

# **ETHICS ADVISORY SUBCOMMITTEE**

## **REPORT AND RECOMMENDATIONS ON CITY COUNCIL ETHICAL STANDARDS AND GUIDELINES**

### **PREPARED FOR THE OXNARD CITY COUNCIL PROCEDURES COMMITTEE**

#### **ETHICS ADVISORY SUBCOMMITTEE MISSION STATEMENT**

The restoration of public trust that the City of Oxnard government will operate under the highest ethical standards is the core mission of this Ethics Advisory Subcommittee.

#### **ETHICS ADVISORY SUBCOMMITTEE TASK**

The Ethics Advisory Subcommittee will address the systemic collapse of an ethical corporate culture as documented in the Ventura County District Attorney's Report on the Public Integrity Investigation of Oxnard City Officials, issued on April 18, 2012. This Subcommittee will analyze three documents: the Ethics Report from the November 6th, and December 2nd, 2013 Ethics Workshops, and the Ventura County District Attorney's Report on the Public Integrity Investigation of Oxnard City Officials, issued on April 18, 2012.

The task of the Ethics Advisory Subcommittee is to prepare a report for the City Council Procedures Committee to consider presenting to the full City Council regarding policies that should be implemented to address ethics in city government, specifically the City Council.

#### **INTRODUCTORY STATEMENT**

The Ethics Advisory Subcommittee offers the following recommendations with the acknowledgement that the City Council Procedures Committee may or may not recommend their adoption to the full City Council. This report does not suggest changing the Oxnard City Code. State law and specifically the Fair Political Practices Commission offer a very firm base for the official conduct of our elected representatives and thereby prevent many potential conflicts of interests.

However, the Ethics Advisory Subcommittee strongly advises adopting and implementing all of the report's recommendations, including the eventual hiring of a Chief Ethics Compliance Officer. The City Council members should aspire to comply with the more stringent guidelines offered in this report. This document and its voluntary adoption will serve as a very important step in helping reestablish public trust in local government.

## Statement on Ethical Governance

“Democratic government can function properly only when the citizenry has confidence in its public officials. Once public trust is damaged, it is difficult to reestablish. As a result, a public agency may not be able to function effectively. Moreover, individual careers or reputations may be irreparably damaged. Hence, it is imperative to foster the highest standards of personal integrity and honesty in discharging public duties. Public officials should never compromise their honesty or integrity for personal gain or advancement. They should remain sensitive to the values of the public they serve. The citizens, businesses and employees of Oxnard are entitled to fair and ethical local government. The ethical operation of local government therefore requires that decision-makers be independent, impartial and accountable. It is the Council’s and the public’s expectation that our city government will act in ways that inspire and retain the trust and confidence of the community we serve.”<sup>1</sup>

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<sup>1</sup> Adapted from the City of Morgan Hill Ethics Policy

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# **CONFLICT OF INTEREST POLICY FOR THE CITY COUNCIL**

## **GIFTS**

City Councilmembers shall not accept at any time or over any period of time any gift from any person or business entity, which to the knowledge of the Councilmember, does business or is interested in doing business with the City. Councilmembers shall not accept any gift at all from any such person or business entity when to do so would create an impropriety or an appearance of an impropriety leading to a perception of favoritism in the Councilmember's discharge of his or her official duties. In addition, Councilmembers may have a possible conflict of interest in making decisions that could conceivably enrich them, their friends or family. These conflicts may occur when Councilmembers, their friends and family have personal financial interests in matters that are the subject of government decisions.

City Councilmembers should not accept gifts, gratuities, or favors of any kind. Councilmembers shall make a quarterly report, similar to Form 700, on gifts received by themselves, their spouses and their dependent children from any source that might be perceived as a potential business partner of the City, to be kept on file with the City Clerk.

## **HONORARIA**

Councilmembers shall not accept payments of honoraria, which shall be defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event or like gathering. Councilmembers shall be allowed to accept reasonable reimbursement from the sponsoring organizations for incurred expenses.

## **EMPLOYMENT WITH BUSINESS PARTNERS OF THE CITY OF OXNARD**

The negotiating or accepting future employment with persons and businesses that have had or may have business matters pending before the City Council should be avoided by the Councilmembers, their immediate families and close friends. Failing to do so presents ample opportunities for the perception of abuse of the public trust.

