



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

County Counsel

DATE: April 11, 2006

BOARD MEETING DATE: May 2, 2006
SPECIAL NOTICE/HEARING: No
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: Thomas F. Casey III, County Counsel
SUBJECT: Amendment to Travel Expense Reimbursement Provisions of the Ordinance Code and Designation of County Employment Positions to Receive Ethics Training

RECOMMENDATION:

Adopt An Ordinance Amending Title 2, Chapter 2.12 Sections 2.12.250, 2.12.270, 2.12.290, 2.12.300, 2.12.310, 2.12.320, Adding 2.12.315 And Repealing 2.12.280 Of San Mateo County Ordinance Code Relating To Reimbursement Of Travel Expenses Of County Officers And Employees.

Resolution Designating Those Positions Of County Employment To Receive Ethics Training In Accordance With Title 5, Division 2, Part One ,Chapter 2, Article 2.4 Of The Government Code.

Direct County Counsel to Conduct Ethics Training As Required.

VISION ALIGNMENT:

Commitment: Responsive, effective and collaborative government.

Goal(s): Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

BACKGROUND:

Last summer, at Supervisor Gordon's request, the Board directed County Counsel to review various ethics related laws and ordinances that are available for the County to consider and to present a report to the Board. My office prepared the report; however, it was not placed on the Board's agenda because at the end of our review, the legislature passed legislation that dealt with some of the items raised in the

report. These items include requirements regarding : (1) ethics training and (2) restrictions on post governmental employment ("revolving door"). A copy of our report is attached for your information.

In December 2005, we informed the Board of the new additions to the Government Code that establish requirements for travel expense reimbursement as well as mandating ethics training for County officials. The County already has an ordinance setting forth the requirements for reimbursement of travel expenses. The current ordinance, however, needs amending to reflect the new provisions.

DISCUSSION:

Requirements For The Reimbursement Of Travel Expenses

We have prepared an amended ordinance for your consideration that addresses the new statutory requirements. The amendments provide that:

- Government and group rates offered by a provider of transportation services shall be used when available.
- The maximum reimbursement for the actual cost of meals will be limited to the Continental United States (CONUS) current rate as set forth in the Code of Federal Regulations. This limit will be increased to double the amount for cities designated as high cost of living metropolitan areas in CONUS. This reimbursement rate methodology is consistent with rates used by other Bay Area counties.
- Government and group rates offered by a provider of lodging services shall be used when available. If such rate is not available, the maximum reimbursement rate shall be limited to double the amount of the CONUS rate or the group rate, whichever is higher.
- All expenses for members of the Board of Supervisors that do not fall within the above provisions or the Internal Revenue Service reimbursable rates shall be approved by the Board of Supervisors at a public meeting before the expense is incurred.
- Expense reports shall be submitted within one hundred and twenty (120) days after incurring the expense.
- Members of the Board of Supervisors shall provide a brief report, either verbally or in writing, on meetings attended at the expense of the County at the next regular meeting of the Board.

In addition to the above required changes, the proposed ordinance contains small technical changes to update the ordinance to reflect present reimbursement procedures.

Ethics Training

Government Code § 53234 requires that, beginning January 1, 2006, "local agency officials" must receive two hours of ethics training every two years. Officials who will leave office before the end of 2006 are exempt. Pursuant to the statute the following "local agency officials" must receive training: members of the Board of Supervisors, Assessor-County Clerk Recorder, Controller, Coroner, District Attorney, Sheriff and Tax Collector-Treasurer. The law further states that if the County provides any type of compensation, salary, stipend or provides reimbursement for expenses incurred by a member of a legislative body in the performance of official duties, then the members need to receive training. Legislative bodies are defined as those that are otherwise covered by the Brown Act.

