

CITY COUNCIL'S AND CITY MANAGER'S JOINT RESPONSE

Conflict of Interest in Sonoma County

The City of Santa Rosa acknowledges the extensive research and interviews conducted by the Sonoma County Grand Jury in connection with its report on conflicts of interest in Sonoma County. The City of Santa Rosa is committed to preventing conflict of interest violations by continuing education and advice. To this end, the City of Santa Rosa has sponsored conflict of interest and Form 700 training by FPPC staff in the City Council Chambers in each of the past five years. Attached are sample invitations to all affected elected officials, appointed board and commission members and City staff. The City Attorney and City Clerk also provide conflict of interest and Form 700 training and educational materials to each newly and appointed elected official. Attorneys in the City Attorney's Office also provide an introduction to conflict of interest rules to each new appointee to the Board of Public Utilities, Planning Commission and Design Review Board. As part of this education and orientation, the City Attorney's Office provides each new elected or appointed official with the following information, copies of which are attached:

1. FPPC publication entitled "How Do I Get Advice from the FPPC?"
2. FPPC publication entitled "Can I vote?"
3. A memorandum from the City Attorney's Office regarding pre-hearing evidence gathering and communications ("ex parte" communications).
4. Santa Rosa City Council Policy #000-03, entitled "Presentation to Boards, Commission, and Council, etc."

Important sections of these resource materials are highlighted during the orientations.

In addition, each newly elected or appointed official is provided with an AutoCAD map of any real property interests held by the official within the City of Santa Rosa. These maps graphically depict a 500' boundary around each real property interest, which assists the official in identifying potential conflicts of interest arising from a proposed project's proximity to the official's real property. A sample AutoCAD map is attached.

As noted by the Grand Jury, conflict of interest issues are the sole responsibility of each public official and designated employee. To assist Council members in identifying potential conflicts of interest, the City Attorney's Office performs a preliminary review each week of all upcoming Council agenda items. During this agenda item review, project locations, project applicants and other involved principals and/or entities are identified and compared to the location of real property interests and a listing of known business interests and sources of income for each Council member. Council members are notified in advance of the Council meeting of potential conflicts which have been identified by the City Attorney's Office and are advised to abstain from participation in an item when appropriate, or to call to discuss potential conflict issues, when staff is uncertain of the existence of a conflict. In addition, as part of the City's annual budget review and adoption, the City Attorney's Office identifies all Capital Improvement Projects which may presently be a conflict of interest for any member of the Council, Planning Commission and Board of Public Utilities.

Beginning in 2001, to further assist the Council, Planning Commission and others in identifying potential conflicts, a "Disclosure Form," which is required to be submitted by a development applicant and which requires the listing and identification of all individuals who have any financial interest in the proposed development, is attached to the staff report relating to the application and development. This form individually names any and all partners, principals, trustees, property owners, option holders, or others possessing a financial interest in the proposed development. See attached copy of City Attorney's memorandum to Community Development dated May 15, 2001, and Community Development's disclosure form.

Periodic memoranda summarizing new rules or court decisions are also provided to elected and appointed officials. A member of the City Attorney's Office attends each Council meeting, as well as each Planning Commission and Board of Public Utilities meeting. These attorneys are available to advise elected and appointed officials in the event a potential conflict comes to the attention of the elected or appointed official during a meeting. (In spite of the best intentions and careful review of agendas and staff reports, awareness or the identification of a potential conflict sometimes arises during a meeting.)

Elected and appointed officials are encouraged to call upon the City Attorney's Office for advice any time they have a conflict question or anticipate a potential conflict of interest. Conferences with staff attorneys are available virtually on a same-day basis, because of the priority placed on the avoidance of conflicts. The City Attorney's Office also seeks oral and written advice on behalf of elected officials and board and commission members from the FPPC regarding possible conflict issues. In addition, the City Attorney's Office occasionally consults with outside counsel who specialize in ethical and conflict of interest issues.

The City's Conflict of Interest Code is re-adopted and updated biennially in even-numbered years as required by law and applies to all City employees, officials and consultants. In 2004, 156 City employees and elected and appointed officials were required under the Code's disclosure requirements to file Statements of Economic Interest (Form 700) with the City Clerk. Attached is a copy of the City's Conflict of Interest Code, adopted December 2004.

Attached is a memorandum from the City Clerk to the City Attorney outlining the steps taken by City staff relative to the preparation and filing of Statements of Economic Interests by elected officials, board and commission members and designated City employees who are required to file statements.

Only a written opinion from the FPPC, under specified circumstances, can insulate an official from any potential criminal or civil penalties in a conflict situation. Advice provided by the City Attorney's Office provides no shield and affords no protection. Unfortunately, it now takes up to two months or more, due to FPPC staff shortages, to obtain a written opinion. Since an elected or appointed official may learn of a potential conflict only shortly before an agendaed item is taken up, FPPC written advice is often unavailable.

