers and employees in their conduct while discharging their public responsibilities.” The Code of Ethics must include ordinances concerning campaign contributions, lobbyists, gifts, honoraria and the “revolving door.”

Beginning in 1993, the Mayor is required to conduct a review of the City’s Code of Ethics every 2 years and make recommendations for amendments to the Code of Ethics and its implementing ordinances.

In August 2003, the City Council established a Blue Ribbon Task Force of Councilmembers to conduct a comprehensive review of the City’s ethics issues and ordinances. The Task Force met for one year, between April 2004 and April 2005, and made a number of recommendations which were adopted by the Council as discussed below.

2. Ethics Policies: Beyond Title 12 of the San Jose Municipal Code, which includes ordinances concerning campaign contributions, lobbyists, gifts, honoraria and the “revolving door,” among other topics, the Council and City employees are subject to the Code of Ethics Policy that was first adopted in 1980 and most recently revised in June of 2005, on the recommendations of the Blue Ribbon Task Force.

## **B. Conflicts of Interest**

1. Disclosure and Sharing of Material Facts: In April 2006, the Council approved a policy requiring each Councilmember, including the Mayor, to publicly share substantive information that is relevant to a matter under consideration by the City

Council, which he or she has received from sources outside of the public decision-making process, before the City Council takes any action on the item.

2. Council-Staff Interaction: Also in April 2006, the Council approved a policy to ensure that staff recommendations reflect their independent professional judgment while also ensuring that the Mayor and Councilmembers have timely access to information about development projects and are free to express their viewpoints about them.

3. Disclosure of Income and Time: In August 2006, the Council passed an ordinance requiring elected officials to (a) disclose on a quarterly basis the time spent by the elected official on performing services unrelated to the elected official's duties of office and the income earned from such services and (b) identify a single source of income once he or she receives five thousand dollars (\$5,000) or more from that single source in the reporting year.

4. Declaration of Conflicts of Councilmembers: In November 2006, the Council adopted a resolution approving a Disclosure of Conflict of Interest Policy requiring the Mayor, Councilmembers and members of City Boards and Commissions to conduct a review of agenda items in order to publicly disclose the nature of any conflict of interest. The Policy requires the Mayor, Councilmembers and members of City Boards and Commissions to publicly disclose a conflict of interest by filing a Declaration Form with the City Attorney and City Clerk 24 hours before a meeting at which the item will be heard.

The Policy requires the identification of specific economic interests which creates a conflict of interest under state law. For example, if a business entity is the Councilmember's economic interest which creates a conflict, the Councilmember must disclose the name of the business entity on the Declaration Form. If a Councilmember has a financial interest in a pending agreement or contract (as described in Gov. Code Section 1090) then the description of the agreement or contract and the Councilmember's interest in the matter must be disclosed on the Declaration Form.

Additionally, a conflict of interest referred to as a "common law" conflict of interest may cause disqualification even if based on a non-economic conflict of interest. Such a conflict may arise where a Councilmember has a private or personal interest which renders them unable to make a fair or impartial decision and therefore conflicts with their official duties.

5. Board and Commission Code of Conduct Policy: In June 2007, the Council adopted a resolution approving the Board and Commission Code of Conduct Policy. This policy governs the conduct of Councilmembers who act as liaisons to City Boards and Commissions. Among other things, the policy makes clear that liaisons should not give direction to or try to influence the Board or Commission on which he or she sits. The policy also clarifies that in the event of an administrative hearing, Councilmembers should not speak with Commissioners on any matter that may be set before the City Council in order to influence a Commission's decision. Moreover, when a Councilmember testifies on his or her own behalf or as a witness in an administrative

hearing which is later set before the Council, the Councilmember is disqualified from participating in the proceeding before the Council only if there is a legal conflict of interest.

6. Expenditure/Reimbursement Policies: As of the date of this memo, the City Council is expected to consider a comprehensive expenditure and reimbursement policy on August 28, 2007. The policy generally provides that (a) the Mayor and Councilmembers should be reimbursed for expenses incurred in the performance of their duties or functions of office and (b) the office staff to the Members of the City Council should be reimbursed for actual and necessary expenses incurred while performing official business of the City when such expenses are authorized or approved. The policy addresses compensation of office staff, retention of consultants, office supplies and equipment, admission to events, membership dues, publication subscriptions, advertising, constituent outreach, employee recognition, grants, food and beverage and contributions to certain organizations.

A revised Travel Policy and a new Special Events Policy will be approved soon as well; one of the recommendations of the Blue Ribbon Task Force, which was adopted by the Council in February 2005, was to terminate the individual Councilmembers' special events accounts.

7. Process Integrity Guidelines: On November 9, 2004, the Council adopted the "Procurement Process Integrity Guidelines" for the New City Hall Converged Network procurement. The Guidelines addressed various elements of interaction between prospective proposers and the City during the procurement process and included a vendor code of conduct and Declaration Form that is required from any firm that was interested in proposing on the Converged Network RFP.