Members of the following Boards and Commissions receive a stipend:

- Aids Community Advisory Board
- Assessment Appeals Board
- Bayside Design Review
- Building and Permit Appeals Board
- Civil Service Commission
- Coastside Design Review
- Planning Commission

Members of the following Boards and Commissions receive reimbursement for mileage or expenses:

- Arts Commissioners
- Commission on Aging
- Commission on Disabilities
- Commission on the Status of Women
- Mental Health Board
- Parks and Recreation Commissioners

In addition to the County officials and the members of the above listed Boards and Commissions, the statute provides that the Board can designate categories of County employment positions that should receive ethics training. Our office, in consultation with the County Manager, has drafted a proposed resolution that provides that employees who are in the position of "department head" should receive training.

Newly adopted Fair Political Practices Commission regulation 18371 enumerates the topics to be covered in the training. In addition, the Attorney General's office has issued "guidance" on course content. The training shall cover "ethics laws," which include, but are not limited to:

- Laws relating to "personal financial gain by public servants", including laws prohibiting conflicts of interest and bribery;
- Laws relating to "claiming prerequisites of office" such as gifts and travel, use of public resources or gifts of public funds, mass mailing restrictions, and

prohibitions on the receipt of free or discounted transportation;

- "Government transparency laws" such as financial interest disclosure requirements, the Brown Act, and the Public Records Act; and
- Laws relating to "fair processes" including those covering bias, due process, incompatible offices, competitive bidding, and nepotism.

Our office recommends that the County Counsel's office provide this training with advice and assistance as we deem necessary. We propose offering a two hour interactive session so issues relevant to this County can be raised and discussed. The training would be scheduled sometime during the late summer and early fall. To make the training convenient, we will provide multiple training sessions to accommodate varying schedules.

Restrictions On Post-Governmental Employment

In addition to the above, Government Code §87406.3 becomes effective on July 1, 2006. It prohibits Members of this Board, as well as the Assessor-County Clerk-Recorder, Controller, Coroner, District Attorney, Sheriff, Tax Collector-Treasurer and the County Manager, for a period of one year after leaving those positions, from acting as a paid agent in order to influence an action by the County. This would include County actions that are administrative, legislative, granting or denying permits, licenses, entering into contracts, or the sale or purchase of goods or property. This statute will prohibit paid appearances before, or communication with, the Board, individual members of the Board, any committee, any other officer or employee of the County. Violation of this section would be subject to administrative, civil, and criminal penalties.

FISCAL IMPACT:

None anticipated other than the minimal cost of training materials. If, in the future, a decision is made to develop an on-line training program, there may be some cost associated with the development of such a program.


THOMAS F. CASEY III, COUNTY COUNSEL

Att.

cc: John Maltbie, County Manager

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COUNTY OF SAN MATEO
Inter-Departmental Correspondence

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DATE:

BOARD MEETING DATE:

SPECIAL NOTICE/HEARING: N/A

VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: Thomas F. Casey III, County Counsel
SUBJECT: Various Ethics Related Laws and Ordinances

RECOMMENDATION:

Accept Preliminary Report Regarding Various Ethics Related Laws and Ordinances.

BACKGROUND:

The Board of Supervisors requested County Counsel to prepare a preliminary report that catalogues the various ethics related laws and ordinances that are available for the County to consider and that identifies some techniques to engage the public in the review of the way the County conducts its business.

DISCUSSION:

In addition to state law and regulations, we reviewed several techniques used by the City and County of San Francisco, City of San Jose, County of Los Angeles and County of Santa Clara to regulate Board member activities. These techniques include regulating: (1) campaign activities relating to contributions, (2) officeholder activities relating to officeholder accounts, gifts, and incompatible activities, (3) former officeholder activities and (4) activities of persons other than the officeholders such as lobbyists.

REGULATING ACTIVITIES DURING OFFICE

Campaign Contribution and Spending Limits

State Law Applicable to San Mateo Elected Officials

While state law does not limit the amount of contributions that a candidate for local

office can receive, the Political Reform Act does require disclosure of campaign contributions and expenditures for candidates and officeholders who receive contributions totaling \$1,000 or more in a calendar year. There are also restrictions on how campaign funds are to be used. In general, expenditures from a candidate or recipient committee's campaign funds must be reasonably related to a political, legislative, or governmental purpose. Any expenditure that confers a substantial personal benefit on an individual must be directly related to a political, legislative, or governmental purpose. The Political Reform Act does not require limits on spending for local campaigns.