## **CONTACT WITH BUSINESS PARTNERS DURING THE BIDDING PROCESS**

Relationships between the City Councilmembers and contractors and vendors shall be circumscribed in the following manner: when the bidding process is officially open, Councilmembers shall have no contact with any bidder until the process is completed. Further, Councilmembers participating in the selection process for City contracts shall sign an annual non-disclosure form, as provided in Exhibit A, and kept on file with the City Clerk.

## **ETHICS TRAINING AND FINANCIAL REPORTING**

There shall be biennial ethics training as required by State law AB 1234 and each Council member shall undergo such training and sign a statement of understanding and compliance, as provided in Exhibit B, on file with the City Clerk. Councilmembers must file quarterly public disclosure reports similar to the FPPC's Form 700 regarding certain personal financial interests to help identify possible conflicts, on file with the City Clerk.

**Note:** all ethics related forms and certificates shall be kept with the council members' Form 700's on file with the City Clerk.

## **STATEMENT ON EX PARTE COMMUNICATIONS**

The following statement is to be read by the presiding officer before discussion on all public hearing items with a potential for ex parte communication:

"At this time, I would like to ask each council member to state on the record whether or not he or she has received any oral or written ex parte communication regarding this agenda item that is not already contained in the record before us on this matter. Please disclose the substance of that information only if that information is not contained in the record before us on this matter."

# **City Council Use of City-Issued Credit Cards**

According to the Ventura County District Attorney's Report on the Public Integrity Investigation of Oxnard City Officials, City practices regularly permitted officials to make personal purchases on city credit cards while traveling. Under the City's record keeping practices, the personal purchases were rarely itemized and, in those circumstances where there was reimbursement, the amounts were unverifiable.

It is evident that this is a complex issue and can lead to abuse of the public trust. Therefore, it is the recommendation of the Ethics Advisory Subcommittee that the members of the Oxnard City Council do not have access to City-issued credit cards. It is possible for the City to pre-pay many of the expenses incurred by council members during the course of their appointed duties, negating the need for city-issued credit cards. For emergencies, council members would use their personal credit cards and submit receipts to the City Manager for reimbursement no later than two weeks after submission. Therefore, the Ethics Advisory Subcommittee strongly recommends revising existing policy.

Implementing a more rigorous oversight and recordkeeping process, and consistently requiring every official to itemize and personally verify all expenses can remedy many of the public's concerns. In cooperation with the City Manager, monthly expense reports shall be submitted by the Treasurer, verified by original receipts and posted to the City's web site. Failure to comply with reporting protocols or provide proof of authorized expenses shall be grounds for censure of the offending elected official and denial of claim. Strict and complete adherence to these procedures shall be an integral performance metric of the City Manager's job evaluation process.

As of February 1, 2011, the City implemented a fixed per diem rate for all employees and elected officials, using federal per diem rates. A City of Oxnard resolution and state law limit the amount City councilmembers can be reimbursed for meal expenses to IRS rates. State law also requires that a City councilmember must seek prior approval at a city council meeting to exceed IRS reimbursement rates. The revised policy no longer permits officials to exceed the per diem rate. The City also developed new travel expense forms specifically for City Council to ensure compliance with Government Code requirements. These forms shall be posted to the City's web site on a monthly basis. The City Manager must bear ultimate responsibility for demanding strict adherence to these recommendations and the overall rate of compliance shall be reflected in the City Manager's job evaluation. This will require an update on the current City policy.

# GENERAL ETHICS PRACTICES AND VALUES FOR THE CITY COUNCIL

## General Practices

- Lead by example.
- Have good internal policies, enforce and abide by them.
- Participate in ethics training on a regular basis.
- Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.<sup>2</sup>
- Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.<sup>3</sup>
- Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the individual may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.<sup>4</sup>
- Recognize that the chief function of local government at all times is to serve the best interests of all people.<sup>5</sup>
- Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.<sup>6</sup>
- Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.<sup>7</sup>

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## Values<sup>8</sup>

### Value 1. Be a model local government for ethical behaviors.

- Have policies that are current and provide clarity about expectations.
- Ensure accountability.
- Set higher standards and enforce the standards.

