

## Analysis of Ethics and Conduct Proposals and Comparison with Other Jurisdictions

September 2007

### Reform Proposals

A number of proposals were submitted to the Sunshine Reform Task Force involving ethics and conduct. The questions presented are whether any of these proposals reflect existing practice or are being proposed as a current amendment to the Lobbyist Ordinance (Chapter 12.12 of the San Jose Municipal Code) and whether other jurisdictions address the issues in their ordinances. Norm Sato, Chief Deputy City Attorney and Rosa Tsongtaatarii, Deputy City Attorney, provided the analysis below.

**8. Require filing of lobbyist disclosure reports within 48 hours, or two business days, of the occurrence of reportable lobbying and fundraising activity.** (Councilmember Cortese, June 13, 2006)

There is no current requirement that lobbyists report fundraising activity within 48 hours in the Code. Lobbyists are required to disclose fundraising activity in their registration and quarterly report. Elected officials, under Chapter 12.16, are required to disclose fundraising activity on a bi-annual basis.

Los Angeles does require lobbyists to disclose fundraising activity within 1 business day of reaching a threshold amount, \$15,000 for councilmembers and \$35,000 for the mayor. L.A. also requires lobbyists to disclose contributions to the elected official or their controlled committee within 1 business day after triggering the threshold amount of \$7,000.

**9. Request the City Clerk to make available the reports required in #8 above, real-time on the City of San Jose website, including lobbyist fundraising activities, contributions raised/offered, and solicitations made on behalf of an elected official.** (Councilmember Cortese, June 13, 2006)

There is no current requirement in the City's ordinance to make any reports available online. In practice, the Office of the City Clerk can make disclosures (e.g. contingency fee disclosure) available online within 1 business day.

Of the jurisdictions reviewed, none requires real time posting of disclosures. Although various other cities do provide that when feasible, lobbyists are required to file online as well as a hardcopy for purposes of auditing their registration, quarterly report, and any other lobbyist forms.

**10. Permanently ban former employees of San Jose elected officials from returning to City Hall to lobby their former supervisors.** (Councilmember Cortese, June 13, 2006)

The City's Revolving Door Ordinance (Chapter 12.10) bans City and Agency Officials and designated employees from lobbying for two years. The Attorney's Office researched this issue and reported its conclusions in a memo to the Rules and Open Government Committee (February

28, 2007 ["Response to the Report of the Government Reforms & Ethics Subcommittee of the Mayor's Transition Committee"](#)).

No review of other jurisdictions was conducted.

**11. Prohibit former city employees, including elected officials, from registering as lobbyists or providing consultation services to a registered lobbyist for at least eight years, the equivalent of two terms in office, after they leave City Hall. Former city employees or elected officials should not be able to exert undue influence on public policy.**

(Councilmember Cortese, June 13, 2006)

Same answer as above.

The Lobbyist Ordinance contemplates that some lobbyists may be providing consultant services to the City or Redevelopment Agency; it is one of many disclosures in their registration and quarterly reports.

Most other jurisdictions also require disclosure by lobbyists of any compensation received from consulting for the city.

Oakland restricts any officer of the city or person that has held the position of department head or budget director from being a lobbyist for 1 year after leaving office.

**12. Prohibit registered lobbyists, whose primary occupation is to influence the outcome of legislation from serving directly or indirectly through others, as fundraisers, treasurers or other campaign employees/consultants for candidates for office.** (Councilmember Cortese, June 13, 2006)

Same answer as above.

San Francisco is the only jurisdiction of those surveyed that does prohibit campaign consultants, individuals with ownership interest in campaign consultants, and employees of campaign consultants from lobbying their current or former client while they are in office.

**13. Require the mayor and city council members to report offers of employment and/or negotiation of future employment with any corporation, organization or entity that has or anticipates having legislative issues pending before the city council.** (Councilmember Cortese, June 13, 2006)

Chapter 12.15 imposes regulations with regard to prospective employment. City elected officers are required to report negotiations and employment offers with prospective employers. The Chapter applies to Prospective Employment where it is foreseeable that the financial interests of the employer could be materially impacted or affected by the decisions of the elected officials. There are disclosure requirements and forms available. The Chapter prohibits participation in any decision involving the financial interest of a Prospective Employer.

Moreover, the Political Reform Act and Government Code section 1090 requires that officials not have any financial conflict of interest. If elected officials are negotiating future employment with a source of income that has a matter before them, the elected official can potentially be criminally prosecuted and any contract entered into by the City may be void.

Of the jurisdictions surveyed, none of them requires this disclosure of the elected official. San Diego does require lobbyists to disclose within 10 days of when they employ a city official or employee.

San Francisco also requires the lobbyist to disclose within 10 days when they have hired an official or city employee and when there has been an appointment of an employee of the lobbyist or lobbyist to a city or county office.

**14. To prevent conflicts of interest and to expose sources of influence, all contributions to city councilmembers must be made available online for San Jose citizens to review.**

(Pete Campbell, August 17, 2006)

Lobbyists in San Jose are required to disclose contributions they made, delivered, or acted as an intermediary for whether the contributions were made on their own initiative or at the behest of an elected official or their controlled committee. These contributions are disclosed in their registration and quarterly report, and the reports are posted online.

**15. June 27, 2006, City Council Meeting, Item 3.12, Meeting Agenda, City Council approved referral of the definition of “contacts” by registered lobbyists to the Sunshine Reform Task Force to determine whether further differentiation between types of contacts and additional information is warranted in the disclosure documents now required by lobbyists.**

In the proposals to be presented to the City Council in October 2007, staff will be amending the definition of “contact” and “lobbying activity” to clarify the scope.

As for the disclosures required, San Jose has substantially similar or more disclosure requirements than the other cities.

Of the jurisdictions surveyed, several distinguish between “contacts” and “lobbying activity” making the latter cover a broader scope of activity. But these definitions need to be reviewed within the context of the threshold for registration.

San Diego does require lobbyists to disclose any persons who engaged in fundraising activity or campaign related services for a current elected official during the 2 year period preceding their filing date.

There are also a number of disclosures discussed above that would mitigate undue influence by lobbyists on elected officials and by former officials and employees.