Existing San Mateo County Limitations by Charter or Ordinance

Chapter 2.205 of the ordinance code sets the campaign contribution limit at \$1,000, from any person or entity, per primary/general elections.

City and County of San Francisco

San Francisco restricts candidates from accepting contributions of more than \$500, from any person, for the primary and general election and \$250 for a run-off election.

City of San Jose

City of San Jose has a separate \$100 limit per primary and general election from any person, with a \$250 limit if voluntary spending limits are not exceeded.

County of Los Angeles

The County of Los Angeles has a limit, from any person, of \$200 per primary and general election with a \$1,000 limit if voluntary spending limits are not exceeded.

County of Santa Clara

County of Santa Clara has a \$250 per election, with a \$500 limit if voluntary spending limits are not exceeded.

Officeholder Accounts

State Law Applicable to San Mateo Elected Officials

At one time state law regulated officeholder accounts. Those provisions have been repealed. Presently, the Political Reform Act provides that after an election, a successful candidate has the option of maintaining his or her committee and campaign bank account. An officeholder who maintains a committee may: (1) continue to receive contributions, (2) use campaign funds to offset officeholder expenses and (3) use the funds for future elections. An unsuccessful candidate may use the money remaining in the campaign fund account for a future election for either the same office or a different office; however, new bank accounts must be set up.

The Political Reform Act does require disclosure of campaign contributions and expenditures for officeholders who receive contributions totaling \$1,000 or more in a

calendar year.

Existing San Mateo County Limitations by Charter or Ordinance

There are no limitations other than the applicable sections of the Political Reform Act.

City and County of San Francisco

San Francisco prohibits officeholder accounts.

City of San Jose

Contributions to officeholder accounts are limited to \$250 per calendar year with a \$10,000 aggregate limit. In addition, no officeholder contributions may be collected or spent during a campaign contribution period. The funds from the account can only be used for officeholder expenses. These funds cannot be used for campaign purposes.

County of Los Angeles

Los Angeles County limits the annual contribution to \$1,000 per contributor with an aggregate limit of \$75,000 per year. No contributions or expenditures can be made from the account during the campaign period.

County of Santa Clara

There are no limitations other than the applicable sections of the Political Reform Act.

Gift Limits

State Law Applicable to San Mateo Elected Officials

Government Code § 89503 limits the amount Board members may accept as gifts. Gifts valued in excess of \$360 generally may not be accepted from any single source in any calendar year. This gift limit is adjusted every odd-numbered year. The gift limit is applicable only to individuals and entities that would have to be disclosed on the Board member's Form 700.

Existing San Mateo County Limitations by Charter or Ordinance

There are no limitations other than those set forth in Government Code § 89503. County Administrative Memorandum B-3 further limits gifts to county officers and employees to \$50, if business is transacted or is in a recommending, advisory, or decision-making capacity with respect to such business. This memorandum does not apply to members of the Board of Supervisors.

City and County of San Francisco

San Francisco has a gift limit of \$100 from certain sources. The restricted sources are persons doing business with or seeking to do business with the official's department or persons who during the prior twelve months knowingly attempted to

influence the officer in any administrative or legislative action.

City of San Jose

Council members cannot accept gifts over \$50 from any person who is subject to the decision-making or recommending authority. The reporting and disclosure of gifts, which are not prohibited, as well as the gift limitations and disqualification requirements are in accordance with Government Code § 89503.

County of Los Angeles

There are no limitations other than those set forth in Government Code § 89503.

County of Santa Clara

There are no limitations other than those set forth in Government Code § 89503.

Incompatible Activities of Officers

State Law Applicable to San Mateo Elected Officials

Government Code § 1090 and the Political Reform Act prohibit or restrict Board members from having financial interests in business transactions or contracts over which they have authority. In regards to "incompatible activities," Government Code § 1126 prohibits local agency officers or employees from "engaging in any employment and activities which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer." Section 1126 is not self-executing and it mandates local agencies to adopt rules governing its application.