On February 6, 2007, the City Council adopted the Procurement and Contract Process Integrity and Conflict of Interest Policy and administrative procedures. The Policy is intended to: (a) ensure integrity in all procurements and contract processes; (b) educate City employees, consultants, uncompensated outside parties, and any person involved in the decision to award a contract about potential Conflicts of Interests; and (c) establish guidelines for procedural screening of conflicts of interests. The policy provides a fair opportunity to participants in competitive processes for the award of City contracts; conflicts of interest are eliminated through the inclusion of a communication protocol, respondents' code of conduct and confidentiality during the evaluation process.

### **C. Discipline of Council**

1. Removal/Recall: In December 2006, the Council approved an ordinance that implements Charter Section 405 by setting forth the grounds and procedure for removing a member of the City Council from office. Removal will be initiated only for the most serious and egregious offenses and as a last resort. Moreover, in the event that a successful petition to recall that member of the Council was filed, the removal proceedings would be terminated.

2. Admonition, Sanction or Censure: In November 2004, the Council revised the Censure Policy (now known as the Council Conduct Policy) on the recommendations of the Blue Ribbon Task Force. This policy provides a procedure for admonition, sanction or censure of a member of the Council for violation of federal or state law, City ordinance or City policy.

#### **D. Lobbyists/Revolving Door**

1. Revolving Door Ordinance: In June 2007, the Council approved extending the revolving door prohibition from 1 year to 2 years. Officials, employees, commissioners, or consultants who have terminated their service with the City or Agency may not (a) work on any matter which they worked on in the 12 months preceding their termination of service with the City or Agency or (b) represent anyone on any issue before the City or Agency.

2. Lobbyist Ordinance: In August 2004, the Blue Ribbon Task Force on Ethics and Lobbyists recommended (a) expanding the definition of lobbyists and lobbying activity and (b) adding certain disclosures.

In February 2007, the Council approved an increase in the late filing fee for lobbyist quarterly reports from \$10 per day to \$50 per day. Also in February 2007, the Council approved the Mayor's recommendation to amend the Municipal Code to require elected officials to disclose all meetings with lobbyists on issues before the Council.

In June 2007, the Council passed an ordinance:

- Banning compensation for lobbying activity when the compensation is directly dependent on the result of legislative or administrative actions that are the subject of lobbying activity (i.e. success fees).
- Requiring disclosure of a compensation arrangement where the lobbyist is not specifically compensated to engage in lobbying activity but compensation depends on the result of a legislative or administrative action and/or any other event.
- Amending the definition of In-House Lobbyist to include "organizations, businesses, or associations with an owner, officers, or employees that in the aggregate engage in lobbying activity for 10 or more hours in any 12 month period" with certain exemptions.
- Exempting compensated employees or officers of a nonprofit organization with tax exempt status under IRC 501(c)(3) and whose attempts to influence are on behalf of the organization.
- Authorizing accrual of interest on late fees incurred for filing a late quarterly report.

In August 2004, the Council first implemented fees for registration of lobbyists, upon the recommendation of the Blue Ribbon Task Force.

## **E. Training**

1. Orientation for Newly Elected Officials: Since at least 2000, the City Manager, City Clerk and City Attorney have provided training to newly elected officials on, among other things, the Council Policies and Code of Ethics.

2. Ethics Training: The Blue Ribbon Task Force recommended regular ethics training for the City Council and management staff. The first training occurred in January 2005. This training now occurs in conjunction with AB 1234 training, which is discussed in the next section.

3. AB 1234: On October 7, 2005, Governor Schwarzenegger signed AB 1234. Beginning January 1, 2006, all local agencies that provide compensation, salary, or stipend to, or reimburses the expenses of, members of a policy body must provide ethics training to local agency officials by January 1, 2007, and every two years thereafter on the following topics:

- Personal financial gain by public servants
- Conflict of interest, bribery and nepotism
- Gift, travel and mass-mailing restrictions
- Honoraria, financial interest disclosure and competitive bidding
- Prohibitions on the use of public resources for personal or political purposes
- The Brown Act open meeting law
- The Public Records Act

4. Quarterly Ethics Training: Reed Reform # 26, approved by the Council in January 2007, requires staff to conduct “regular public hearings on ethical issues around the state so we can learn from our mistakes and the mistakes of others.”

5. Council Assistants Certification: Reed Reform # 25, approved by the Council in January 2007, requires staff to “create a training program for Mayoral and Councilmember staff to ensure they are fully aware of laws and ethical standards so they can help their bosses follow the law.” The first training is scheduled in August 2007.



SUNSHINE REFORM TASK FORCE



# *Ethics and Conduct Overview*

# Ethics and Conduct



- City Charter
  - Biannual Review
  - Blue Ribbon Task Force
- Ethics Policies
  - Campaign contributions
  - Lobbyists
  - Gifts and Honoraria
  - “Revolving Door”

# Conflicts of Interest



- Disclosure of Material Facts
- Council-Staff Interaction
- Disclosure of Income and Time
- Declaration of Conflicts of Councilmembers
- Board & Commission Code of Conduct
- Expenditure/Reimbursement
- Process Integrity Guidelines

# Discipline of Council

- Removal/Recall
- Admonition, Sanction or Censure



# Lobbyists



- Revolving Door Ordinance
- Lobbyist Ordinance

# Training



- Orientation for Newly Elected Officials
- Ethics for Council and Management Staff
- AB 1234
- Quarterly Ethics Training for Council
- Council Assistants Certification