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<sup>2</sup> Adapted from the ICMA Code of Ethics, Tenet 1

<sup>3</sup> Adapted from the ICMA Code of Ethics, Tenet 2

<sup>4</sup> Adapted from the ICMA Code of Ethics, Tenet 3

<sup>5</sup> Adapted from the ICMA Code of Ethics, Tenet 4

<sup>6</sup> Adapted from the ICMA Code of Ethics, Tenet 9

<sup>7</sup> Adapted from the ICMA Code of Ethics, Tenet 12

<sup>8</sup> Pages 3-7, City of Oxnard Community Ethics Visioning Workshop

- Have an independent third party who is impartial make the call on whether something is unethical.
- Understand that mistakes happen; be patient with reasonable expectations.
- Create a process to ensure that Oxnard values and corresponding behaviors are being enforced.
- Cultivate a positive, productive working environment.
- Practice open communication to ensure transparency.
- Ensure that checks and balances are built into the system as safeguards.
- Admit to mistakes.
- Follow through on promises.

**Value 2. Tell the truth.**

- Always provide the whole truth.

**Value 3. The ends do not justify the means.**

- Don't skirt laws, policies and procedures in the name of expediency to accomplish a worthy goal.
- The best decisions require time.
- Just because you can act, doesn't mean you should.

**Value 4. Have policies and practices that support our ethics.**

- Seek out best practices from other organizations.
- Review existing policies and make changes to ensure they are best practices and support our values.
- Determine needs in updating our policies and allocate resources to update them.
- Communicate our policies (including to individuals who may be outside the City organization and may not know our policies).
- Educate people on the underlying "why" of the policies.
- Be transparent with the public; have easy access to our policies.
- Communicate complex items clearly to foster transparency.

**Value 5. Act in the best interest of the public at all times.**

- Take the best actions that will do the most good for a majority of the people, even if it is an unpopular decision.
- Use education and communication to explain the public interests being served.
- Have high personal conduct – do the right thing when no one is watching.
- Manage expectations and provide enough time to afford staff an opportunity to gather information to assist the Council in making the best decisions.
- Understand that reasonable people may disagree about what the "best interests of the community" are.
- Understand there are competing interests in many decisions.



- Understand that we need to act in the best interest of the community, even when there is a vocal group with a particular position; there are silent community members who don't verbalize their points of view, but the City Council must take their needs into consideration.
- There should be full disclosure when presenting information on issues, including the positive and negative aspects of an issue.
- Treat all neighborhoods and resident classes equitably.
- Share rationale for decision-making with the public.
- Know that a lack of information creates misunderstandings.
- Recognize that sometimes doing the right thing takes sacrifice; integrity is more important than self-preservation.

**Value 6. Be accountable and responsible for our own behaviors.**

- Expect everyone to operate within the City's guiding values.
- Create and maintain a culture of respect.
- Recognize when mistakes are made, deal with them, and move forward; operate in the present.
- Move from accuse and diminish to trust but verify.
- Support an approach of "we are all in this together".
- Continue to get things done and focus on the right things, even when dynamics are difficult.
- Be honest with fellow Councilmembers, the public and staff.
- Have consequences for unethical behaviors.
- Speak up when values are not being upheld.
- Provide a safe way for employees to bring a problem to light safely (i.e. a whistleblower policy).

**Value 7. Respect the Council - Manager form of government.**

- Take initiative to understand each other's roles – Council's policy role, staff's expertise and operational role.
- Strive for good teamwork between Council and staff.
- Follow established lines of communication from the Council to staff.
- Council and staff should lead by example in creating a culture of respect.
- There should be an effort to establish trust between Council and staff.
- Provide ample time for Councilmembers to consider information on complex issues.

**Value 8. Council, staff and the public should treat each other with civility, respect and fairness.**

- Expect everyone to treat everyone with mutual respect: Council, staff and public.
- Don't allow people, whether on the Council or staff, or in the public, to treat each other disrespectfully.
- Foster an approach that we are on the same team – there are no "sides".
- Appreciate that a difference of views in itself is not a lack of respect.

- Address inappropriate comments about staff or others immediately; don't allow personal attacks – reinforce that our value is one of expecting mutual respect to be shown by everyone in a public meeting.
- Establish and maintain decorum at meetings (i.e., no heckling or speaking derogatorily about staff; impermissible to speak derisively about people's race, religion, sexual preference or any other protected classes).
- Practice forgiveness.