In the summary, the City of Santa Rosa placed emphasis on continuing education and advice for its public officials long before the issuance of the Grand Jury Report or any media coverage.

For the past several months the League of California Cities' Institute for Local Government has worked on a pamphlet entitled, "Ethics Law / Compliance / Best Practices." The pamphlet is now being circulated statewide. A copy is attached. Santa Rosa's Deputy City Manager and City Attorney participated in the preparation of the pamphlet and will use the pamphlet as a training tool at the City of Santa Rosa.

**CITY COUNCIL’S AND CITY MANAGER’S
JOINT RESPONSES TO RECOMMENDATIONS (R)**

Conflict of Interest in Sonoma County

City Manager – R1, R2, R4, R5

City Council – R1, R2, R4, R5

R1. Adopt an Incompatible Activities List

Response: The recommendation is being considered.
Within the next 120 days, after receiving a full analysis from staff, the Council will consider whether to adopt an incompatible activities list.

R2. Adopt a Code of Ethics

Response: The recommendation will be implemented.
Within the next 120 days the City Council will adopt a Code of Ethics for the Council and boards and commissions.

R4. Institute regular, mandatory training

Response: The recommendation has been implemented and will be further implemented. The City has provided introductory and ongoing conflicts of interest and Form 700 filing training for elected officials and members of the Board of Public Utilities, Planning Commission and Design Review Board, as well as for other boards and commissions and designated employees. The City will require bi-annual training for elected officials, appointed officials, and executive management, on conflicts of interest, ethics and other laws governing their obligations as public servants. (The Institute for Local Government, which has unique expertise regarding the functioning and complex responsibilities of California cities, recommends bi-annual training. The Institute is the research division of the League of California Cities.) The training requirement may be satisfied by attendance at a League of California Cities conference where there is a conflict of interest presentation, staff training, or other reasonable method.

The City currently requires conflict of interest training, including providing written materials for new appointees, elected officials and designated employees, who serve on boards and commissions or in employment positions where conflict issues are likely to arise. Other appointed officials and designated employees are strongly encouraged to participate in annual conflict of interest training.

R5. Re-file Form 700 on a Material Change

Response: The recommendation will not be implemented.
The City of Santa Rosa does not support and will not take steps to implement the Grand Jury’s recommendation to adopt a requirement that all designated Statement of Economic

Interest filers file amendments to Form 700 within 30 days of a material change. Government Code section 87103 relates to whether a decision or action will have a “material effect” on an official’s economic interest; it does not relate to a “material change” in a public official’s economic interests. R5 appears to be recommending the adoption of a requirement that an official who is required to file a Form 700 must amend his or her current Form 700 within 30 days of the receipt or acquisition of an economic/financial interest which is not shown on the official’s current form and which, under state law, will be required to be reported on the official’s next filing of Form 700 (annual or leaving office statement). The City believes that public officials and designated employees should remain subject to the state law’s current filing requirements. The recommendation, as interpreted, appears to be administratively and personally unduly burdensome (for example, even minor changes would in some cases be deemed “material”), notice cannot be given by the City Clerk to the official when an amendment to his or her current statement is required, and the proposed requirement is not subject to timely verification.

**CITY COUNCIL’S AND CITY MANAGER’S
JOINT RESPONSES TO FINDING F4 (F)**

Conflict of Interest in Sonoma County

F4. Ten Violations in Sonoma County

Comment:

Although the City Council and City Manager are not required to respond to the Findings, the City Council wishes to convey its partial disagreement with the Grand Jury’s Summary of FPPC Cases numbered 99/501 and 96/162. The Grand Jury summary of FPPC Case No. 55/501 ignores the fact that the appointed official voted “. . . against his own economic interests.” FPPC Case No. 99/501, p. 7. The table accompanying F4 states that the violation resulted in a Business/Personal Gain in excess of \$450,000. In fact, the vote resulted in a substantial loss of income to the bank in which the appointed official held shares of stock, which constituted the basis for the conflict. The FPPC acknowledged that the vote in question was against the public official’s economic interests. This is a significant mitigating factor.

The table accompanying F4 also omits and distorts FPPC Case No. 96/162. Two Council members received compensation in relevant years from the Santa Rosa Chamber of Commerce, a non-profit corporation. One served as a consultant responsible for the Leadership Santa Rosa program and the other served as Education Director (liaison to local education). Both Council members voted on matters pertaining to services (unrelated to their Chamber responsibilities) provided by the Santa Rosa Chamber of Commerce to the City of Santa Rosa. The City compensated the Chamber for the costs it incurred in providing the services. The Council members did not gain or stand to gain anything, yet the table suggests that there was a substantial Business/Personal Gain. The City realizes that the Grand Jury was attempting to summarize a substantial volume of data in a table. Unfortunately, the summary appears to be, in part, misleading.