Existing San Mateo County Limitations by Charter or Ordinance

Chapter 2.188 of the ordinance code mandates department heads to formulate rules regulating incompatible activities of officers, employees and Board appointed members of boards and commissions. These rules may prohibit outside activity or employment that involves: (a) the use of County time, facilities, equipment or supplies or the badge, uniform, prestige or influence of his County office or employment, (b) the receipt of money for work that the employee was required to do in his or County employment, (c) the performance of an act that may be subject to control, inspection, review, audit, or enforcement of any other officer or employee of the County, or (d) it involves such time demands as would interfere with the efficient performance of County duties. The rules also provide for disclosure and review of outside activities. Chapter 2.188, however, does not apply to members of the Board of Supervisors.

City and County of San Francisco

Board members cannot engage in employment of activities that are incompatible. The definition of incompatible activities essentially mirrors state law.

City of San Jose

The City Charter provides that no member of the Council shall hold any other City

office or City employment, other than Mayor, during the term for which he or she was elected to the Council; provided and excepting, however, that a member of the Council may become a member of any advisory, administrative or governing body of any special purpose district, entity, organization or committee when such is authorized by State law or where the offices are not incompatible. The City of San Jose does not have any ordinances that regulate incompatible activities of City Council members.

County of Los Angeles

The County of Los Angeles does not have any ordinances that regulate incompatible activities of members of the Board of Supervisors.

County of Santa Clara

The Santa Clara County ordinance restricts outside activities of members of the Board of Supervisors. It prohibits a Board member from participating in outside employment for compensation if: (1) it would substantially interfere with the member's ability to carry out official duties or exercise independent judgment on behalf of the public interest, or (2) where the amount of time expended in such engagement exceeds an average of one day per week, or (3) where any part of the Board member's effort will be subject to approval by the Board of Supervisors or any other County board, officer or employee. In addition, Board members are "discouraged from participating" in non-compensated activities which involve: (1) a substantial commitment of time or (2) matters which come regularly before the Board.

Limitation of Board Member Activities Relating to Spouses and Domestic Partners

State Law Applicable to San Mateo Elected Officials

The Political Reform Act requires Board Members to disclose income from spouses and domestic partners. In addition, state law limits the participation of an official in decision making where an economic conflict of interest exists. This economic conflict of interest is based upon income, investments and real property interests that the elected official has a community property or domestic partnership interest.

Existing San Mateo County Limitations by Charter or Ordinance

There are no limitations other than those set forth in the Political Reform Act.

City and County of San Francisco

San Francisco prohibits Board members from making, participating in making, or otherwise seeking to influence a decision of the City regarding an employment action involving a relative. They can, however, write a letter of reference.

City of San Jose

The ordinance code does not contain any limitations.

County of Los Angeles

The ordinance code does not contain any limitations.

County of Santa Clara

The ordinance code prohibits Board members from participating “in a governmental decision in which he or she has a close personal interest which would tend to impair the exercise of independent judgment in the public interest.” Personal, as distinguished from financial, interests include interests arising from blood or marriage relationships or very close personal associations which would constitute a conflict of interest under the common law. The ordinance code provides that: “The purpose of this section is to disqualify Board members from participating in decisions in which there would be a conflict of interest under the common law.”

**REGULATING ACTIVITIES RELATING TO PROSPECTIVE EMPLOYERS
AND AFTER LEAVING OFFICE.**

Limitation of Former County Officials

State Law Applicable to San Mateo Elected Officials

There is no state law regulating Board member activity after the term of office. However, Government Code § 87407 prohibits Board members from making, participating in, or influencing a governmental decision that directly relates to a prospective employer.

Existing San Mateo County Limitations by Charter or Ordinance

Section 204 of the County Charter provides: “No Supervisor during the term of office or for one year thereafter is eligible for appointment to any County office, position or employment carrying compensation except for reimbursement of authorized expenses.” Any change to Section 204 of the Charter would need to be approved by the electorate.