**Value 9. Lead by example.**

- Be above reproach; know that by our behaviors, we are setting the tone for others to emulate.
- Understand that perception is important in building trust.
- Embrace leadership and act like we want others to act.
- Learn from the past and then move forward.

**Value 10. Do not use your office for personal advantage or to do favors for others.**

- Do not agree to make a decision in exchange for anything of value.
- Do not accept gifts, services or other special considerations because of your public position.
- Honor the process, but if something is broken, work together to fix it.
- Councilmembers must model the behaviors to restore trust and integrity to government.
- Ensure equitable treatment for everyone.
- Recognize competing interests in service delivery.
- Use authority responsibly and fairly; do not abuse authority.

**Value 11. Respect confidentiality and understand what can be shared with others and what cannot be.**

- What happens in closed session stays in closed session.
- Have respect for everyone's privacy.
- Disclose from closed sessions only what is properly public information.
- Understand and respect what legally may and may not be disclosed. Comply with the law.
- Understand that some matters must remain confidential to protect the City's interests.
- Have a formal policy that provides for when and how settlements can be released.
- Practice transparency in all non-confidential matters.

**Value 12. Support the Council's decision once it has been made.**

- Everyone should understand and respect the roles of City Council and staff.
- Staff should provide thorough information to the Council and Councilmembers should communicate their questions and concerns in advance of Council meetings so that staff can be prepared.

# **ACCOUNTABILITY**

Elected officials should be accountable to the public for honesty, integrity, competence, ethics, service, and the quality of their decisions. They should be accountable to the public for the environmental, economic, political, and social effects of their actions or operations.

Accountability ensures actions and decisions taken by public officials are subject to oversight so as to guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to be benefiting, thereby contributing to better governance.

The concept of accountability involves two distinct stages: transparency and enforcement. Transparency in this context refers to the obligation of public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the institution responsible for accountability can sanction the offending party or remedy the contravening behavior.

Elections provide the most obvious enforcement of accountability, but this is a rather blunt tool, exercised only at widespread intervals and offering only the broadest citizen control over government.

## **ADDITIONAL RECOMMENDATIONS**

These recommendations of the Ethics Advisory Subcommittee are effective only to the degree of City Council compliance. Therefore, it is strongly advised that the City Council explore the possibility of hiring or retaining the services of a person capable of fulfilling the duties of a Chief Ethics Compliance Office. Their duties would include, but not be limited to, the sample job description provided in Exhibit C, of this report.

# **EXHIBIT A**

## **ANNUAL CERTIFICATE OF NON-DISCLOSURE AND CONFLICT OF INTEREST STATEMENT**

I understand that in the course of my duties and responsibilities, I may have access to information received by the City in confidence from any entities in connection with procurements including, but not necessarily limited to, technical approaches, past performance information, trade secrets, inventions, discoveries, and reports of a financial nature and cost or pricing related information. I may also have access to other procurement information such as the names, identities or numbers of entities under consideration or the methods or procedures used in the selection of a contractor, including but not limited to, the standards, criteria, and ratings used in the evaluation process. I understand that my obligation not to disclose the information described above does not terminate with the award of a contract or any other contract action. I further understand that unauthorized disclosure of such information may result in Council Censure.

I further affirm that I have and will continue to review my financial interests and those of my spouse and immediate family as well as significant others and to the best of my knowledge those interests do not and will not create a real or perceived conflict of interest by my participation in procurements. In the event a proposal is received from a firm in which I have a personal or financial interest of any nature, I will immediately notify and recuse myself from voting on that matter. I acknowledge that the personal or financial interest may require my removal from further participation in a procurement or may even preclude the City from entering into a proposed contract. (Note that the interest of a spouse, minor child, or other member of an employee's household should be reported in the same manner as an interest of the Council member).

I recognize that this statement is in addition to existing State regulations and that I voluntarily submit to these enhanced guidelines.