City and County of San Francisco

The City of San Francisco has a one year restriction for former members of the Board of Supervisors in regards to communication with city departments, boards or commissions. Former Board members are not eligible for city employment or for appointment to a board or commission for one year.

City of San Jose

The City of San Jose prohibits former city officials, including city council members, for one year from: (1) working on any legislative or administrative matter on which the official worked on 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 (2) representing 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.

County of Los Angeles

The Los Angeles County Charter provides that Board members "shall devote all their time during business hours to the faithful service of the public." There are no further limitations listed in the Los Angeles County ordinance code.

County of Santa Clara

The County Charter has the same prohibition as our charter. In addition, the ordinance code prohibits Board members from engaging in paid representation ("lobbying") on any matter within the employee's responsibility for a period of four years after leaving office.

REGULATING ACTIVITIES OF OTHERS

Lobbying

State Law Applicable to San Mateo County

There is no state law regulating lobbying activities that is applicable to the County.

Existing San Mateo County Limitations by Charter or Ordinance

There is no county regulation of lobbying activities.

City and County of San Francisco

Certain persons or firms that lobby the city must register annually and file quarterly reports. The definition of a lobbyist is a person who, pursuant to contract or multiple contracts, receives at least \$3,200 in any three consecutive month period or has at least 25 separate contacts with officers of the City. In addition persons who send \$3,200 to influence legislative or administrative action within three consecutive calendar months has to register and file reports regarding the payments.

City of San Jose

The municipal code requires individuals who engage in lobbying on behalf of one or more clients and who has received or has entered into an agreement for compensation of \$1,000 or more for lobbying during any consecutive three-month period must register and file quarterly reports. The municipal code also requires that any employer shall disclose concurrent employment, in any capacity, of any officer of the city, redevelopment agency or any full-time employee of the city or agency when: the employer is a local governmental lobbyist or a client of a lobbyist, who made the offer of employment based on the request or recommendation of the lobbyist.

County of Los Angeles

The ordinance code requires individuals and firms that are paid to communicate with the Board either directly or through agents must register as a lobbyist and file quarterly reports.

County of Santa Clara

Every person or entity, who has a matter on the agenda of the Board of Supervisors as part of an application for a County contract, permit, license or franchise, shall file a declaration and shall state prior to the appearance on the matter, the names of any individual(s) or firm(s) paid \$100 or more to present the position of the applicant to the Board of Supervisors, or to any individual member or members of the Board of Supervisors, or county staff with the ability to make administrative decisions regarding such applications. Any person who is a lobbyist under the terms of the ordinance must identify themselves to the Board or county staff prior to speaking on a matter.

THOMAS F. CASEY III, COUNTY COUNSEL

cc: John Maltbie, County Manager

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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RESOLUTION DESIGNATING THOSE POSITIONS OF COUNTY EMPLOYMENT TO RECEIVE ETHICS TRAINING IN ACCORDANCE WITH TITLE 5, DIVISION 2, PART 1, CHAPTER 2, ARTICLE 2.4 OF THE GOVERNMENT CODE.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, Title 5, Division 2, Part 1, Chapter 2, Article 2.4 of the Government Code requires the local agencies to provide ethics training to local agency officials as specified in the Article 2.4; and

WHEREAS, Government Code §53234 (c) of Article 2.4 defines "Local agency official" as : "(1) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties and (2) Any employee designated by a local agency legislative body to receive the training specified under this article"; and

WHEREAS, pursuant to Government Code §53234(c)(2), this Board desires to designate all employees who hold the position of department head for the departments specified in San Mateo County Ordinance Code §2.04.020 to receive ethics training as specified by Article 2.4;

NOW THEREFORE, the Board hereby orders that all employees who hold the

position of department head for the departments specified in San Mateo County Ordinance Code §2.04.020 are designated to receive ethics training in accordance with Title 5, Division 2, Part 1, Chapter 2, Article 2.4 of the Government Code.

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