Name (Printed): \_\_\_\_\_

Title (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT B

## CITY OF OXNARD ETHICS POLICY

### COMPLIANCE FORM<sup>9</sup>

The City of Oxnard's City Council members should comply with the following:

- Public officials, both elected and appointed, comply with both the letter and the spirit of the laws and policies affecting the operations of government;
- Public officials be independent, impartial, and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally required to be confidential, in an atmosphere of respect and civility; and

As those charged with carrying on the City's business, I the undersigned, affirm my commitment to the City of Oxnard's ethics policy and endeavor to practice the following core values:

**Honesty.** I am honest with my fellow elected officials, the public and others. I am prepared to make unpopular decisions when my sense of the public's best interests requires it; and I take responsibility for my actions, even when it is uncomfortable to do so. I am trustworthy.

**Respect.** I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community. I respect others' time by coming to meetings prepared and offering observations only when I believe it will move the discussion forward. I work to gain value from diverse opinions and build consensus. I am approachable, open-minded and willing to participate in dialog and I work to convey this to others. I recognize government's responsibilities to everyone. I convey the agency's care for and commitment to its community members through my words and deeds. I am attuned to, and care about, the needs and issues of citizens, public officials and agency workers.

**Responsibility.** I do not accept gifts, services or other special considerations because of my public position. I refrain from any action that might appear to compromise my independent judgment. I support merit-based processes for the award of public employment and public contracts. I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds).

**Fairness.** I support the public's right to know and participate in the conduct of the public's business. I am impartial when making decisions. I make decisions based on the merits of the issue.

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<sup>9</sup> Adopted from the City of Morgan Hill Ethics Policy

**Loyalty.** I respect the confidentiality of information concerning the agency's property, personnel and affairs. When presenting my individual opinions and positions, I explicitly state that my opinions do not represent the agency's position and I will not allow the inference that they do.

I acknowledge that I have read and understand the provisions of the City of Oxnard's Ethics Policy.

Print Name: \_\_\_\_\_

Position Held: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

# EXHIBIT C

## CHIEF ETHICS COMPLIANCE OFFICER

**Qualifications:** The Chief Ethics Compliance Officer will have skills and experience sufficient to identify potential issues within a variety of compliance areas. The Compliance Officer will be able to remain objective and function independently from other agency departments. The Compliance Officer will be detail oriented and have experience with investigative and reporting procedures. They should have knowledge of FPPC regulations, State and local ethics laws, ethics training, general procedures and record keeping, public records compliance and Brown Act compliance and training.

**Accountability:** The Chief Ethics Compliance Officer shall be accountable to the City Manager and the City Council.

**Duties:** The Ethics Compliance Officer's chief duties are planning, implementing and monitoring the Ethics Compliance Program. Coordination of compliance audit activities and communication of expectations and reporting results are the key functions of this position.

The Chief Ethics Compliance Officer will:

- Oversee and monitor the implementation of the Ethics Compliance Program.
- Report to the City Manager and City Council on a regular basis to review progress on program implementation and assist with establishing improvement plans.
- Periodically revise and update the program.
- Review employee Standards of Conduct Certification Statements.
- Develop and implement a Compliance training plan.
- Assist the Finance Department in coordinating internal compliance review and monitoring activities.
- Investigate complaints and coordinate action plans with other departments.
- Develop policies and programs that encourage staff to report suspected fraud or impropriety without fear of retaliation.
- Develop and communicate the objectives of the Compliance Program and report accomplishments.
- Access records relevant to compliance monitoring activities and report findings.
- Maintain a log of communications received relevant to compliance.
- Monitor reports of potential ethical violations, findings and recommendations developed, action plans established, and progress noted.
- Establish and communicate reporting procedures and reporting modes available (email, voice mail, suggestion box, etc.).
- Interview internal and external customers periodically.
- Conduct unannounced mock surveys, inspections and audits periodically to assess staff readiness and to specifically identify where corrective actions are needed. Reevaluate areas of previous deficiency to identify improvements.
- Present written evaluations and reports to the City Council at least quarterly.

# SIGNATORY PAGE

Chairman (Steve Nash) \_\_\_\_\_

Vice-Chairman (Jack Villa) \_\_\_\_\_

Subcommittee Member (Russell Dominy) \_\_\_\_\_

Subcommittee Member (Gene G. Harter) \_\_\_\_\_

Subcommittee Member (Travis L. Kelly) \_\_\_\_\_

Subcommittee Member (Robert L. Sills) \_\_\_\_\_

Subcommittee Member (Robert Stewart) \_\_\_\_\_

Date \_\_\_\_\_